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PUBLIC SERVICE AMENDMENT BILL 1978

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Aboriginal
Affairs and Minister Assisting the Prime
Minister in Public Service Matters, the
Honourable R. I. Viner, M.P.)

PUBLIC SERVICE AMENDMENT BILL 1978

Introduction

This Bill effects a number of amendments to the Public Service Act 1922, primarily in relation to the disciplinary code applicable to public servants, and in relation to the rights of officers who engage in employment with Commonwealth authorities not staffed under the Public Service Act.

Disciplinary Provisions

2. The major new disciplinary provisions are to be found in clauses 20-22. In the main, the provisions are based on recommendations by a sub-committee of the Joint Council (an employer-employee body established under the Public Service Act to examine matters of general interest throughout the Australian Public Service). The recommendations have the full support of the Public Service Board; the Royal Commission on Australian Government Administration also generally endorsed the proposed changes, and recommended that prompt action be taken to amend existing legislation.

3. The existing provisions have remained virtually unchanged since 1922, and the provisions in the present Bill will reflect modern concepts of the role of the disciplinary process in public administration. In particular, disciplinary provisions will be a complement to other management processes of supervision, leadership and counselling, with disciplinary action generally as a last resort.

4. Features of the new disciplinary code in the Bill include:

- . legislative restriction of 'improper conduct' to situations where the conduct is relevant to the officer as an officer (with a similar restriction for criminal offences which may attract disciplinary action);
- . extension of appeal rights to cover all formal disciplinary action;
- . extension of the protections afforded by disciplinary provisions to a greater number of temporary employees;
- . emphasis on the primary role of departments, especially in relation to suspension powers and action where there has been a criminal offence;
- . provisions enabling findings to be reviewed when new evidence comes to light;
- . Second Division officers to be covered by the general disciplinary provisions rather than by the special formal provisions applicable to First Division officers.

Officers employed by public authorities

5. Part IV of the Public Service Act, inserted by clause 31 of the Bill, implements a new scheme recommended by a sub-committee of the Joint Council for the preservation of the rights of officers of the Australian Public Service (A.P.S.) who take up employment with Commonwealth authorities staffed outside the provisions of the Public Service Act. The new scheme will replace the existing and inadequate Officers' Rights Declaration Act.

6. Provision is made so that the existing Officers' Rights Declaration Act will continue to apply only to persons covered by that Act at the time the new scheme comes into operation. Such persons will, however, have the right (by virtue of provisions in Division 4 of Part IV) to elect to be covered by the new provisions.

7. The proposed scheme adopts a two tier approach. The first tier (dealt with in Division 2 of Part IV) covers officers who join a Commonwealth authority for periods of up to three years. It provides for leave without pay from the Australian Public Service with the preservation of all the rights normally applied to staff on leave without pay.

8. The second tier (dealt with in Division 3 of Part IV) covers officers who at the end of the initial three year period decide to stay with an authority and officers who are transferred from the Public Service to an independently staffed authority as a result of the transfer of functions from the Public Service to that authority. The second tier provides that officers sever their direct connection with the A.P.S. but retain significant specified rights.

9. A person who is covered by the second tier scheme has the following rights:

- . remains a contributor under the Superannuation Act, unless he elects otherwise;

- . retains his existing and accruing A.P.S. long service leave entitlements, unless he elects otherwise;
- . carries over any A.P.S. sick leave and recreation leave credits - his entitlements then being subject to the rules of the authority;
- . during his employment with the authority (or with another authority, provided the periods of service are continuous) and up to age 65, he is entitled to:
 - (a) sit for Public Service examinations;
 - (b) apply under section 50 of the Public Service Act for promotion or transfer to any advertised vacancy (whether open to outsiders or not); and
 - (c) appeal against any provisional promotions in the Australian Public Serviceas if he were still an A.P.S. officer; and
- . has, on application, access to additional re-entry provisions designed to take account of dismissal from the authority, retrenchment, or substantial effect on career expectations as a result of the curtailment of activities of the authority (if the officer was transferred from the A.P.S. to that authority).

10. Provisions in Divisions 1 and 2 of Part IV will enable the extension of the new scheme to the Northern Territory Public Service and to non-Commonwealth employment where the Government considers this to be appropriate, for example, to cover situations such as the transfer of staff of the Australian Legal Aid Office to the States.

11. Special provisions in Division 5 of Part IV correct certain inequities that occurred in relation to the transfer of staff of the former Postmaster-General's Department to the Postal and Telecommunications Commissions, and bring certain transfers of staff from the A.P.S. to Commonwealth authorities that have already taken place within the ambit of the new scheme.

Other Amendments

12. The Bill also makes changes, some of a technical nature, to simplify and improve aspects of the Public Service Act. These provisions include:

- . the replacement of the specific categorisation of different classes of leave without pay now in the Act with a general power to grant leave for purposes prescribed by the regulations and on such terms and conditions as are prescribed;
- . clarification of the Public Service Board's delegation powers under the Public Service Act and provision to enable the Board to delegate its powers under other Acts;
- . a more flexible determination-making power in relation to conditions of advancement within particular professional categories and provisions to enable the waiver of probation in certain cases;
- . abolition of the graduate intake restriction;
- . repeal of the redundant provision concerning payments to female officers

- retiring on marriage;
- . expansion of the regulation-making power to cover the payment of expenses in connection with the death of an officer or employee;
- . insertion of a regulation-making power to enable conditions regarding the forfeiture and lapsing of recreation leave to be prescribed;
- . amendments to the provision concerning the recognition of prior service in the public sector to include employment recognised for long service leave purposes and certain service in Papua New Guinea - provision is also made so that breaks not exceeding two months will not affect continuity of prior service.

13. Various consequential amendments are made to the Public Service Act and certain other Acts arising out of the provisions of the new Part IV and the new discipline provisions.

NOTES ON CLAUSES

- Clause 1 Citation of Act
- Clause 2 Commencement Provisions
- Clause 3 Amends section 7 (interpretation) so as to incorporate a revised definition of 'criminal offence', primarily for the purposes of the new disciplinary provisions. The new definition ensures that offences against foreign laws are covered if they would have been an offence under Australian law (as recommended by the Discipline Sub-Committee of Joint Council in para. 7.5 of its report).
- Clause 4 Amends section 9 so as to more accurately describe current administrative arrangements in the Parliamentary Departments.
- Clause 5 Amends section 16 to enable the Public Service Board to delegate its powers under the Public Service Act and other Acts to members of the Board and to officers and employees of the Australian Public Service (A.P.S.). Other technical changes have been made to section 16 to provide greater flexibility in relation to the issue of instruments of delegation.
- Clause 6 Deletes 'conduct' from section 31 of the Act as a ground for deferring an increment (as recommended by the Discipline Sub-Committee of Joint Council (DSC) in para. 40 of their supplementary report).

- Clause 7 Repeals the existing section 32 and a new section is inserted so that in determining conditions and advancement within a particular professional employment category, reference may be made to an incremental point in a salary range. Under the repealed section, the actual rate of salary was required to be specified in such determinations.
- Clause 8 Repeals section 36 of the Act which provided a ten per cent restriction on the number of graduates that could be recruited to the A.P.S. in any one year.
- Clause 9 Sub-sections 37(2), 38(2) and 40(2A) dealing with
Clause 10 waiver of probation are repealed and are now dealt
Clause 11 with in new sub-sections 47(14) and (15) (see clause 12).
- Clause 12 Amends section 47 so that probationers who are deemed to be on leave without pay by virtue of relevant provisions in the new Part IV of the Act (see clause 31) may have their appointment confirmed even though they are removed from normal departmental processes (new sub-sections 47(9), (9A), (9B) and (9C)). The new sub-section 47(14) will enable the Board, in appropriate circumstances, to waive the requirement that a person appointed to the Service serve a period of probation.
- Clause 13 Makes a consequential amendment to section 47B to enable persons who cease to be officers by virtue of new section 87D (see clause 31) to be re-appointed to the A.P.S. on the same basis as persons who retire, or who have been retired, from the A.P.S.

Clause 14 Amends 47C to deal with the situation of an officer covered by Division 2 of the new Part IV of the Act who resigns from the Public Service to contest an election and is unsuccessful at that election. This provision will enable such a person to preserve his long service leave entitlements if he is re-appointed to the A.P.S.

Clause 15 Amends the existing section 47E which enables the recognition of prior public employment for the purposes of the Public Service Act.

The effect of sub-clauses (1)(a) and (d) is that by the insertion of new sub-sections 47E(1) and 47E(6)(a), prior service in public employment which is recognised for the purposes of the Long Service Leave (Commonwealth Employees) Act, will be recognised as prior service for the purposes of the Public Service Act.

New sub-section 47E(2) enables the recognition of prior continuous service in Papua New Guinea on the same basis that it is recognised for long service leave purposes.

Sub-clauses (1)(b) and (c) make consequential technical amendments.

New sub-section 47E(6)(b) inserted by sub-clause 1(d) provides that a break in employment not exceeding two months will not affect the continuity of prior service.

New sub-section 47E(7) makes provision so that full-time training under Commonwealth vocational training schemes does not break continuity of prior service.

Sub-clause (2) preserves determinations made under the repealed sub-section 47E(1).

