

1991

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

PUBLIC SERVICE AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister Assisting the
Prime Minister for Public Service Matters,
Senator the Hon. Peter Cook)



PUBLIC SERVICE AMENDMENT BILL 1991

OUTLINE AND FINANCIAL IMPACT STATEMENT

Purpose of Bill

This Bill amends the *Public Service Act 1922* to prevent the duplication of benefits to Commonwealth employees made redundant from Government Business Enterprises and Commonwealth authorities (double dipping).

Part IV of the *Public Service Act 1922* deals with the rights of officers of the Australian Public Service (APS) who become employed by the Commonwealth outside the provisions of the *Public Service Act* or by certain non-Commonwealth bodies.

The Bill amends Part IV of the Act to prevent people who obtain redundancy benefits from a Commonwealth authority or Government Business Enterprise from double dipping by exercising their rights under Part IV of the Act to return to the APS or, having exercised their right to return, obtaining further redundancy benefits.

Framework of Bill

The Bill prevents double dipping in the following situations:

- . where an employee is to receive a voluntary retrenchment benefit from an authority - (in these situations there is to be no option of return to the APS);
- . where an employee is to be compulsorily retired from an authority and does not exercise an early option to return to the APS; and
- . where an employee is compulsorily retired from an authority and exercises an early option to return to the APS.

The Bill makes provision for each of the above situations in relation to each of three categories of people who have rights under Part IV of the Act. These categories are:

- . **People covered by the "first tier" provisions of Part IV**

The "first tier" provisions are included in Division 2 of Part IV of the Act. They generally apply where officers move into eligible public employment as a result of applying successfully for a job in an authority. First Tier people generally have Division 2 coverage for the first 3 years of their employment. They are deemed to be on leave without pay from the APS and automatically become unattached officers of their former department. As such they may return to their former department at any time. It is then the responsibility of that department to place the officer.

People covered by the "second tier" provisions of Part IV

The "second tier" provisions are included in Division 3 of Part IV of the Act. They apply to

- . "first tier" people who continue to be employed by an authority for more than 3 years;
- . officers on "first tier" who resign from the APS but not from the authority;
- . certain people who have been transferred from APS employment with the transfer of a function.

Under "second tier", people cease to be APS officers but retain certain rights, including the right to apply for promotion and transfer to APS vacancies. They also have certain rights in relation to re-appointment to the APS if certain conditions have been fulfilled.

People to whom the repealed Officers' Rights Declaration Act 1928 (the ORD Act) applies

Division 4 of Part IV enables officers who are covered by the ORD Act to elect to be covered by the provisions of Part IV. The Division also preserves the rights of officers who do not elect to be so covered.

People covered by the ORD Act are unattached officers of the APS. They are entitled to be appointed by the Public Service Commissioner to an office in the APS at any time.

FINANCIAL IMPACT STATEMENT

Preventing the duplication of redundancy benefits removes the potential for significant, and unjustifiable, additional costs associated with the restructuring of GBEs and authorities.

While it is not possible to provide an estimate of the likely additional expenditure if legislative, or other arrangements, were not in place to prevent double dipping, there is a considerable potential for such costs.

Current estimates suggest that there are currently some 50,000 people covered by the mobility provisions of the Public Service Act. Many of these people are presently working in agencies which are undergoing major restructures.

CLAUSE NOTES

Clause 1 - Short Title, etc

1. Subclause (1) provides for the short title of the Act to be the *Public Service Amendment Act 1991*.
2. Subclause (2) provides that, in the Bill, the term "Principal Act" means the *Public Service Act 1922*.

Clause 2 - Commencement

3. With the exception of subsections 4(2), 8(2) and 9(2), the Act will commence on the day it receives the Royal Assent.
4. Subsections 4(2), 8(2) and 9(2) are to commence on a date to be proclaimed. These subsections insert clauses into the Act in relation to each category of person covered by the Bill who resume duty in the APS. In such cases the Bill provides that action taken by an authority in relation to a person's retirement or retrenchment is to be treated as if it had been done under the Public Service Redundancy Award. The effect of the proposed provision may be achieved by a variation to that Award and if this is done the provisions will no longer be required and will not be proclaimed.
5. Subsection (3) provides for subsections 4(2), 8(2) and 9(2) to be repealed if they are not proclaimed within 6 months of the Act receiving Royal Assent.

