

1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

PUBLIC SERVICE ACTS AMENDMENT BILL 1981

EXPLANATORY MEMORANDUM

(CIRCULATED BY AUTHORITY OF THE MINISTER
FOR INDUSTRIAL RELATIONS AND MINISTER
ASSISTING THE PRIME MINISTER, THE
HONOURABLE R.I. VINER)

PUBLIC SERVICE ACTS AMENDMENT BILL 1981

GENERAL OUTLINE

The Bill makes amendments to Public Service Act to implement a revised arrangements for staffing action within the Public Service.

The Bill repeals those provisions which established the First, Second, Third and Fourth Divisions of the Public Service. The separate provisions relating to recruitment of Third Division officers and Fourth Division officers are replaced by a single provision which authorises the Public Service Board to determine standards and practices in relation to recruitment of staff. The essential features of open competitive recruitment which have been a feature of the Public Service since its inception are retained.

The provisions in the Act relating to the promotion process are also replaced. The proposed provisions will abolish seniority as a ground for promotion leaving the efficiency of the officer as the sole ground of promotion. For this purpose efficiency is defined as the suitability of the officer to perform the duties of the office having regard to the officer's capacity, standard of work, experience, qualifications and personal qualities.

The new provisions relating to promotion retain the arrangements for promotions to be subject to appeal to a Promotion Appeal Committee chaired by an independent Chairman and having a departmental and staff nominee.

These changes require a significant number of consequential changes to other parts of the Act.

The other amendments made by the Bill make provision for

- . certain statutory officers to be appointed as Chief Officers for the purposes of the Act
- . appointment of an acting member of the Public Service Board in the event of a vacancy arising on the Board
- . the dormant appointment of acting Permanent Heads
- . the attachment of the salaries of officers to satisfy judgement debts
- . retrenchment benefits under the Superannuation and Long Service Leave (Commonwealth Employee) Acts not to be payable where an officer declines redeployment.

PUBLIC SERVICE ACTS AMENDMENT BILL 1981

NOTES ON CLAUSES

PART 1: PRELIMINARY

Clause 1 Short Title

Clause 2 Commencement Provisions

PART 2: AMENDMENTS OF PUBLIC SERVICE ACT 1922

Clause 3 Defines Public Service Act 1922 as the Principal Act for purposes of this Part

Clause 4

Section 7 (Interpretation) of the Principal Act is amended :

- (a) to delete definitions of 'Division', 'Selection Test' and 'the prescribed educational qualification' which are unnecessary as a result of the abolition of Divisions within the Service
- (b) to insert new definition of 'Department' 'office of Permanent Head', 'Permanent Head' and 'relevant Permanent Head' to facilitate reference to those statutory officers who by other legislation have been granted the powers of a Permanent Head in relation to certain parts of the Service.

The references to the repealed Officers' Rights Declaration Act 1928 and the former section 6 of the Trade Commissioners Act 1933 relate to the proposed section 87TA inserted by clause 64.

Clause 5

Formal amendment of title of office of Secretary to the Joint House Department.

Clause 6

Section 10 of the Principal Act is amended to reflect the revised definition of 'Department' inserted by Clause 4

Clause 7

The amendment of sub-section 11(1) of the Principal Act to remove the requirement that any vacancy in the Public Service Board be immediately filled on a permanent basis is consequential upon the introduction by clause 9 of the proposed section 12A which permits an acting appointment to be made when there is a vacancy on the Board. Sub-section 11(8) which previously made provision for the appointment of a deputy of a member is unnecessary and is repealed.

Clause 8

The amendment made to Section 12 of the Principal Act is similar to the amendment by clause 7 in consequence of the introduction of section 12A which will permit the appointment of an acting Chairman of the Board.

Clause 9

Inserts a new section 12A to enable a person to be appointed to act as a member of the Public Service Board or as Chairman in the event of a vacancy in the office or during any period of absence, unavailability, leave or suspension of the member or Chairman. Acting appointments in the event of a vacancy in an office are limited to six months from the occurrence of the vacancy. The provision permits dormant acting appointments to be made and provides

that a person appointed to act as a member of the Board has all the powers and functions of a member.