Clause 16 Makes consequential amendments to section 50 as a result of the repeal of the existing leave provisions effected by clause 27 and the insertion by that clause of new provisions in lieu thereof.

Clause 17 Technical amendments of section 54B (acting appointments to the First Division) : ensures that an instrument of appointment can apply to a period described by reference to the absence or unavailability of the substantive occupant, rather than by reference to particular dates.

Clause 18 Repeals section 54C (payments to female officers retiring on marriage) which is now redundant.

Clause 19 Formal : new heading for Division 6 of Part III of Act.

Clause 20 This clause repeals sections 55 to 63 of the Act (the main sections dealing with disciplinary processes) and substitutes new sections 55-63T. Notes on the proposed sections follow hereunder.

55(1) Definitions:

. 'Chief Officer' is defined so as to enable regulations to prescribe who is the Chief Officer of a person who is no longer an officer (following dismissal or forfeiture

of office), or who is an unattached officer performing duty otherwise than in a Department, and who may now wish to appeal, etc.

- . 'eligible public employment' is defined by reference to Part IV (as to which, see notes hereunder)
- . 'Minister' is defined so as to ensure that there is a Minister - namely the Prime Minister - who can take action in respect of an unattached First Division officer (for Permanent Heads, etc.
'Minister' is the Minister administering the Department)
- . 'misconduct' is defined as meaning a failure of the officer to fulfil his duty as an officer
- . the definition of 'original office' is necessary for the purposes of possible 'reinstatement' under the sections dealing with nullification of a criminal conviction (63F), review of findings when new evidence comes to hand (63G), appeals following dismissal of unattached officers (63N) and appeal following forfeiture of office for unexplained absence (66A)
- . 'salary' is defined so as to include such allowances as are prescribed; this is relevant to the suspension provisions, and will enable allowances to be continued where they are not in the nature of salary (as recommended by DSC in para. 8.28 of its report).

- 55(2) This is a technical provision enabling persons to be appointed to the Service (in the sorts of circumstances summarised in the note on the definition of 'original office') as unattached officers rather than to a particular office.
- 55(3) A technical provision ensuring coverage of persons whose services have been made available to statutory bodies, and who are deemed for that purpose to be occupying offices in Departments.
- 55(4) Technical provision consequential on Subdivision D (officers employed otherwise than in a Department).
- 56 This section specifies the misconduct which can lead to disciplinary action under the Act (as recommended by the DSC in para. 5.49 of its report, the provision is so drafted as to avoid the current language, 'shall be guilty of an offence').

The main change from the matters set out in section 55(1) of the present Act is that the reference to 'improper conduct otherwise than as an officer' is limited to conduct that 'affects adversely the performance of his duties or brings the Service into disrepute' (as recommended by the DSC in para. 14 of its supplementary report).

The provision in the current Act relating to 'using intoxicating liquors or drugs to

excess' has been deleted (the DSC has recommended in para. 5.10 of its report that the provision be limited to situations where the performance of duties was impaired; however, the area is covered by the 'improper conduct' provision in any event).

Sub-division B of Division 6 (proposed sections 57-60) sets out the procedures to be followed in relation to First Division officers. The DSC considered it would be inappropriate to make firm recommendations in this area, but did make a number of suggestions.

An important change is that the new provisions are restricted to First Division Officers, whereas the relevant current provision (section 56), applies to both First and Second Division officers. The DSC canvassed a change to this effect, as did the Public Service Board in a Submission to the Royal Commission on Australian Government Administration (RCAGA), and it was in fact recommended (R.186) by the RCAGA. The Bill groups Second Division officers with Third and Fourth Division officers for disciplinary purposes.

Another important change concerns the power, under current section 56, for 'any person' to charge a First or Second Division officer with a disciplinary offence (in fact, when the provision has been used it has generally been by officers 'displeased' with decisions by senior officers, rather than by members of the public).

The DSC raised the possibility of eliminating the 'any person' provision; the RCAGA's view was that 'it should still be open to any person to lodge complaints about an alleged misconduct and that there ought to be administrative procedures to ensure that such complaints are recorded and investigated' (para. 8.5.21 of RCAGA report). The approach taken in the Bill is to vest the charging power with the responsible Minister, whilst still recognising the right of anybody to bring a matter forward (i.e., 'Where the Minister has at any time, whether by reason of an allegation made to him or otherwise, reason to believe').

Other notes on proposed sections 57-60 follow hereunder:

- 57(1) Vests initial step - i.e., charging - in responsible Minister. As in current section 56, suspension is an integral and compulsory part of the process.
- 57(2) Minister then reports suspension and charge to the Public Service Board.
- 57(3) Provides for the charged officer to, in effect, either deny or admit the truth of the charge.
- 57(4) Technical provision : failure to deny something does not mean that the officer has admitted it.
- 57(5) Provides for establishment of a Board of Inquiry where the charge is not admitted.

- 57(6) Board is to consist of three persons (a variation from current section 56 suggested by the DSC is adopted here, in that Boards of Inquiry will be appointed by the Governor-General rather than the Public Service Board).
- 57(7) Provides for the Public Service Board to recommend possible disciplinary action to the Governor-General (as suggested by DSC in para. 12.10 of its report, the current 'such penalty or other punishment as the case demands' provision is omitted; only the specified disciplinary action - admonition, transfer or dismissal - can be taken).
- 57(8) Procedural provision relating to documents that are to accompany a recommendation to the Governor-General under 57(6). A DSC suggestion (para. 12.7 of report), that the officer should be entitled to submit a statement to the Governor-General, is adopted.
- 57(9) Provides the officer with an opportunity to furnish a statement as envisaged by 57(8).
- 57(10) Power of the Governor-General to take action (this may be as recommended by the Public Service Board, or something else that could have been recommended) or to decide to take no action.
- 57(11) Requires tabling of a statement of reasons in Parliament where the Governor-General does not follow the Public Service Board's recommendation (this is similar to section

18 of the Act).

- 58(1) Enables the Public Service Board to recommend disciplinary action (transfer or dismissal) to the Governor-General when a First Division officer is convicted of a criminal offence (or a Court, without recording a conviction, finds that such an offence has been committed). In the current Act, there is a general 'criminal offence' provision - section 62 - for officers of all Divisions; the DSC suggested in para. 12.7 of its report that provisions for First Division officers should be harmonised with those applicable in 'non-criminal' situations. The officer must be given an opportunity to furnish a statement in writing, and action can only be recommended if the Board is of the opinion that this is justified having regard to the nature and circumstances of the offence, the nature of the duties of the officer, and the interests of the Service.
- 58(2) Documentation to accompany a recommendation as in (1) - cf 57(8).
- 58(3) Opportunity for officer to make a statement - cf 57(9).
- 58(4) Governor-General's power to take action or no action - cf 57(10).
- 58(5) Statement in Parliament - cf 57(11).

- 58(6) Technical provision : conduct can still be taken into account in the course of normal personnel processes (e.g. if under consideration for another office) even if it is decided that formal disciplinary action is unnecessary or inappropriate.
- 58(7) Technical provision : prevention of 'double punishment' (i.e. where conduct could be the basis for disciplinary action under either proposed sections 57 or 58).
- 59(1) Discretionary power for Minister to suspend a First Division officer who has been charged with a criminal offence, or to temporarily transfer the officer to other duties. Such action can only be taken if the Minister is of the opinion that it would be prejudicial to the effective operation of the Service, to the interests of the public or to the interests of the officer or his fellow officers if he were to continue to perform the duties of his existing office (this basic approach was recommended by DSC in para. 8.10 of its report).
- 59(2) Provides that, except as provided in 59(3), a suspended First Division officer is not entitled to salary; this is the same as for Second, Third and Fourth Division officers : see note re 63B(2).
- 59(3) Salary entitlement of First Division officers suffering hardship : see note re 63C(2).

- 60(1) Provides for removal of suspension in accordance with section (or in relation to an imprisoned officer to whom proposed section 63R applies).
- 60(2) Enables Minister to remove a suspension imposed under section 59, and requires the Minister to review his decision after a suspension has continued for 30 days (basic approach suggested by DSC : see note re 63C(2)).
- 60(3) Removal of suspension if charge under section 57 found to be not proved.
- 60(4) Removal of suspension re criminal offence if found innocent.
- 60(5) Technical provision re 60(4).
- 60(6) Provides for a re-crediting of leave in the situation where a First Division officer takes leave when he would otherwise be suspended, and is ultimately found not guilty etc.
- 60(7) A period of suspension which is followed by dismissal is not to count as service for any purpose (as recommended by DSC in para. 8.44 of report).
- 60(8) Discretion vested in Board as to whether a period of suspension should count as service when the officer retires or dies before the disciplinary action is finalised (as recommended by DSC in para. 8.23 of report).

60(9) Technical provision : cessation of suspension when disciplinary processes are finalised.

60(10) Technical provision : if a Minister uses the power available to him under section 59(1) to lift a suspension, he can later reimpose it.

Subdivision C of Division 6 (proposed sections 61-63I) sets out the disciplinary provisions for Second, Third and Fourth Division officers.

Comments on particular provisions follow hereunder.

61(1) Basic power for a supervisor of an officer to initiate disciplinary processes (vesting of the power in a 'supervisor' was recommended by DSC in para. 3.11 of its report; the term has been left undefined so as to give greater administrative flexibility). Before considering whether disciplinary action is warranted, the supervisor may seek an explanation from the officer (as recommended by the DSC in para. 3.11 of its report).