Clause 3 - Interpretation

6. Section 87 of the Principal Act is amended by inserting definitions of certain terms.
7. Subsection 87(1) is amended by adding the definitions of:
 - . "Public Service Redundancy Award" - which means the Australian Public Service Redundancy Award 1987; and
 - . "retention period" - which means a period during which an authority may not retire a person without consent on the grounds that the person is excess to requirements.
8. New subsection 87(1A) is inserted. New paragraph (a) provides that a reference to a person electing to be retired from employment is a reference to a person notifying the authority that the person is willing to be voluntarily retired. New paragraph (b) provides that a reference to the employing authority accepting an election is a reference to the employing authority notifying the person that the person is to be voluntarily retired.

9. New subsection 87(1B) is inserted. New paragraph (a) provides that a reference to a person becoming excess in ~~relation to his or her employment is a reference to a~~ retention period becoming applicable to the person. A reference to the date on which a person became excess is a reference to the date the retention period commences. New paragraph (b) provides that a reference to a person ceasing to be excess is a reference to a retention period ceasing to apply to the person.

Subclause 4(1) - Proposed new sections 87JA and 87JB

10. Subclause (1) inserts new sections 87JA and 87JB into Division 2 of Part IV of the Act. People covered by Division 2 are unattached officers of the APS deemed to be on leave without pay.

Proposed section 87JA: Officer electing to be retired

11. This section prevents an officer who is working in an authority from taking a voluntary retirement package from the authority and then resuming duty in the APS.

12. New subsection (1) applies the section to an officer, to whom Division 2 applies, who elects to be retired from an authority.

13. New subsection (2) provides that unless the officer resigned from the APS beforehand, the officer is to be taken to have resigned from the APS when the election to be voluntarily retired from the authority is accepted.

14. New subsection (3) prevents the officer obtaining Division 3 coverage following resignation from the APS although he or she might continue to be engaged in eligible employment which would normally attract such coverage.

Proposed section 87JB: Excess officer failing to resign from employment

15. This section requires an officer to make an election, within a 60 day period, to resume duty in the APS or stay with the authority without a right of resumption in the APS.

16. New subsection (1) applies the section to an officer to whom Division 2 applies who, after commencement of the section, becomes excess, is notified of the effect of the section in accordance with the regulations and does not, before the end of 60 days after he or she became excess or was so notified (whichever is the later), resign from the employing authority. Such resignation would make the officer available to take up duty in the APS.

17. New subsection (2) provides that unless the officer resigned earlier, he or she is taken to have resigned from the APS at the end of the 60 day period.

18. New subsection (3) prevents the officer obtaining Division 3 coverage following resignation from the APS although he or she might continue to be engaged in employment which normally attracts such coverage.

19. New subsection (4) provides that where an officer ceases to be excess and continues in employment with the authority then the provisions of the section do not apply and are taken never to have applied to the officer.

Subclause 4(2) - Proposed section 87JC: Excess officer resigning from employment

20. Subclause (2) inserts a new section 87JC into Division 2 of Part IV of the Act. People covered by Division 2 are unattached officers of the APS deemed to be on leave without pay.

21. The new section prevents an officer who is excess to the requirements of an authority and who has resumed duty in the APS from gaining access to two sets of entitlements under 2 sets of redundancy arrangements.

22. New subsection (1) applies the section to an officer to whom Division 2 applies who, after commencement of the section, becomes excess, is notified of the effect of the section in accordance with the regulations and before the end of 60 days after he or she became excess or was so notified (whichever is the later), resigned from the employing authority. Such resignation makes the officer available to take up duty in the APS.

23. New subsection (2) provides that any action taken by the authority in relation to the officer's retirement or retrenchment is to be treated as if it had been done under the Public Service Redundancy Award.

24. New subsection (3) provides that the officer's retention period in the APS is to be taken to have begun when he or she became excess with the authority.

Clause 5 - Persons to whom Division applies

25. Clause 5 amends subsection 87K(12) of the Act. Section 87K provides for the persons to whom Division 3 of Part IV of the Act applies. Once covered by the Division, subsection 87(12) provides that a person remains covered by Division 3 up to age 65 provided that he or she remains in employment which attracts the application of Part IV.

26. The subsection is amended so that it is clear that Division 3 does not continue to apply to a person where the person remains in other employment which would also normally attract the application of Division 3 where the person ceases to be a person to whom Division 3 applies under new subsections 87SA(2) and 87SB(2).

Clause 6 - Right to re-enter Service by way of transfer or promotion

27. Clause 6 amends section 87M of the Act which provides that a person covered by Division 3 of Part IV is able to apply for promotion and transfer to any APS vacancy and appeal against APS appellable promotions. Subsection 87M(7) currently preserves uncompleted promotion action in relation to a person who ceases to be covered by Division 3.