Clause 10

Consequential on the insertion of section 12A, section 13A is amended to clarify that an acting appointee is part of the quorum of the Board

Sub-sections 13A,(2),(3) and (4) which provided particular arrangements in relation to the quorum of the Board and which are no longer necessary are repealed. The proposed sub-section 13A(4) clarifies that in the event of there being only one member of the Board he may exercise the powers of the Chairman.

Clause 11

Sub-section 16(1) is amended to enable the Board to delegate its powers to certain statutory office holders in charge of staff under the Public Service Act. Sub-section 16(4) is amended to ensure that an Acting Chairman of the Board can exercise delegations given to the Chairman. The transitional provision in sub clause 11(2) continues existing delegations in force.

Clause 12

The abolition of the Divisions within the Service and the abolition of seniority as a factor in promotions effected by other provisions of this Bill removes the need for the Board to publish a list of officers indicating their seniority and Divisional status. Section 21 is to be amended accordingly.

Clause 13

Formal amendment of heading of Division I of Part III

Clause 14

Repeals Sections 23 and 24 . Section 23 provided for the Service to be grouped in Divisions and Section 24 provided for the officers who were to be included in each Division

Clause 15

Sub-section 25(5) is amended to enable a Permanent Head to delegate his powers to a statutory office holder. Sub-section 25(4A) which granted powers of a Permanent Head to the Chairman of the Prices Justification Tribunal is repealed following the abolition of that office.

Clause 16

Section 26 is amended to permit the Board on the recommendation of the Permanent Head to appoint as Chief Officer persons drawn from a broader group, in particular to include employees and certain statutory office holders. The proposed sub-section 26(4) enables the Board in relation to statutory office holders appointed as Chief Officer to determine the Chief Officer powers to be exercised and to specify the group of staff over which he has charge. Sub-clauses 16(2) and (3) provide transitional arrangements to continue existing appointments of Chief Officer in force

Clause 17

Inserts into section 29 of the Principal Act provisions enabling the Governor-General, on the recommendation of the Board, to recreate (without change to classification) offices which were abolished as a result of changes to the Administrative Arrangements Order.

Clause 18

The section 30 has been amended as a consequence of the abolition of the Division within the Service with transitional provisions continuing existing determinations of the Remuneration Tribunal in force.

Clause 19

Formal amendment of heading to Division 4 of Part III

Clause 20

Repeals section 33 and inserts new sections 33, 33A, 33B and 33C. Section 33 defines 'committee' and the following for the purposes of Division IV.

'prescribed day' to mean the day prescribed by regulation for the purpose of commencement of duty and payment of salary

'promotion' is defined as a movement to an office involving an immediate increase in salary or maximum salary attainable.

Sub-section 33(2) defines a vacancy to include a vacancy which is about to occur and thus permits promotion action (advertising, selection, appeals) to commence in anticipation of a vacancy although no such promotion shall take effect before the vacancy arises.

Sub-section 33(4) provides that appeals become inoperative in circumstances where the continuation of the appeal to determination is not appropriate.

section 33A:

The repeal effected by clause 21 of the Bill removes the separate provisions providing for distinct processes for the recruitment of Fourth Division Officers and Third Division Officers. The proposed section reenacts provisions substantially similar to those contained in the existing sections but without any distinction based on Divisions. The new section empowers the Board to notify:

- . the manner of inviting applications for appointment
- . the manner of determining the order of appointment
- . academic or other qualifications required for appointment
- . the academic or other qualifications necessary for appointment, promotion or transfer to certain offices
- . circumstances in which vacancies are to be advertised
- . any other matters relating to appointments transfers or promotions

Section 33B This section empowers the Board to conduct examinations or tests for the purposes of appointment to, or promotion within, the Service

Section 33C This section permits the Board to assign unattached officers to a particular Department for the purpose of administering the other provisions of the Act

Sub-clause 20(2) provides transitional arrangement to ensure the validity of previously made appointments under the Act.

Clause 21

Sections 35 to 46 are repealed and replaced by the proposed section 33A. Sections 35 - 40 are proposed to be inserted.