It should also be mentioned that, in proposed section 61(1) and other appropriate parts of the Bill, there is a requirement to consider counselling as an alternative to formal disciplinary action. The DSC recommendation to this effect (para. 3.11 of its report) follows from what it saw as a basic principle (outlined in para. 3.11) namely that formal disciplinary action should generally be seen as a last resort.

- 61(2) This provides for the second 'step' in the disciplinary process, i.e. where the supervisor has decided to furnish a report on the matter. Under sub-section 61(2), an officer authorised for the purpose must decide whether or not the officer should be formally charged (the counselling alternative is again mentioned).
- 61(3) Enables the charged officer to require a copy of the charge to be sent to his staff association (as recommended by DSC in para. 4.5 of report).
- 62(1) Provides for the holding of inquiries where an officer has been charged. The inquiry will normally (see 62(2) hereunder) be held by the Chief Officer, and must be held 'without undue delay' (DSC recommendation, para. 4.10 of report).
- 62(2) Disqualifies those involved in the charging process from holding the inquiry.
- 62(3) Specifies that a formal hearing is not required for the inquiry, and gives the charged officer the right to admit or deny the charge, and to submit a statement (as recommended by DSC, para. 4.6 of report).
- 62(4) Right of charged officer to elaborate orally on his written statement (as recommended by DSC, para. 4.8 of report).
- 62(5) Technical provision : failure to deny something does not mean that the officer has admitted it.

- 62(6) Specifies the actions available to the officer who held the inquiry if he finds the charge to be sustained (counselling is again mentioned as an alternative to formal action). Consistent with a DSC recommendation (para. 6.5 of report), words such as 'punishment' and 'fine' are avoided so as to avoid any suggestion of actions analagous to criminal sanctions. The range of formal actions available is as recommended by the DSC (paras. 6.8 - 28 of report) and covers:
- . admonition;
 - . deduction from salary of up to \$40;
 - . reduction on an applicable incremental range;
 - . transfer to an office of the same classification, with or without action as in (c) above;
 - . transfer to an office of the same classification, plus \$40 deduction;
 - . demotion;
 - . dismissal (this takes the form of a recommendation to the Board).
- 62(7) Technical provision : removal to a lower Division not possible if offices have the same designation and classification.
- 62(8) Procedural provision : documents to accompany a dismissal recommendation to the Board.
- 62(9) Entitles an officer against whom disciplinary action is taken to a statement of the reasons for that action.

- 62(10) Technical provision : ensures disciplinary action does not take effect until appeal period expires or, if there is an appeal, until the appeal is disallowed (should that be the result).
- 63(1) Basic power for Chief Officer to take action where an officer is convicted of a criminal offence (or, without recording a conviction, the court finds that such an offence has been proved). The vesting of this power in the Chief Officer is a change from the provision in the current Act (section 62 : Board has the power) and was recommended by the DSC (para. 7.12 of report).

The officer must be given an opportunity to submit a written explanation (as recommended by DSC, para. 7.13 of report) and action can only be taken where the offence is relevant to the employment situation (as recommended by DSC, para. 7.9 of report).

As with 'non-criminal' disciplinary action, the Chief Officer is required to consider counselling as an alternative to formal disciplinary action. The actions available are level transfers, demotion, or recommendation for dismissal (the DSC had also recommended that 'issue of warning' be available; the Bill does not provide for this as a formal disciplinary action, but sub-section (5) hereunder ensures that conduct can be taken into account in the course of normal personnel processes.

- 63(2) Technical provision : removal to lower Division not possible if offices have same designation and classification.
- 63(3) Procedural provision : documents to accompany a dismissal recommendation to the Board.
- 63(4) Entitles an officer against whom disciplinary action is taken to a statement of the reasons for that action.
- 63(5) Technical provision : ensures disciplinary action does not take effect until appeal period expires or, if there is an appeal, until the appeal is disallowed (should that be the result).
- 63(6) Technical provision : conduct can still be taken into account in the course of normal personnel processes (e.g. if under consideration for promotion), even if it is decided that formal disciplinary action is unnecessary or inappropriate.
- 63(7) Technical provision : prevention of 'double punishment' (i.e. where conduct could be the basis for 'criminal' or 'non-criminal' disciplinary action).
- 63A Board power to dismiss (or take other available action) following a recommendation from the Chief Officer to that effect (and after any appeal has been disallowed).

- 63B(1) Basic power for Chief Officers to suspend officers in connection with disciplinary action. Consistent with the DSC's view that suspension should not in any sense be a disciplinary punishment in itself, but rather an administrative measure necessarily taken in various situations (para. 8.6 of report) and with suggested criteria (para. 8.10), suspension can only be imposed where the Chief Officer is of the opinion that it would be prejudicial to the effective operation of the Service, to the interests of the public or to the interests of the officer or his fellow officers for the officer to continue on duty; there is also a requirement (as recommended by the DSC in para. 8.10 of its report) to consider whether temporary transfer to other duties would suffice in lieu of suspension.
- 63B(2) Technical provision : no salary payable during suspension except as provided in ss. 63B - C.
- 63B(3) Entitlement to receive salary until the officer is formally charged (as recommended by DSC in para. 8.23 of report).
- 63B(4) Suspension during a period of leave does not prevent continued payment of any salary entitlements relating to that leave (as recommended by DSC in para. 8.12 of its report).
- 63B(5) Entitlement of a suspended officer to apply for any paid leave that he may have available (as recommended by DSC in para. 8.13 of its report).

- 63B(6) Basic entitlement of officers suspended without pay to engage in outside employment (as recommended by DSC in para. 8.23 of report).
- 63C(1) Technical provision : removal of suspensions.
- 63C(2) Power for Chief Officer to remove a suspension or, if he is satisfied there is hardship, to direct that all or part of salary be paid during suspension; there is also an obligation to consider whether the suspension should be removed, or salary paid, after suspension has continued for 30 days (as recommended by DSC in para. 8.23 of report).
- 63C(3) Technical provision : removal of suspension or direction to perform other duties where a charge is not proved or not proceeded with.
- 63C(4) Similar to 63C(3), in relation to cases where an officer is found innocent of a criminal offence.
- 63C(5) Technical provision : re 63C(4).
- 63C(6) Entitlement to back pay where suspension is removed under 63C(3) or (4) (as recommended by DSC in para. 8.23 of report).
- 63C(7) Limitation on any entitlement under 63C(6) : outside earnings are to be deducted (recommended by DSC in para. 8.23 of report).
- 63C(8) Technical provision : re disclosure of outside earnings for the purposes of 63C(6).

- 63C(9) Re-crediting of leave taken during suspension if suspension is removed under 63C(3) or (4) (recommended by DSC in para. 8.13 of report).
- 63C(10) Where dismissal follows suspension, the period of suspension is not to count as service for any purpose (as recommended by DSC in para. 8.44 of report).
- 63C(11) Board discretion to count a period of suspension as service where a suspended officer dies or retires (as recommended by DSC in para. 8.44 of report).
- 63C(12) Similar discretionary power for Board, where suspended officer dies or retires, to authorise payment, to officer or his estate, of back pay less outside earnings (as recommended by DSC in para. 8.23 of report).
- 63C(13) Technical provision : cessation of suspension or direction to temporarily perform other duties when disciplinary action takes effect.
- 63C(14) Technical provision : re-imposition of suspension (or direction re other duties) possible.
- 63D(1) Sets out the matters which can be the subject of an appeal to a Disciplinary Appeal Board (DAB). In accordance with DSC's recommendations (paras. 9.9 - 10 of report, and para. 28 of supplementary report) this covers all formal disciplinary action (under the present Act, there is no right of appeal in respect of certain minor punishments, nor in

respect of action consequential on a criminal offence).

- 63D(2) Basic entitlement of officers to appeal on grounds that charge should have been dismissed (this does not apply to criminal convictions, where facts are decided by courts) or that proposed disciplinary action is too severe (as recommended by DSC, para. 10.10 of report).
- 63D(3) Basic power of DAB to confirm, vary, or set aside decision appealed against.
- 63D(4) Technical provision : substitution of DAB's order where it varies the decision appealed against.
- 63D(5) Technical provision : power for Board to take action where a DAB varies a decision so as to recommend dismissal.
- 63D(6) Requires certain matters to be taken into account in a 'severity' appeal, namely, previous employment history and general character of appellant, any loss of earnings arising from suspension without pay, expenses involved in any proposed transfer (as recommended by DSC in paras. 8.42, 10.23 and 13.10 of its report).
- 63D(7) Requirement that a DAB give reasons for its decisions (as recommended by DSC in para. 32 of supplementary report).
- 63E(1) Formal provision : constitution of DABs from time to time by the Public Service Board.

