

1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

PUBLIC SERVICE ACTS AMENDMENT BILL

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

### AMENDMENTS TO BE MOVED ON BEHALF OF THE GOVERNMENT

#### GENERAL OUTLINE

The amendments to the Bill make provision for -

- . increased autonomy for the Parliamentary Departments in staffing arrangements;
- . acting appointment of Chairman of the Public Service Board;
- . the supplying of reasons for decision in relation to decisions about promotions, transfers and related matters; and
- . dual appointment of Permanent Heads

PUBLIC SERVICE ACTS AMENDMENT BILL

NOTES ON CLAUSES



AMENDMENT (1)

Amends the commencement provisions of Clause 2 of the Bill to provide for the commencement on Royal assent of some of the provisions proposed to be inserted.

AMENDMENT (2)

Replaces Clause 5 of the Bill with a revised Clause 5 containing the following provisions:

## Section 9

Sub-section (1) is amended to provide for the appointment of Permanent Heads of Parliamentary Departments by the Governor-General on the recommendation of the Presiding Officers.

Sub-section (2) is omitted and replaced with a provision empowering the Presiding Officers to make appointments and promotions in the Parliamentary Departments.

Sub-section 2AA is inserted to substitute Presiding Officers for references to the Permanent Head in the proposed Section 53L.

Sub-section 2AB is inserted to substitute references to the Presiding Officers for references to the Public Service Board wherever the latter appears in determinations made under the Public Service Act.

Sub-section 2A is amended to correct an anomaly in the naming of the Secretary to the Joint House Department.

Sub-section 5 is omitted to be replaced with a section 9A.

Sub-section 8 is amended to insert a definition of references to offices of the Parliament.

Transitional provisions is made to retain the existing structure of officers and offices as if that structure were created under the revised provisions for the creation of offices.

CLAUSE 5A(1) inserts -

Section 9A

Sub-sections (1) to (6) empower the Presiding Officers on obtaining a report from the relevant Permanent Head to create, abolish, raise or lower classification of, or alter the designation of offices in Parliamentary Departments.

Sub-section 7 provides that where the classification of an office is altered, that office is to be deemed vacant.

Sub-sections 8 and 9 enable the Presiding Officers to direct that sub-section 7 does not apply in some

circumstances where the 'reclassification' is the result of changes in salary levels generally.

#### Section 9B

Provides that the Presiding Officers will report annually on the operation of the Parliamentary Departments.

Sub-section 3 ensures that this provision does not prevent members from seeking information from the Presiding Officers on the operation of the Parliamentary Departments through other Parliamentary processes.

Sub-clauses 5(2) and (3) require that the first annual report be made in respect of the year ending 30 June immediately following the commencement of the section unless the commencement occurs in the latter half of the reporting year in which case any matters required to be covered are to be covered in the report for the following year.

#### AMENDMENT (3)

Replaces Clause 9 of the Bill with an amended Clause 9. The section 12A inserted by the Bill did not provide for the acting appointment of Chairman of the Board as was intended. The amended section 12A inserted by these amendments enables a person to be appointed to act as a member of the 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 the 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.

#### AMENDMENT (4)

Inserts transitional provisions in relation to amendments of section 16 of the Principal Act to ensure that actions already taken under that section are not invalidated following the amendments made by the Bill.

#### AMENDMENT (5)

Replaces Clause 17 of the Bill with an amended Clause 17. This Clause 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 Administrative Arrangements Order. The amended Clause 17 will allow some degree of flexibility in that the office recreated need not be identical to the original office, provided the duties are substantially similar.

#### AMENDMENT (6)

This amendment is consequential on the amendment made by amendment (2) to provide for the creation of offices in the



Parliamentary Departments to be the responsibility of the Presiding Officers.

AMENDMENT (7)

This amendment ensures that the power of the Presiding Officers to recommend to the Governor-General the appointment of the Permanent Heads of the Parliamentary Department extends similarly to the appointment of Acting Permanent Heads of those Departments.

AMENDMENT (8)

Amends Clause 21 to insert a section 38A which will enable a Permanent Head to hold another office of Permanent Head simultaneously. The provision precludes a person holding such a dual appointment from receiving remuneration in relation to the second office of Permanent Head.

AMENDMENT (9)

This amendment clarifies that appeal rights extended in certain circumstances by the proposed section 50H are to be dealt with under section 50 of the Act.

AMENDMENT (10)

Formal amendment to reflect the introduction of Sub-Division F (see amendment (9)).

AMENDMENT (11)

Amends Clause 30 to clarify that where there are appeal rights in section 53A against transfers to training positions

where there is automatic advancement upon successful completion of the training course, then those appeal rights do not apply where the training office is in a Parliamentary Department.

#### AMENDMENT (12)

Inserts a new Sub-Division F comprising new sections 53L to 53N providing for the furnishing of reports in respect of decisions relating to promotions and transfers.

Sub-section 53L(1) defines the relevant decisions where reports are to be furnished; they are:

- . transfers;
- . promotions;
- . appointments;
- . directions for temporary performance;
- . appeals against promotions;
- . appeals against temporary performance;
- . cancellation of promotions.