Sections 35 - These sections dealing with the procedures for
37 appointment of Permanent Heads are a reenactment of the provisions contained in sections 54, and 54A (which are repealed by Clause 30).
References in these provisions to 'First Division' have been replaced with 'Permanent Head' or similar appropriate expression consequent upon the abolition of the Divisional structure within the Service. The provisions permit the Governor-General to appoint Permanent Heads on the recommendation of the Prime Minister. They require that the Prime Minister may only recommend after receipt of advice from the Chairman of the Board and a Committee of Permanent Heads

appointed by the Chairman, after consultation with the Prime Minister, in relation to a vacant office or an office expected to become vacant on persons considered suitable for appointment to the vacancy or expected vacancy. In the event that a person is appointed whose name is not contained in the report of the Chairman or the Committee or a subsequent report, prepared by the Chairman or the Committee at the request of the Prime Minister or the responsible Minister, the appointment can only be made for a fixed term of up to five years and the person engagement may be terminated in the event of a change in Government.

Section 38 The proposed section will enable acting appointments as Permanent Head in the event of a vacancy in the office, the suspension of the Permanent Head or the absence of, or unavailability of, a Permanent Head. Acting appointments in the event of a vacancy are limited to six months. The provision permits dormant acting appointments to be made and provides that an acting appointee can exercise all the powers of a Permanent Head

Section 39 This section authorizes the Board to appoint persons either to particular offices or as unattached officers. This section is a reenactment (without reference to Divisions of the Service) of section 33 of the Principal Act which is proposed to be repealed (see Clause 20).

Section 40 This section authorizes the Board to make special appointments and is a reenactment of section 38 of the Principal Act which is proposed to be repealed by Clause 21.

Clause 22

Consequential provision deleting references to Divisions in section 47 of the Principal Act

Clause 23

Consequential provision. Sub-section 47A(2) which relates to age limits for returned soldiers is no longer necessary as the provisions relating to the imposition of age limits on appointment have been repealed.

Clause 24

Inserts a new section 47AB which provides that an officer to whom the repealed Officers' Rights Declaration Act 1928 or the former section 6 of the Trade Commissioners Act 1933 applies is not entitled to be reappointed to an office if there is no vacant office available which he is competent to perform and can be reasonably be required to perform.

Clause 25

Sub-clause 25(1) makes a formal amendment. Sub-clause 25(2) is consequential on the abolition of Divisions within the Service.

Clause 26

Clause 26 removes from section 47C references to age limits.

Clause 27

Repeals sections 50 to 50A of the Principal Act which made provision for promotion etc and inserts new sections 50 to 50L

Section 50 The proposed section permits the Permanent Head of a Department to fill a vacancy in his Department by promoting or transferring an officer. Sub-sections 50(1) and 50(2) provide that the Permanent Head may advertise the vacancy in the Gazette and shall do so if the Board directs.

Sub-section 50(4) permits the Board to restrict the filling of a vacancy without its approval.

Sub-sections 50(5) and (6) require that notice of all promotions be published in the Gazette, are subject to appeal, and do not take effect until any appeals are determined.

Section 50A The proposed section provides that relative efficiency is the only criteria for promotion and defines efficiency as the suitability of the officer to perform the duties of the vacant office to be ascertained having regard to

- (a) the capability of the officer to discharge those duties;
- (b) the standard of the work performed by the officer in other offices;
- (c) any experience possessed by the officer relevant to the discharge of those duties;
- (d) the training and educational qualifications of the officer;
- (e) any personal qualities of the officer relevant to the discharge of those duties

Provision is made for special consideration being given to officers who have been absent on defence service and for greater weight to be given to one or more of the factors in relation to certain classes of offices.

Section 50B The proposed section permits an officer who considers he is more entitled to promotion to appeal against the promotion of another officer on the grounds of greater efficiency. Regulations will outline the manner and timing of an appeal.

Section 50C Under this section the Board is required to establish such Promotions Appeal Committees as are necessary to determine appeals under section 50B

Section 50D The Promotions Appeal Committee is required to inquire into the claims of all parties to the appeal. It can, subject to this and any

provisions of the regulations determine its own procedures and is able to receive information not bound by formal rules of evidence.

Where a Committee receives adverse information on a party to an appeal, which influenced its decision, it is required to release the substance of that information.

Confidential information is not to be disclosed except on request of a party and the supplier consents, or it is adverse to a party. Where confidential adverse material is supplied, the identity of the supplier is not to be revealed.