- 63E(2) Constituion of DAB, namely Chairman (see also 63E(4) hereunder), an officer nominated by the Chief Officer, and a person nominated as provided by the regulations to represent officers (the basic composition of the DAB is the same as under the present Act, but with some refinements suggested by DSC in paras. 10.3 - 9 of the report, namely that the Chairman does not have to be a magistrate, and the officers' representative will be a nominee of staff organisations rather than someone elected by officers of each Division).
- 63E(3) Special provisions for the composition of DABs where officers of the Parliamentary Departments are involved, so as to reflect the basic approach in the Public Service Act that, for such officers, the President and/or Speaker (as appropriate) should exercise functions vested in the Public Service Board.
- 63E(4) Chairman of DAB to be a magistrate or barrister/solicitor of not less than 5 years standing (see note re 63E(2) above).
- 63E(5) Standard Remuneration Tribunal provisions for
- (7) determining the remuneration of a DAB Chairman and the allowances of all members.
- 63E(8) Terms and conditions of appointment of DAB Chairmen.
- 63E(9) Disqualifies a person involved in the formal disciplinary processes from being nominated by

a Chief Officer as a member of the relevant DAB.

- 63E(10) Enables a DAB to award costs against an appellant where the appeal is frivolous, vexatious, etc. (as recommended by DSC in para. 10.22 of report; there is a similar provision in the present Act, except that the DAB can only make a recommendation to the Public Service Board).
- 63E(11) Formal provision : power to take evidence on oath or affirmation.
- 63E(12) Evidentiary provision : basically leaves procedures to be determined by DAB, with as little formality as possible.
- 63E(13) Technical provision : continuation of DAB proceedings, by consent, when the DAB is reduced to two members.
- 63E(14) Technical provision : re-commencement of appeal proceedings where a DAB reduced to two members is unable to complete the hearing.
- 63F This section deals with situations where disciplinary action is taken as the result of a criminal conviction, and that conviction is set aside. Particular provisions of the section are outlined hereunder.
- 63F(1) Specifies the circumstances in which a criminal conviction is nullified (e.g. quashed, pardon).

- 63F(2) Entitlement of a person who has been dismissed to apply to Board for re-appointment to the Service if the conviction on which that dismissal was based is subsequently nullified (this is consistent with the basic approach recommended by the DSC in para. 7.18 of report).
- 63F(3) Similar entitlement where an officer has been transferred to another office.
- 63F(4) Similar entitlement for dismissed officers to whom Division 3 of Part IV (certain former officers - see notes hereunder) applies.
- 63F(5) Procedural : Board refers any such application to the appropriate Permanent Head for a recommendation as to whether officer should be re-appointed/transferred back.
- 63F(6) Procedural : Permanent Head may so recommend.
- 63F(7) Entitlement of person to appeal where there is an unfavourable recommendation (as recommended by DSC in para. 7.21 of report), and to be furnished with reasons for the recommendation.
- 63F(8) Provision for DAB to hear such appeals.
- 63F(9) Board power to re-appoint, transfer back, etc. following recommendation or appeal (i.e. whether or not favourable).
- 63F(10) Makes Board action under 63F(8) mandatory where the recommendation is a favourable one.

- 63F(11) Provides for continuity of service in the event of re-appointment. The Board may also determine that all or part of the intervening period is to count as service for specified purposes.
- 63F(12) Technical provision re offices to which a person can be appointed/transferred.
- 63G This section implements a DSC recommendation (para. 13.15 of report) that, where new evidence comes to light, an officer should be entitled to seek to have the findings in his case reviewed. Provisions of the section are outlined hereunder.
- 63G(1) Basic entitlement for an officer (or former officer, if dismissed) to request the Public Service Board to review a finding in a disciplinary case (including the severity of action taken) on the ground that new evidence has come to light.
- 63G(2) Procedural : request under 63G(1) is to set out particulars.
- 63G(3) Procedural : if the Public Service Board is satisfied the ground of request is established (i.e., in effect, a 'prima facie case') it is to refer the request to a DAB.
- 63G(4) Procedural : power of DAB to review the findings (i.e. as to facts) and make a recommendation to the Public Service Board either that findings be affirmed, or that findings be quashed and that Board take action to recompense the officer. The DAB must give reasons for its recommendations.

- 63G(5) Procedural : similar to 63G(4), in respect of disciplinary action taken.
- 63G(6) Board power to take action consequential on a recommendation under (4) or (5).
- 63G(7) Elaboration of Board's power to take action under (6) : may include re-appointment to Service (without probation), transfer to an appropriate office, or application (where appropriate) of Divisions 2 or 3 of Part IV (as to which, see notes hereunder).
- 63G(8) Technical provision : relating to application of Division 3 of Part IV.
- 63G(9) Provision for continuity of service in the event of re-appointment. The Board may also determine that all or part of the intervening period is to count as service for specified purposes.
- 63G(10) Technical : meaning, in section, of 'investigation of a charge' and 'giving of evidence'.
- 63H Procedural : enables a Chief Officer to delegate his powers in relation to suspension (e.g. it may be desirable to have other officers who can impose a suspension in emergencies).

Subdivision D of the Bill (sections 63J-63Q) is designed to overcome technical difficulties which have arisen in the past concerning the application

of disciplinary provisions to unattached officers who are engaged in some other form of employment outside the Public Service. The DSC recommendation was that the Chief Officer of the Department in which such officers last worked should have jurisdiction (para. 4.12 of report), but numerous drafting and technical difficulties (e.g. identification of persons empowered to exercise the various disciplinary powers and functions) meant that a somewhat different scheme had to be developed. This scheme is outlined in the notes hereunder.

- 63J(1) Definitions of 'misconduct' and 'unattached officer' (the latter term is defined so as to only cover various categories of unattached officers who are performing duties otherwise than in a Department).
- 63J(2) Enables disciplinary provisions to apply to improper conduct engaged in whilst the officer is unattached.
- 63J(3) Clarifies the improper conduct to which 63J(2) applies.
- 63K(1) Enables the regulations to provide for an unattached officer to be charged with misconduct committed before he became unattached.
- 63K(2) The regulations may also provide for the holding of an inquiry into such a charge.
- 63K(3) Action available to the person holding the inquiry : because the charged officer is not currently working in the Public Service, this

action is restricted to either counselling or recommendation to the Public Service Board for dismissal (but see also 63K(4)).

- 63K(4) Requirement that the person give reasons for his findings.
- 63K(5) Enables regard to be had to a finding of misconduct in appropriate contexts (e.g. application for promotion) by Board, Permanent Heads, etc.
- 63K(6) Technical; re non-application of 63K(4) to a finding set aside by a DAB.
- 63K(7) Technical : definition of misconduct for purposes of section 63K only.
- 63L(1) Regulations may provide for the charging of an unattached officer with misconduct committed whilst he is unattached.
- 63L(2) Regulations may provide for the holding of inquiries into such charges.
- 63L(3) Power for person holding the inquiry to either counsel the officer or recommend that he be dismissed.
- 63L(4) Reasons for findings - cf 63K(4).
- 63L(5) Enables regard to be had to a misconduct finding in appropriate contexts - cf 63K(5).
- 63L(6) Technical - cf 63K(6).

- 63L(7) Technical - action under this section of the Public Service Act does not prevent action under some other Act (i.e. in the context of other current employment).
- 63M(1) Enables the Board to arrange for a person (selected from a prescribed class of persons) to consider whether the dismissal should be recommended of an unattached officer who has been convicted of a criminal offence.
- 63M(2) Reasons for findings.
- 63M(3) Enables regard to be had to a conviction etc. in other appropriate contexts - cf 63(6).
- 63M(4) Restriction on 'double punishment' - cf 63(7).
- 63N Board dismissal power in relation to action under sections 63K-M.
- 63P(1) Right of an unattached officer to appeal to a DAB against misconduct findings or dismissal recommendations.
- 63P(2) Technical provision re nature of appeals.
- 63P(3) DAB power to confirm or set aside decision appealed against.
- 63P(4) Technical provision re effect of upholding an appeal.
- 63Q DAB to give reasons.

Subdivision E of the Bill (sections 63R-T) deals with miscellaneous matters as set out hereunder.

63R(1) Provides for the status of officers who are imprisoned, or in custody (para. 7.23 of DSC report refers), as follows:

- . period to be, unless dismissed, leave without pay (para. 7.22 of DSC report refers);
- . continuity of service where the officer is not dismissed, with Board discretion re counting of period of imprisonment as service (para. 7.22 of DSC report);
- . technical provisions re suspension.

63R(2) Discretion to pay salary, in the event of hardship, to an imprisoned officer (cf 63C(2) re salary whilst suspended : the purpose of 63R(2) is to enable the same arrangement to apply where the officer is imprisoned in a situation where he would otherwise have been suspended).

63S This section is designed to overcome various technical difficulties associated with the application of disciplinary provisions to unattached officers who are performing duties in a Department. Thus they are deemed by 63S(3) to be occupying offices, whilst 63S(4) enables various forms of disciplinary action to be taken which are similar to, but do not involve, transfer to another office.

63T This section enables regulations to be made so as to effectively apply the disciplinary provisions to temporary employees with one year's actual or prospective service. This was recommended by DSC in para. 11.12 of its report and para. 35 of its supplementary report, and is consistent with trends towards narrowing inappropriate distinctions between 'permanent officers' and 'temporary employees'.

Clause 21 This clause makes technical and consequential amendments to section 65 of the Act, relating to the deduction of pecuniary penalties from an officer's salary.

Clause 22 Inserts a new Division 6A, Forfeiture of Office (sections 66A-B) in the Act to implement a DSC recommendation (para. 13.13 of report) that, to obviate inappropriate use of disciplinary provisions, provision should be made for forfeiture of office after a period when an officer is absent without authority, including a reinstatement provision and appeal rights. Provisions of Division 6A are outlined hereunder.