Sub-section 53L(2) defines in detail the groups of officers who are entitled to reports.

Sub-section 53L(3) clarifies the identity of the decision-maker where the decision-maker is a delegate of another person or body.

Sub-section 53L(4) clarifies the identity of the decision-maker where that person was acting in the position, another person is acting in the position or the position no longer exists.

Sub-sections 53L(5) and (6) entitle a person who is aggrieved by a relevant decision to request a report from the decision-maker. Where the decision-maker is a Promotions Appeal Committee the regulations will set down where the request is to be made.

Sub-section 53L(7) provides that the decision-maker must provide the report within 28 days.

Sub-section 53L(8) provides that the Chairman, Promotions Appeal committee may provide a report on behalf of the Committee where the other members of the Committee agree.

The section provides that different types of reports will be given to the different categories of officers that are specified in sub-section (2). The reports described in sub-sections (9), (10), (11) and (13) will include:

- . the duties of the position;
- . the selection criteria;
- . the procedures used to reach the decision; and
- . whether the officer was considered suitable with an assessment of the officer against the selection criteria.

The reports described above will be provided to officers who were:

- . unsuccessful applicants to an advertised vacancy filled by promotion, transfer or appointment;

applicants, and other officers of the Department, not selected to perform temporary duties; or unsuccessful parties to an appeal against a promotion or a direction to perform temporary duties.

Reports under sub-section 12 containing a statement of reasons why a particular decision was made without a vacancy being advertised will be provided to any officer outside the Department aggrieved by a decision to fill a vacancy by transfer or promotion without advertising.

Reports under sub-section 14 will provide a statement of reasons as to why a particular decision was made. These reports will be provided on request to an officer - transferred to a vacancy that was not advertised;

directed to temporarily perform duties of an office where applications were not invited; or whose promotion was cancelled.

Sub-section 53L(15) provides for the decision-maker to indicate by notice that the person requesting the statement is not entitled to a report and in similar manner to the Administrative Decisions (Judicial Review)

Act 1977, the person may seek to have such a refusal reviewed by the Federal Court. Sub-section 17 makes consequential provision in relation to time limits for such action on the same basis as sub-section 13(6) of that Act.

Sub-section 53L(16) provides that a request for a report must be made within 28 days of the notification of the decision, or if the decision was not notified, within a reasonable period. Where a request is not made within the required period, the person is to be told within 14 days that a report will not be furnished.

Sub-section 53L(18) makes special provision for the incorporation of information given in confidence in the report but requires that, in relation to such information it shall not, as far as practicable, be made in such a form as would reveal the identity of the person who supplied the information.

Section 53M provides that a person promoted to a position and appealed against is entitled to the same type of report as is provided to an unsuccessful applicant under section 53L.

Section 53N enables a statement provided under 53L or 53M to be considered as a statement for the purposes of making an application under section 11 of the

Administrative Decisions (Judicial Review) Act 1977  
which relates to a review by the Court of the decision  
in accordance with the other provisions of that Act.

AMENDMENT (13)

The amendment clarifies that each of the actions which may  
be taken under paragraph 62(6)(a) is mutually exclusive  
of each other action and not cumulative.

AMENDMENT (14)

Extends eligibility to receive reports under section 53L  
to former officers covered by Part IV of the Principal Act  
where they are exercising their rights to return to the  
Service by applying for promotion or transfer (or appealing  
against promotion) as provided in section 87M of the Act.

AMENDMENT (15)

Amends Clause 73 to limit the protection afforded by section  
89B against legal action to persons giving reports made  
under the Principal Act as amended by the Bill.

AMENDMENT (16)

Inserts provision to enable regulations to be made determining  
the allowances in respect of travelling expenses that are to  
be paid to members of the Joint Council who are not officers  
or employees.

AMENDMENT (17)

Inserts after Clause 77 of the Bill new sections 77A, 77B  
and 77C. Sections 77A, 77B and 77C will provide transitional

arrangements which will provide the same entitlements as sections 53L, 53M and 53N in relation to decisions made after the commencement of the provisions inserted by the Bill arising from promotion action which commenced before the commencement day of the Bill. Clause 77 of the Bill enables such promotion action to continue (ie the appeal processes) as if the existing promotion and appeal arrangements were in force.

Section 77D provides transitional arrangements for dual appointment of Permanent Heads prior to the proclamation of Clause 21 of the Bill. That clause places the provisions relating to the appointment of Permanent Heads in a different place in the Act.

#### AMENDMENT (18)

Amends Clause 93 of the Bill to insert an amendment to the Administrative Decisions (Judicial Review) Act 1977. The amendment to Schedule 2 will provide that section 13 of the Administrative Decisions (Judicial Review) Act will not apply to relevant decisions for the purposes of section 53L and section 77A of the Public Service Acts Amendment Act 1982. Other amendments to Schedule 2 are consequential amendments arising from the amendments made to section 53B and 53C of the Principal Act.