The Committee is not required to release information to a party which relates to other parties to the appeal. It is not required to allow parties to be present when it is receiving information from other sources and may determine whether parties are to make oral submissions. Where oral submissions are made, unless the Committee otherwise decides -

- . submissions to be made by parties not by representatives
- . party giving submission not to be accompanied by persons to advise or assist
- . no other persons to be present

The Committee can either allow or disallow the appeal. In the event that there are more than two officers appealing, choose which, if any, of the appeals should succeed, subject to the limitation that in relation to certain appeals, to be defined in the regulations, the Committee is to report to the Board on the claims of all parties, which shall determine the appeal.

Sub-section 50D(7) requires that where an appeal is successful the Board shall cancel the promotion and promote the appellant. The Committee and the Board in determining appeals are bound by the criteria set out in accordance with section 50A.

Section 50E The proposed section provides for the promotion to take effect as soon as any appeals are finalised. Provision is made for salary to be payable when the promotion takes effect except that where an appeal is allowed the salary becomes payable to a promotee who withstands appeal or a successful appellant on the prescribed day which would have been applicable had there not been an appeal.

- Section 50F Where an officer has been promoted and that promotion appealed against, should that officer die after the prescribed day, all appeals will lapse.
- Section 50G Provision is made so that where the Board consider a vacant office should be abolished or a vacancy should be further advertised, the Board can cancel the promotion and any outstanding appeals would lapse. Cancellation and lapsing of appeals is also provided where salary movements subsequent to the promotion action make that action redundant.
- Section 50H Provision is made for officers who have been declared eligible for redeployment under the Commonwealth Employees (Redeployment and Retirement) Act to be able to appeal against promotions to a level equal to, or lower than their present substantive level. In the event of the appeal being allowed the resultant movement would be a transfer and suitable provision is made to give effect to this. Appeal rights under this section cease when redeployment action by the Board under that Act is completed.

Section 50J The effect of the proposed section is to permit transfers between Departments with the agreement of relevant Permanent Heads and the officer concerned. The Board retains the power to direct that the transfer occur. Special provision is made to recognise the relationship between the Presiding Officers and the Board in relation to Parliamentary Departments.

Section 50K The proposed section permits the Permanent Head to simultaneously transfer officers between offices

Clause 28

The proposed section 51AA inserted by this clause permits the Board to transfer an officer to a substituted office created by the Governor-General under sub-section 29(1A). Actions which have been taken to fill an abolished office are deemed to have been taken in relation to the substituted office.

The Board is required to notify the relevant Permanent Heads of details of such transfers.

Clause 29

Section 51A is amended to enable regulations to be made in addition to the transfer of officers within Departments as provided by the existing section to cover inter-Departmental temporary transfers.

Clause 30

Sections 53 - 53C of the Principal Act are repealed and replaced

by proposed sections 53 to 53K which are inserted by this clause. Sections 54 - 54B are also repealed and replaced by the proposed sections 35 - 38 (see clause 21).

Section 53 | Under the proposed paragraph 33A(1)(d) the Board can determine that a particular group of offices can only be filled by the promotion of persons who complete an examination or test. The proposed section provides for the filling of a vacancy by the Permanent Head of such an office by a person who has completed the examination. Where more than one person is qualified the provision requires the vacancy to be filled in accordance with the order of merit at examination. Promotions of officers under this section are not subject to appeal and take effect immediately with an immediate salary increase.

Section 53A | The proposed section enables the Board to declare that certain classes of offices can only be filled by persons who have completed a course of training in a training position and the section provides for advancement to a higher office on successful completion of the training course. As transfer or promotion to a training office carries the right to advancement to a higher office provision is made for officers to appeal against the transfer or promotion to a training office as if it were a promotion to a higher office. Certain references in other sections are interpreted for this purpose and transfers to training offices are required to be notified in the Gazette.

Provision is made for the order of advancement to higher office to be, within any group of officers first satisfactorily completing the course, in order of merit in completing the course. Advancement to the higher office takes effect immediately with increased salary and is not subject to appeal.