66A(1) Power for a Permanent Head, where an officer is absent from duty without permission for a period of not less than four weeks, to send a notice to the officer (at his last known address) requiring him to return to duty or explain his absence (and seek permission for any further period of absence).

- 66A(2) Officer is deemed to have retired if he does not appropriately respond, within two weeks, to a notice under (1).
- 66A(3) Permanent Head to consider and act upon any response from the officer to the notice under (1) - in effect, the response can be accepted, or the officer can be told he has a further specified period of at least two weeks in which to return to duty.
- 66A(4) Officer deemed to have retired if he does not return to duty as required pursuant to (3).
- 66A(5) Board power to revoke a notice under the section.
- 66B(1) Entitlement of a person who is deemed to have retired under the above provisions to apply to the Board for re-appointment.
- 66B(2) Board to refer any such application to an appropriate Permanent Head.
- 66B(3) Permanent Head, if satisfied the person had reasonable grounds for being absent may recommend to Board that he be re-appointed.
- 66B(4) Entitlement of the person to appeal against an unfavourable recommendation by the Permanent Head.
- 66B(5) DAB to hear any such appeals.

- 66B(6) Board power to re-appoint following Permanent Head's recommendation or DAB's decision (whether favourable or otherwise).
- 66B(7) Provision for continuity of service in the event of re-appointment.
- Clause 23 Amends section 68 to provide a regulation-making power so that conditions governing the lapsing and forfeiture of accrued recreation leave credits may be prescribed in the regulations.
- Clause 24 A technical amendment to ensure that certain officers are not disadvantaged when calculating completed months of service for the purpose of determining their recreation leave entitlements.
- Clause 25 Repeals section 69 dealing with leave of absence to attend arbitral proceedings. Leave for this purpose will be available under the provisions of the new section 71 inserted by clause 27.
- Clause 26 Makes a consequential amendment in view of the terms of the new sub-section 71(1) inserted by clause 27.
- Clause 27 Repeals the existing specific provisions in the Act regulating the grant of leave without pay and inserts a new section 71 which will enable leave to be granted from the Public Service for such purposes as are prescribed in the regulations upon such terms and conditions as are prescribed (sub-section 71(1) and (4)).

Sub-section 71(2) provides that leave under section 71 shall not be granted for the purpose of enabling an officer to take up employment in respect of which the provisions of the new Part IV of the Act apply.

Sub-section 71(3) deals with the situation of officers granted leave for the purpose of enabling them to take up employment with the Northern Territory Public Service and who have not proceeded on that leave at the time the N.T.P.S. is brought within the provisions of Part IV.

Sub-sections 71(4) and (6) clarify the matters that may be dealt with by the regulations in respect of the granting of leave.

Sub-section 71(5) enables the Board to determine terms and conditions governing the grant of leave provided that they are not inconsistent with the terms and conditions that are prescribed in the regulations.

Clause 28 Paragraph (a) of the clause amends section 82 of the Act (temporary employment), consequential on the proposed extension (see 63T above) of the new disciplinary provisions to certain temporary employees.

Paragraph (b) of the clause incorporates new sub-sections 82(9) and (10) which replace existing sub-section 82(11) in identical terms. New sub-section 82(11) extends the provisions of section 47E (dealing with the recognition of prior public employment) to persons employed in a temporary

capacity in the A.P.S.

Clause 29 Repeals section 82AA (this gave certain temporary employees appeal rights against dismissal, and has been overtaken by the arrangements envisaged by 63T).

Clause 30 This provision repeals section 84C of the Public Service Act which deals with the preservation of the A.P.S. rights of officers transferred to the Northern Territory Public Service. These rights will now be dealt with by relevant provisions in the new Part IV of the Act (see clause 31). The new section 84C inserted by sub-clause (1) re-enacts section 4 of the Public Service Amendment Act (No. 2) 1976 repealed by clause 40. Section 84C will preserve the right of an officer transferred to the Northern Territory Public Service to be promoted in the Australian Public Service where the officer has been provisionally promoted before the date of transfer but the promotion has not been confirmed before that date.

Sub-clause (2) preserves promotion action taken under the provisions of the repealed section 84C that has not been completed at the date of repeal.

Clause 31 Inserts a new Part IV in the Public Service Act to deal with the rights of officers of the Australian Public Service who become employed by the Commonwealth outside the provisions of the Public Service Act or by certain non-Commonwealth bodies.

Division 1,
Part IV

This Division provides the necessary definitions and governs the application of the provisions of Part IV.

Proposed section 87 draws a distinction between bodies in respect of which the Commonwealth has legislative power ('Commonwealth authority' and 'Commonwealth office') and bodies and statutory offices in respect of which the Commonwealth does not have such power ('public authority' and 'public office').

The scheme of Part IV is such that, on the one hand, it provides for the preservation of certain A.P.S. conditions of service against the employing authority while, on the other hand, it entitles persons covered by the scheme to return to the A.P.S. by promotion and transfer or under special re-entry provisions. In relation to bodies in respect of which the Commonwealth does not have legislative power, the right to return to the A.P.S. is made dependent upon the body in question agreeing to the provision of the same conditions of service preserved by Part IV against Commonwealth authorities in relation to persons covered by the scheme.

Against this background, section 87B provides that, in order that a particular non-Commonwealth body may be prescribed as a 'public authority' under section 87, the Public Service Board must be satisfied as to certain matters and the appropriate Minister must be satisfied that satisfactory arrangements have been made in relation

to Superannuation benefits. The matters in respect of which the Board is required to be satisfied are set out at sub-sections 87B(6) and (7) and concern the:

- . sick leave and recreation leave rights;
- . long service leave entitlements; and
- . Superannuation coverage

that the body in question will provide for the benefit of persons to whom the provisions of Part IV will apply.

Sub-section 87B(4) provides that where a non-Commonwealth body breaks the agreement entered into with the Board, the Board is required to repeal the regulation prescribing the body as a 'public authority'..

However, by virtue of sub-section 87B(5), such a repeal will not affect the rights of persons employed by that body under the terms of the agreement to return to the A.P.S.

Section 87A provides that the exclusion of a particular type of Commonwealth employment from the provisions of Part IV will not affect the rights of those persons who, at the time of the exclusion, are subject to those provisions.

Division 2,
Part IV

This Division applies to A.P.S. officers who take up employment with an authority covered by the provisions of Part IV for the initial three years of their employment or the period of that employment, whichever is the less. The Division also applies to A.P.S. officers who are appointed to statutory offices for the duration of the period of appointment.

Sub-section 87C(1) provides that Division 2 applies to A.P.S. officers who:

- . are engaged in 'eligible public employment' as defined in s.87 (para. (a));
 - . elect to join the new scheme while covered by the repealed ORD Act and who have been covered by that Act for less than three years (para. (b));
 - . elect to join the new scheme while covered by the repealed s.6 of the Trade Commissioners Act (para. (c));
- or
- . were, before the day on which the Northern Territory Public Service is brought within the provisions of Part IV, granted leave without pay for the purpose of engaging in employment with that Service and have been engaged in that employment for less than three years (para. (d)).

Sub-section 87C(2) restores the Division 2 coverage of a person who was dismissed for misconduct from both the employing authority and the A.P.S. and who has subsequently been re-appointed to both services as a result of a review of the finding of misconduct or the nullification of the criminal conviction which gave rise to the dismissal.

Sub-section 87C(3) provides that, as from commencing day, Division 2 will apply to:

- . A.P.S. officers who were, before commencing day, granted leave without pay to take up employment with either the Postal or Tele-

communications Commission (para. (a));

- . persons who, in ignorance of their rights, resigned from the A.P.S. to take up employment with either the Postal or Telecommunications Commission (para. (b)); or
- . A.P.S. officers who have been appointed, before commencing day, as a member of the Repatriation Commission or of a Repatriation Board (para. (c)).

Sub-section 87C(4) excludes from the application of Division 2, an A.P.S. officer who:

- . was transferred to the Northern Territory Public Service as a result of the transfer of functions from the Commonwealth to the Northern Territory (para. (a));
- . continues to be covered by the repealed ORD Act or s.6 of the Trade Commissioners Act (para. (b));
- . is transferred out of the A.P.S. as a result of a transfer of functions (para. (c));
- . is covered by s.14 of the Insurance Act - such a person remains an officer of the A.P.S. (para. (d)); or
- . has been granted leave without pay for the purpose of engaging in employment which subsequently becomes covered by Division 2 or which, on commencing day, is covered by Division 2 but was granted leave before that day (para. (e)).

Sub-section 87C(5) provides that an officer remains a person to whom Division 2 applies until he ceases to be engaged in the type of employment which gave rise to Division 2 coverage or ceases to be an officer, whichever first occurs.

Sub-section 87C(6) provides that officers covered by Division 2 are deemed to be on leave of absence without pay from the A.P.S. and that the absence counts as service for all purposes of the Public Service Act.

The effect of section 87D is to provide that where an officer who is covered by Division 2 is employed by an authority or by one or more authorities continuously for a period of three years, he ceases to be an A.P.S. officer at the end of that period. (Note: this section does not apply to statutory office holders). The Board has the power, to take account of special circumstances, pursuant to sub-sections 87D(3) and (4), to extend the period of Division 2 coverage beyond three years.

Section 87E preserves A.P.S. sick leave and recreation leave rights against the employing authority, and as a condition of service of statutory office holders, in relation to a person covered by Division 2. The section relates only to Commonwealth employment.

Sub-section 87E(1) preserves the sick leave and recreation leave credits the officer had on joining the authority or upon becoming a person to whom Division 2 applies.

Sub-section 87E(2) deals with the preservation of the sick leave and recreation leave credits of persons covered by the repealed ORD Act or s.6 of the Trade Commissioners Act, who, upon electing to join the new scheme, become persons to whom Division 2 applies. It also covers the situation of A.P.S. officers who were appointed as members of the Repatriation Commission or of a Repatriation Board and who have become persons to whom Division 2 applies.

Sub-sections 87E(3), (4) and (5) provide that, throughout the period of Division 2 coverage, an officer's sick leave and recreation leave entitlements accrue on the same basis as if he were still working in the A.P.S.

Sub-sections 87E(6) and (7) preserve the officer's entitlement to payment in lieu of recreation leave upon ceasing to be employed by the Commonwealth or following his death.

Sub-section 87E(8) preserves the sick leave and recreation leave credits of a Division 2 officer who returns to the A.P.S.

Sub-section 87E(9) provides that where a person ceases to be covered by Division 2 (by reason of

ceasing to be an officer) but continues to be employed by the Commonwealth in a capacity that attracts Part IV coverage (such a person in fact becomes covered by Division 3 - see sub-section 87K(1)), that person carries over any A.P.S. sick leave and recreation leave credits that had accrued to him immediately before ceasing to be an officer.

Sub-sections 87E(10) and (11) make it clear that the provisions of section 87E have effect in relation to persons covered by Division 2 notwithstanding that the ordinary terms and conditions determined by an employing authority may differ from A.P.S. conditions.

Section 87F preserves an officer's entitlements under the Long Service Leave (Commonwealth Employees) Act for the duration of Division 2 coverage against Commonwealth authorities that are not normally covered by the provisions of that Act.

Sub-section 87G(1) provides that the position held by an officer at the time he becomes covered by Division 2 is declared to be vacant. Similarly, where a Division 2 officer is transferred or promoted to an A.P.S. position, unless he resumes duty in the A.P.S. within a period of 30 days, the position becomes vacant. This provision will enable officers to gain a higher A.P.S. status while working with an authority without the necessity of resuming duty in the A.P.S. Sub-sections 87G(2), (3) and (4) enable the

extension of the 30 day period in certain circumstances.

Section 87H is a technical provision relating to the classification of officers to whom Division 2 applies.

Section 87J deals with the situation of A.P.S. officers who, after commencing day, are transferred from a Department to an independently staffed Commonwealth authority (or to a non-Commonwealth authority) as a result of the transfer of functions from the Department to that authority. Upon the necessary declarations being made under this section, transferred officers become, by virtue of sub-section 87K(2), persons to whom Division 3 applies.

Sub-sections 87J(1) and (2) set out the necessary definitions. It should be noted that the provisions of sub-sections 87J(3) and (4) cannot be invoked unless a transfer of staff has occurred or is about to occur; the sub-sections do not make provision for the actual transfer.

On the one hand, sub-section 87J(3) enables the Departmental function to be transferred to be identified while, on the other hand, sub-section 87J(4) provides for the identification of the authority to which the function is to be transferred.

Sub-sections 87J(5) and (6) have the effect that transferred officers cease to be A.P.S. officers, carry-over their sick leave and recreation leave credits if they were transferred to a Commonwealth

authority, but remain subject to the relevant provisions of Part IV for the duration of their period of employment with the authority to which they were transferred.

Sub-section 87J(7) prevents the provisions of Part IV applying in relation to a transfer of staff to a non-Commonwealth body unless that body agrees to employ the transferred staff on terms and conditions that satisfy the requirements of sub-section 87J(8).

Sub-section 87J(8) requires a non-Commonwealth body to agree to:

- . carry over the sick leave and recreation leave credits of transferred staff;
- . allow transferred staff to elect to continue to have their long service leave entitlements determined in accordance with the rules applicable in the A.P.S.; and
- . allow such staff to elect to continue to be covered by the Commonwealth Superannuation Act.

Sub-section 87J(9) provides that if a non-Commonwealth body breaks such an agreement, the Board is required to revoke the transfer arrangement.

Sub-section 87J(10) protects the rights of transferred officers employed by a non-Commonwealth body which breaks a transfer agreement.

Division 3,
Part IV

This Division applies to A.P.S. officers who desire, at the end of the initial three year period with an authority as persons covered by Division 2, to continue in the employ of that authority or another authority covered by the provisions of Part IV. In addition, this Division also applies to A.P.S. officers who are transferred from the A.P.S. to an authority as a result of the transfer of functions from the A.P.S. to that authority.

Sub-section 87K(1) provides that Division 3 applies to persons who are engaged in employment covered by the provisions of Part IV and who:

- . while subject to Division 2, resign from the A.P.S. at any time before the expiration of three years (para. (a));
- . after three years of Division 2 coverage, cease to be officers by virtue of s.87D(1) (para. (b));
- . elect to join the new scheme whilst covered by the repealed ORD Act, become persons to whom Division 2 applies, and whose period of ORD Act and Division 2 coverage totals three years (para. (b));
- . were granted leave without pay from the A.P.S. for the purpose of engaging in employment with either the Postal or Tele-Communications Commission (or with the Northern Territory Public Service), on commencing day became persons to whom Division 2 applies, and whose period of leave without pay and Division 2 coverage totals three years (para. (b)); or

- . resigned from the A.P.S. for the purpose of engaging in employment with either the Postal or Telecommunications Commission, on commencing day became persons to whom Division 2 applies and whose period of employment with a Commission before commencing day together with the period of Division 2 coverage totals three years (para. (b)).

Sub-section 87K(2) extends Division 3 coverage to:

- . officers who are transferred from the A.P.S. to an authority as a result of the transfer of functions to that authority (whether before or after the commencing day) and in respect of whom there are in force relevant declarations under s.87J or s.87ZC;
- . persons who elect to join the new scheme whilst covered by the repealed ORD Act and who, at the time of that election, have been covered by the ORD Act for a period of three years or more; and
- . persons who were granted leave without pay from the A.P.S. for the purpose of engaging in employment with either the Postal or Telecommunications Commission (or the Northern Territory Public Service) and who, on commencing day (or in the case of the N.T.P.S. - on the day on which it is brought within the provisions of Part IV), have been absent on such leave for three years or more.

Sub-sections 87K(3) and (4) apply Division 3 to

the situation of A.P.S. officers transferred to the Northern Territory Public Service (whether before or after commencing day) under the special transfer provisions of s.84A of the Public Service Act.

Sub-section 87K(5) provides that former officers of the then Postmaster-General's Department who were transferred to the Postal and Telecommunications Commissions are, from commencing day, subject to the provisions of Division 3.

This provision also has the effect that Division 3 applies, as from commencing day, to officers who resigned from the A.P.S. in order to engage in employment with one of the Commissions and who, on that day, have been engaged in that employment or other Commonwealth employment for a period of three years or more.

Sub-sections 87K(6), (7) and (8) extend the provisions of Division 3 to A.P.S. officers who, before commencing day, held office as Territorial Magistrates and who were subsequently re-appointed as Magistrates outside the provisions of the Public Service Act.

Sub-sections 87K(9) and (10) bring officers of the Australian Legal Aid Office transferred to State or Territorial Legal Aid Commissions (whether before or after commencing day) within the terms of Division 3.

Sub-section 87K(11) applies Division 3 to a former A.P.S. officer who was dismissed from the A.P.S.

for misconduct, has subsequently had the finding of misconduct reviewed in his favour, and has been engaged throughout the period since his dismissal from the A.P.S. in Commonwealth employment for a period of at least three years.

Sub-section 87K(12) provides that a person remains covered by Division 3 up to age 65 provided that he remains in employment which attracts the application of the provisions of Part IV.

Section 87L provides that persons to whom Division 3 applies who are employed by Commonwealth authorities which are not subject to the provisions of the Long Service Leave (Commonwealth Employees) Act, continue to be covered by that Act unless they elect to be covered by the authority's own long service leave scheme (sub-section (1)).

Sub-section 87L(2) preserves the special long service leave entitlements accorded certain persons while they remained officers of the A.P.S. The entitlements are preserved for the duration of their Division 3 coverage provided that they do not make an election to be covered by their employing authority's own long service leave scheme.

Sub-section 87L(3) ensures that a person's Division 3 service is counted as qualifying service for the purposes of the Long Service Leave (Commonwealth Employees) Act if that person returns to the A.P.S.