Where an officer completes the course and there is no vacancy to which he can be advanced the officer becomes an unattached officer and performs duties and receives salary at the higher level until placed in a vacant higher office. The provision does not prevent the Permanent Head filling a vacant office by a qualified officer by normal promotion procedures if there are no persons available who have completed the training course.

Section 53B Formal - defines 'appoint' to include 'reappoint'

Section 53C The proposed section provides for the Promotion Appeal Committee to be constituted as follows: -

- . Chairman appointed by Governor-General
(including persons appointed to a pool of part-time Chairmen)
- . Departmental nominee
- . A nominee of staff

Provision is included to limit the terms of appointment of full-time Chairman to five years with the eligibility for reappointment. An age limit of 65 years for appointment is applied.

Sections 53D. These proposed sections provide for:
- 53G . remuneration of Chairman to be determined
by Remuneration Tribunal
. Chairman to resign in writing to the Governor-
General
. the grant of leave to Chairman, and
. termination of appointment of Chairman by the
Governor-General on certain grounds

Section 53H Provision is made for the Promotions Appeal
Committee to be constituted by the remaining
members in the event one member ceases to take
part in the deliberations of the Committee

Section 53J The proposed section provides for the Committee
to decide by majority and where no majority can
be formed, the Chairman's view prevails.

Section 53K The provision authorises the Promotion Appeal
Committee to sit within Australia at places
approved by the Board.

Sub-clauses 30(3) and (4)

Suitable transitional provisions to continue in force actions
which had been taken under the repealed provisions which are
reenacted by other clauses of the Bill.

Clause 31

Formal Provision

Clauses 32 - 42

These clauses introduce new definitions of 'Minister' and 'Permanent Head' and 'officer' for the purpose of application of provisions of the Principal Act relating to discipline and remove references to Division consequent upon the abolition of Divisions within the Service.

Clause 43

Repeals the existing section 64 and substitutes a new section 64 providing for the recovery by a creditor, by attachment of salary of a debt owed by an officer of the Australian Public Service.

Provides for procedures for a creditor to establish that a debt is owing and opportunity for the affected officer to show the debt has been satisfied. The department is empowered to satisfy the debt by deductions to salary. An administration fee is payable to the Commonwealth, levied on the creditor for the service of collecting a debt on his behalf.

As the provision makes deductions in satisfaction of a judgement debt mandatory the revised provisions contain certain protections for officers:

- . Paying Officer may reduce deduction where satisfied that severe hardship will be caused by the normal deduction of 20% of net salary
- . enables excess deductions to be reclaimed by officer
- . provides penalties if creditor does not notify that debt satisfied, and

- . prevents attachment to salary in respect of an officer who is an undischarged bankrupt.

Clause 44

Consequential amendment as a result of the abolition of the Divisions within the Service

Clauses 45 - 49

Formal provision - updates references in various sections to take into account the repeal and amendment of the sections of the Principal Act referred to in those sections.

Clauses 50,51,55,56,58-63

The provisions of the various sections amended by these clauses relate to the rights of certain former officers to return to the Service by way of promotion or transfer. The various sections have been amended to take account of changes which have been made to the provisions of the Principal Act relating to promotion and transfer by other clauses of this Bill. References to Division are removed as a consequence of the abolition of Divisions within the Service.

Clause 52

Amends section 87B of the Act which enables the prescription, by regulation, of State bodies and statutory appointments for the purposes of the application of Part IV of the Act (Part IV contains provisions which preserve the rights of APS officers on movement to approved bodies). The new sub-section (1A) provides that the agreement of the relevant State Government is required before a regulation making such a prescription may be effected.

Clauses 53 - 54

Consequential amendments arising from the insertion of section 87TA (see clause 64)

Clause 57

Amends section 87J of the Act which enables provisions that preserve the rights of officers to be invoked where a transfer of staff occurs following the transfer of functions of a department of the APS to a Commonwealth statutory authority or prescribed State employment. The new sub-section (6A) provides that the agreement of the relevant State Government must be obtained where it is proposed to invoke the preservation provisions in respect of a transfer to State employment.

Clause 64

Inserts section 87TA which adopts a different legislative form to preserve the rights of certain officers with rights under the

Trade Commissioners Act 1933 and the Officers' Rights Declaration Act 1928. The effect of this provision is to continue the existing situation that officers with these rights continue to hold them as long as they remain in eligible Commonwealth employment as defined in section 87(1) of the Principal Act.