Section 87M makes provision so that a person covered by Division 3 is able to:

- . apply for promotion and transfer (under the relevant sections of the Public Service Act) to any A.P.S. vacancy;
- and
- . appeal against A.P.S. provisional promotions

as if he were still an A.P.S. officer (sub-section (1)). In this regard, the section provides that:

- . the person cannot be promoted or transferred to an A.P.S. position unless he is qualified for that position (sub-section (1));
- . for the purpose of determining whether promotion or transfer is involved, his classification is to be that he held in the A.P.S. at the time when he ceased to be an A.P.S. officer (para. 1(b));
- . the person retains his A.P.S. seniority (para. 1(c));
- . a successful transferree or promotee must take up duty in the A.P.S. within a period of 30 days of the completion of the selection process, otherwise the promotion or transfer lapses (sub-section (3)). However, provision is made so that in certain circumstances, the 30 day period may be extended (sub-sections (4), (5) and (6)); and
- . a successful applicant is re-appointed as an A.P.S. officer from the date the person commences duty in the A.P.S. (sub-section (2)).

Sub-sections 87M(7) and (8) preserve uncompleted promotion action in relation to a person who ceases to be covered by Division 3 as a result of retrenchment action by the employing authority.

Section 87N in sub-section (2) sets out the circumstances in which a person to whom Division 3 applies may apply for re-entry into the A.P.S. in addition to his right to apply for promotion and transfer.

As regards a statutory office holder, such a person may make application if:

- . his appointment is terminated before the end of the term for which he was appointed (para. (2)(a)); or
- . upon the expiration of the term of the appointment, he is not found alternative employment with the Commonwealth (para. (2)(b)).

As regards a person employed by an authority, such a person may make application if:

- . he is, or is about to be, retrenched from the authority;
- . his appointment with the authority is annulled;
- . he is dismissed from the authority for misconduct (para. (2)(c)); or
- . the authority with which he was previously employed refuses to re-engage him following the nullification of the criminal conviction which caused his dismissal from the authority (para. (2)(d)).

Paragraphs 87N(2)(e) to (j) deal with the circumstances of persons who become employed by an authority as a result of the transfer of functions from the A.P.S. to that authority and who can claim that their career expectations or employment situation have been substantially affected by the curtailment of the activities of that authority. (Note: each transfer situation has been dealt with separately).

Sub-sections 87N(3) and (4) make provision as to how applications from persons who attain 65 years, or are about to attain 65 years, are affected.

Sub-section 87N(5) sets out the procedures to be followed in making an application for re-entry.

Sub-section 87N(6) provides that applications are to be forwarded to the appropriate Re-appointments Review Committee (as constituted under the provisions of section 87T).

Sub-section 87N(7) specifies the manner in which the Re-appointments Review Committee is required to deal with an application. In effect, the Committee must determine whether or not to grant the application. If it decides to grant the application, the Committee must go on to decide the level at which the applicant should return to the A.P.S. and certain other re-integration matters.

Sub-section 87N(8) prevents a Committee from granting an application in the case of a person

dismissed from an authority for misconduct unless it is satisfied that had the misconduct occurred in the A.P.S., it is likely that he would not have been dismissed from the A.P.S. (para. (a)) or that it is likely that he would have been recommended for re-appointment to the A.P.S. under the new provisions of the Public Service Act dealing with the nullification of a criminal conviction or the review of findings of misconduct (para. (b)).

Sub-section 87N(9) requires that a Committee may not grant an application in the case of a person whose appointment was annulled unless it is satisfied that such action would not have been taken if the person had been employed in the A.P.S.

Sub-sections 87N(10) to (13) detail matters that the Committee must have regard to in determining applications and the procedures to be followed after the Committee has given its decision.

Section 87P enables certain persons to apply for the re-instatement of Division 3 coverage. The persons who are eligible to apply are persons who lose their Division 3 coverage by reason of dismissal from an authority for misconduct and who are re-instated by their previous employing authority under provisions which are similar to the Public Service Act provisions dealing with the review of findings of misconduct or the nullification of a conviction. Such applications are to be dealt with by a Re-appointments Review Committee in the manner set out in the section.

Section 87Q details the procedures to be followed where a Re-appointments Review Committee determines that an applicant should be re-appointed to the A.P.S. The procedures are specified as follows:

- . the Board is required to notify the applicant that he has been successful and to furnish a copy of the Committee's determination to him (sub-section (1));
- . the Board must notify the applicant of the place at which he should report for duty and the nature of the duties on which he will be initially engaged (sub-section (2));
- . an applicant who receives a notice of re-appointment and has attained 65 years of age loses his entitlement to be re-appointed (sub-section (3));
- . an applicant has 21 days after receipt of the notice of re-appointment to report for duty in the A.P.S. otherwise his entitlement to be re-appointed is lost (sub-sections (4) and (7));
- . alternatively, if an applicant attains, or will attain, 65 years during the 21 day period, he is required to notify the Board of his intention to be re-appointed (sub-section (4));
- . applicants who report for duty within the required time (or who give the required notice) are re-appointed to the A.P.S. as unattached officers from the date they ceased duty with their previous employing

- authority. Re-appointed applicants are deemed to have been absent on leave without pay during the period, if any, between the date of re-appointment and the resumption of duty in the A.P.S. (sub-section (4));
- . as a general rule, applicants will be re-appointed to the A.P.S. without probation (sub-section (5)); and
 - . the leave of absence without pay previously mentioned forms part of the applicant's period of service for all purposes of the Public Service Act and for long service leave benefits (sub-section (6)).

Section 87R enables the Board, on application, to re-appoint a person to whom Division 3 applies to the A.P.S. as an unattached officer at the level he had attained when he last ceased to be an A.P.S. officer. This power may only be exercised if the Board considers that there are special circumstances (e.g. compassionate grounds) justifying it in doing so.

Section 87S deals with the rights of persons covered by Division 3 who re-enter the A.P.S. by way of promotion or transfer or under the special re-entry provisions. In effect, the section provides that such persons:

- . carry over sick leave and recreation leave credits from their previous employment (sub-section (2));
- . retain the special A.P.S. long service leave rights (if any) which were preserved on commencement of Division 3

... (sub-section (3)); and
... with their original
... date and service
... period of Division 3
... recognised for the
purpose of determining the seniority
of certain persons (sub-sections (4)
and (5)).

Sub-section 87S(6) provides that persons re-appointed to the A.P.S. under the special re-entry provisions and who were not dismissed from their previous employing authority for misconduct are entitled to receive salary from the authority (if it is a Commonwealth authority) during the period between the cessation of duty with the authority and the resumption of duty in the A.P.S.

Sub-section 87S(7) appropriates the funds necessary to meet the Commonwealth authority's commitment under the previous sub-section.

Section 87T provides for the constitution of Re-appointments Review Committees. Provision is made in sub-sections (2) to (5) for a Committee consisting of an independent Chairman, a staff association representative, and a person appointed by the Public Service Board. In the case of applicants who were dismissed from an authority for misconduct, the Chairman must be a person who is also a Chairman of a Disciplinary Appeal Board. In all other cases, a Chairman of a Promotions Appeal Committee must preside.

Sub-sections 87T(6) to (10) set out the procedures

to be followed by Committees in conducting an inquiry in relation to an application.

Division 4,
Part IV

This Division enables officers who, after commencing day, remain covered by the repealed Officer's Rights Declaration Act (or the repealed section 6 of the Trade Commissioners Act) to elect to be covered by the new provisions. The Division also deals with the consequences of such elections.

The effect of sub-sections 87U(1) and (2), read in conjunction with sub-clauses 43(2) and 44(3), is that a person to whom the ORD Act (or s.6 of the Trade Commissioners Act) continues to apply after its repeal, may elect to join the new scheme in one of two ways i.e. by the delivery of a notice in writing or the lodging of an appeal against a provisional promotion in the A.P.S.

Sub-sections 87U(3) and (4) are technical provisions preserving the promotions appeal process in relation to persons who have made an election.

Sub-section 87V(1) is concerned with the Division of Part IV in which persons covered by the ORD Act who have made an election are to be included upon making the election. Thus, a person who, at the time of making the election, has been covered by the ORD Act for three years or more, ceases to be an A.P.S. officer and becomes a person to whom Division 3 applies (para. (a) read with s.87K(2)(b)).

Division 3 also applies to a person who while covered by the ORD Act elected under that Act to be subject to the terms and conditions of

employment offered by his employing authority rather than to be subject to A.P.S. conditions (para. (b) read with s.87K(2)(b)).

On the other hand, a person who has had less than three years ORD Act coverage at the time of making the election becomes a person to whom Division 2 applies (para. (c) read with s.87C(1)(b)).

Sub-section 87V(2) provides that where a person who has made an election becomes a person to whom Division 2 applies, he ceases to be an officer when the period of his ORD Act coverage and Division 2 coverage totals three years. By virtue of s.87K(1)(b), such a person then becomes a person to whom Division 3 applies.

Sub-section 87V(3) deals with the manner in which the three year period previously referred to is to be calculated and sub-section (4) enables the Board to extend the three year period in special circumstances.

Sub-section 87V(5) entitles persons who have made an election and become covered by Division 3 to carry over their sick leave and recreation leave credits.

Section 87W, read in conjunction with s.87C(1)(c), has the effect that a person covered by section 6 of the Trade Commissioners Act who makes an election to be covered by the new scheme becomes a person to whom Division 2 applies.

Division 5,
Part IV

This Division is primarily concerned with correcting certain inequities that have occurred in connection with the transfer of A.P.S. officers to various authorities.

Section 87X sets out the necessary definitions.

Section 87Y deals with the situation of officers who, before commencing day, were granted leave without pay from the A.P.S. for the purpose of engaging in employment with either the Postal or Telecommunications Commission.