Clauses 65 - 71 and 75

The clauses make further consequential amendments arising from the abolition of the Divisional structure of the Service, revisions to the promotions process and the changes to transitional provisions made by clause 64 in relation to officers to whom the Officers' Rights Declaration Act and the Trade Commissioners Act applied.

Clause 72

Inserts section 87ZEA to provide that where an officer with rights preserved under the proposed section 87TA loses his position on retrenchment and the Board is unable to redeploy him in the Service, should he subsequently be retrenched from the Service he should be paid retrenchment benefits at the rate of salary he last received while with the authority.

Clause 73

Inserts new sections 89A and 89B.

Sub-section 89A(1) the Superannuation Act 1976 provides that where an employee is retrenched, that employee is eligible to receive special retrenchment benefits. That Act is being amended (Clause s 91 and 92) to enable a certificate to be issued which will preclude such benefits being paid to a person who has rejected reasonable offers of alternative employment.

Sub-section 89A(1) provides that the Board can issue such a certificate if it is satisfied that reasonable offers of employment which would have provided the opportunity to continue to contribute under the Superannuation Act 1976 have been rejected. The Board is required to have regard to certain criteria.

Sub-section 89A(2) The Long Service Leave (Commonwealth Employees) Act 1976 contains a similar provision to the Superannuation Act 1976 and amendments are proposed by clauses 89 and 90. Sub-section 89A(2) makes provision analogous to 89A(1).

Section 89B Provides that legal actions shall not be taken

against officers giving work reports, referee report, etc in good faith.

Clause 75

Section 97 is amended to permit regulations to be made to regulate the revised promotion and transfer provisions and to make changes consequential on the abolition of Divisions within the Service.

Clause 76

Formal change of name of office in Schedule of the Principal Act

Clause 77

Transitional provision. Enables promotion action in train on commencement day to proceed to finality under the existing procedures.

PART 3 : AMENDMENTS TO THE COMMONWEALTH EMPLOYEES
(REDEPLOYMENT AND RETIREMENT) ACT 1979

Clauses 78-87

The Principal Act as defined in clause 79 is amended in consequence of the amendments made to the Public Service Act.

PART 4 - AMENDMENT OF THE LONG SERVICE LEAVE (COMMONWEALTH
EMPLOYEES) ACT 1976.

Clause 88

Defines the Principal Act

Clause 89

Inserts a sub-section 17(2A) to enable the Public Service Board to issue a certificate as provided for in Sub-section 89A(2) of the Public Service Act (Clause 74) certifying that a person is not eligible under the special retrenchment provisions where the person has rejected an offer of reasonable alternate employment. Where the Board is not the approving authority in respect of this Act, the certificate is issued to the approving authority.

PART 5: AMENDMENT OF THE SUPERANNUATION ACT 1976

Clause 90

Defines the Principal Act

Clause 91

Inserts a sub-section 58(5) into the Superannuation Act which will enable the Public Service Board to issue a certificate to the Commissioner of Superannuation as provided for in sub-section 89A(1) of the Public Service Act (Clause 74). Such a certificate will certify that a person is not eligible for special retrenchment benefits where that person had rejected offers of reasonable alternative employment.

PART 6: AMENDMENTS TO OTHER ACTS

Clauses 92, 94 - 97 and 100

Aboriginal Affairs (Arrangements with the States) Act 1973, Meat Inspection Arrangements Act 1964, Mint Employees Act 1964, National Parks and Wildlife Conservation Act 1975 and Statistics (Arrangements with States) Act 1956 are amended in relation to staffing provisions which are to be read as being incorporated in the Public Service Act. The amendments remove references to repealed provisions and substitute the currently applicable comparable provisions.

Clause 93

Amends references to promotion provisions in Schedule 2 of the Administrative Decisions (Judicial Review) Act 1977,

Clause 98

Repeals sub-sections 44(2) and 45(2) of the Public Service Amendment Act 1978 following the insertion of Section 87TA (Clause 64).

Clause 199

Amends Remuneration Tribunals Act 1973 to delete references to First Division consequent upon the abolition of the Division within the Service.