In effect, the section provides that if, on commencing day, an officer has been on leave without pay for a period of three years or more, that person ceases to be an A.P.S. officer and (by virtue of s.87K(2)(a)) becomes a person to whom Division 3 applies (para. 2(a)).

On the other hand, if the person has been absent on such leave for a period of less than three years, he becomes a person to whom Division 2 applies (para. 2(b) read with s.87C(3)(a)).

Such a person will become a person to whom Division 3 applies when the total period of absence from the A.P.S. amounts to three years (sub-sections (3) and (4) read with s.87K(1)(b)).

Section 87Z has application to officers who have been granted leave without pay from the A.P.S. for the purpose of engaging in employment with the Northern Territory Public Service. However, the section will not come into operation unless and until that Service (by its agreement) is

brought within the provisions of Part IV.

In this event, officers who have been on leave without pay for three years or more will cease to be A.P.S. officers and become persons to whom Division 3 applies (para. 2(a) read with s.87K(2)(a)).

Officers on leave without pay for less than three years will become subject to the provisions of Division 2 (para. 2(b) read with s.87C(1)(d)), but will cease to be A.P.S. officers and become persons to whom Division 3 applies when the total period of absence from the A.P.S. amounts to three years (sub-sections (3) and (4) read with s.87K(1)(b)).

Section 87ZA applies to persons who, before commencing day and in ignorance of their rights, resigned from the A.P.S. in order to take up employment with either the Postal or Telecommunications Commission. In addition, the section does not apply unless such persons have been engaged in Commonwealth employment throughout the period since their resignation from the A.P.S. and that period does not exceed three years (sub-section (1)).

Sub-sections 87ZA(2) to (4) restore A.P.S. status to persons covered by this section and, by virtue of s.87C(3)(b), become persons to whom Division 2 applies.

Sub-sections 87ZA(5) and (6) provide that persons restored to A.P.S. status will again cease to be A.P.S. officers but will become persons to whom

Division 3 applies (by virtue of s.87K(1)(b)) when the total period of absence from the A.P.S. amounts to three years.

Section 87ZB restores the former A.P.S. seniority of persons who:

- . were transferred from the then PMG's Department to the Postal or Telecommunications Commission; or
- . resigned from the A.P.S. for the purpose of taking up employment with one of those Commissions

and who have subsequently returned to the A.P.S.

Section 87ZC is similar to section 87J and deals with the situation of officers of the A.P.S. who, before commencing day, were transferred from a Department to a Commonwealth authority as a result of the transfer of functions to that authority.

Sub-section 87ZC(1) provides for the identification of the branch of the A.P.S. which was the subject of the transfer and for the identification of the authority to which the officers were transferred.

Sub-section 87ZC(2) provides that where the necessary declarations associated with the identifications have been made, the transferred officers cease to be officers of the A.P.S. but, by virtue of s.87K(2)(b), become persons to whom Division 3 applies.

Sub-section 87ZC(3) requires that the Board make arrangements so that persons affected by the declarations are notified.

Division 6,
Part IV

This Division is concerned with machinery provisions arising from the operation of previous Divisions.

Section 87ZD preserves uncompleted promotion action and promotion appeal rights in relation to persons who become persons to whom Division 3 applies upon ceasing to be A.P.S. officers.

Sub-section 87ZE(1) provides that where a person has been continuously covered by Division 2 for a period including a period during which the person served as a statutory office holder, a period of service as a statutory office holder is discounted when calculating the total period of Division 2 coverage for the purpose of determining the commencement of Division 3 coverage.

Sub-section 87ZE(2) will prevent an officer from taking advantage of the right to return to the A.P.S. at any time during Division 2 coverage in order to avoid the application of Division 3 to him in the normal course of events.

Sub-section 87ZE(3) preserves the continuity of Division 2 coverage of a person who ceases to be employed by an authority, does not cease to be an A.P.S. officer, although he does not resume duty in the A.P.S. and is subsequently re-employed by that or another authority.

Sub-section 87ZE(4) preserves the continuity of Division 3 coverage of persons who are required to resign from their employing authority in order to contest an election and are unsuccessful at that election.

Section 87ZF is a technical provision dealing with the service of documents.

Section 87ZG is a formal provision relating to determinations made by the Board.

Clause 32 Makes a formal consequential amendment.

Clause 33 Makes a consequential amendment as a result of the provisions of Divisions 2 and 3 of the new Part IV of the Act.

Clause 34 Repeals section 93, as recommended by the DSC in para. 13.12 of its report. The section concerns World War I Servicemen, who do not return to duty, and is obsolete.

Clause 35 Omits sub-section 96(2) of the Act, as recommended by the DSC in para. 5.45 of its report. The sub-section currently provides for the summary dismissal of officers who impersonate others at examinations (or who permit this to occur) and the DSC's view was that any such dismissals should be processed through the normal disciplinary provisions, with appeal rights.

Clause 36 This clause makes a number of amendments to section 97 of the Act, which is the main head of power for the making of regulations under the Act:

- . new paragraphs (g), (ga), (gb) and (gc), and consequential amendments of current paras. (h) and (s), will

enable regulations to be made concerning the procedures of Disciplinary Appeal Boards;

- . new paragraph (jb) is added so that provision may be made for the payment of expenses in connection with the death of an officer or employee;
- . current paragraph (q), relating to the recording etc. of disciplinary action, has been replaced as a consequence of the new disciplinary provisions;
- . a new paragraph (w) is added to enable penalties to be prescribed where persons fail to give evidence before, or produce documents to, a Disciplinary Appeal Board.

Clause 37 Makes formal amendments as set out in the Schedule to various sections of the Act in order to simplify references to dates, numbers and sections etc.

Clause 38 Sub-clause (1) inserts a new section 101A in the Postal Services Act to enable persons covered by the ORD Act to retain that coverage upon becoming engaged in employment with the Postal Commission.

Sub-clause (3) provides that the new section has retrospective effect to 1 July 1975 (the date that the Commission commenced operation) so that persons who have joined the Commission before commencing day are not disadvantaged.

Sub-clause (2) is a consequential amendment given the provisions of Part IV.

Clause 39 Achieves the same effect in relation to the Telecommunications Commission as clause 38 has in relation to the Postal Commission.

Clause 40 Sub-clause (1) repeals section 4 of the Public Service Act (No. 2) 1976 dealing with the preservation of uncompleted promotion action in relation to A.P.S. officers transferred to the Northern Territory Public Service. However, by virtue of clause 30, the repealed section is re-enacted in identical terms in a new section 84C.

Sub-clause (2) preserves the rights of persons affected by the repeal of section 4.

Clause 41 Makes consequential technical amendments to the Repatriation Act arising out of the provisions of the new Part IV.

Clause 42 Makes certain amendments to the Superannuation Act so that regulations under that Act may make provision for various superannuation aspects of the scheme implemented by the new Part IV.

Clause 43 Sub-clause (1) repeals the ORD Act in its various forms.
Sub-clause (2), however, preserves the application of the ORD Act to persons who, on commencing day, are covered by that Act. Such persons remain covered by the ORD Act if they transfer to another area of Commonwealth employment which was covered by that Act before commencing day and until they rejoin the A.P.S., resign from the A.P.S., or elect to join the new scheme implemented by the

new Part IV.

Clause 44 Sub-clause (1) amends certain provisions of s.6 of the Trade Commissioners Act in order to enable A.P.S. officers appointed as Trade Commissioners to have the benefit of the provisions of the new Part IV.

Sub-clause (2), however, preserves the application of s.6 to persons who, on commencing day, are covered by that section. Rights under the repealed provisions of s.6 are preserved for as long as a person remains a Trade Commissioner and until he rejoins the A.P.S., resigns from the A.P.S. or elects to join the new scheme implemented by Part IV.

Clause 45 Repeals the sections in the Commonwealth Legal Aid Commission Act dealing with the preservation of the A.P.S. rights of transferred officers. The rights of such officers will be protected by the provisions of the new Part IV.

Clause 46 Preserves uncompleted A.P.S. promotion action and A.P.S. promotion appeal rights in relation to officers of the Postal or Telecommunications Commissions as a result of the repeal of the relevant provisions in the Postal Services Act and the Telecommunications Act effected by clauses 38 and 39.

Clause 47 Makes provision so that an A.P.S. officer who is granted leave without pay under the repealed leave provisions (effected by clauses 25 to 27) may continue on that leave as it had been

granted under the new provisions and under the same conditions subject to which the leave was originally granted. It should be noted, however, that this provision does not apply to A.P.S. officers who were granted leave without pay for the purpose of taking up employment with:

- . either the Postal or Telecommunications Commission;
- . the Northern Territory Public Service; or
- . certain Commonwealth bodies to which the officers were transferred as a result of the transfer of functions to those bodies.

The rights of persons in this category are protected by special provisions in the new Part IV.

Clause 48 Transitional : provides for the continuation of disciplinary action, appeals, etc. in relation to matters not finalised when the new disciplinary provisions are proclaimed as coming into operation.

Clause 49 Transitional : preservation of rights of temporary employees to appeal against dismissal under (repealed) section 82AA.

Clause 50 Transitional : continuation in office as Disciplinary Appeal Board Chairmen of persons holding similar office under the current Act at the time when the new provisions are proclaimed as coming into operation.