28. New subsection (8A) is inserted to provide that the promotion action is not preserved where a person ceases to be a person to whom Division 3 applies because he or she has taken a voluntary retrenchment package from an authority.

Clause 7 - Application for re-appointment to Service

29. This clause amends section 87N of the Act which sets out the circumstances in which a person to whom Division 3 applies, or has ceased to apply, may apply for re-appointment into the APS.

30. Subsection 87N(3) is amended to provide that a person may not make an application under the section for re-appointment where the person has ceased to be a person to whom Division 3 applies under new subsections 87SA(2) and 87SB(2).

31. New subsection (4A) is inserted so that an application under the section lapses where a person who has made an application for re-appointment subsequently ceases to be a person to whom Division 3 applies because he or she has taken a voluntary retirement package from an authority.

Subclause 8(1) - Proposed sections 87SA and 87SB

32. Subclause 8(1) inserts new sections 87SA and 87SB into Division 3 of Part IV of the Act. Persons to whom this Division applies are former APS officers who retain certain rights in relation to the APS.

Proposed section 87SA: Person electing to be retired

33. This section prevents a person who is working in an authority from taking a voluntary retirement package from the authority and then resuming duty in the APS.

34. New subsection (1) applies the section to a person, to whom Division 3 applies, who elects to be retired from an authority.

35. New subsection (2) provides that unless the person resigned from the authority before the election is accepted, he or she ceases to be a person to whom the Division applies when the election is accepted.

36. New subsection (3) prevents a person from continuing to qualify for Division 3 coverage although he or she might continue to be engaged in employment which would normally attract such coverage.

Proposed section 87SB: Excess employee failing to apply for re-appointment

37. This section requires a person to make an election, within a 28 day period, to resume duty in the APS or stay with the authority without a right of resumption in the APS.

38. New subsection (1) applies the section to a person, to whom Division 3 applies, who after the commencement of the section becomes excess, is notified of the effect of the section in accordance with the regulations and who does not before the end of 28 days after he or she became excess or was so notified (whichever is the later), exercise his or her right to apply for re-appointment under section 87N.

39. New subsection (2) provides that unless the person ceased to be a person to whom the Division applies earlier, he or she ceases to be such a person at the end of the 28 day period.

40. New subsection (3) provides that where an officer ceases to be excess and continues in employment with the authority then the provisions of the section do not apply and are taken never to have applied to the person.

Subclause 8(2) - Proposed section 87SC: Excess employee applying for re-appointment to the Service

41. Subclause 8(2) inserts new section 87SC into Division 3 of Part IV of the Act. Persons to whom this Division applies cease to be APS officers but retain certain rights in relation to the APS.

42. The new section prevents a person who is excess to the requirements of an authority and who has resumed duty in the APS from gaining access to two sets of entitlements under 2 sets of redundancy arrangements.

43. New subsection (1) applies the section to a person, to whom Division 3 applies, who after the commencement of the section becomes excess with an authority, is notified of the effect of the section in accordance with the regulations and who, before the end of 28 days after he or she became excess or was so notified (whichever is the later), applies for re-appointment to the APS and is re-appointed.

44. New subsection (2) provides that any action taken by the authority in relation to the person's retirement or retrenchment is to be treated as if it had been done under the Public Service Redundancy Award.

45. New subsection (3) provides that the person's retention period in the APS is to be taken to have begun when he or she became excess with the authority. It further provides that where a person is paid by an authority an amount in lieu of a retention period, then the retention period in respect of the person's employment in the APS is taken to have expired.

Subclause 9(1) - Proposed sections 87UA and 87UB

46. Subclause 9(1) inserts new sections 87UA and 87UB into Division 4 of Part IV of the Act. This Division enables officers who remain covered by the repealed *Officers' Rights Declaration Act 1928* (the ORD Act) to elect to be covered by Part IV of the Public Service Act. The proposed new sections deal with the rights of people who are in a redundancy situation in a Commonwealth authority, have not elected to be covered by Part IV of the Public Service Act, and therefore continue to have rights under the Act.

Proposed section 87UA: Officer electing to retire

47. This section prevents an officer who is working in an authority from taking a voluntary retirement package from the authority and then resuming duty in the APS.

48. New subsection (1) applies the section to an officer to whom the ORD Act applies who, after the commencement of the section, elects to be retrenched from an authority.

49. New subsection (2) provides that unless the officer resigned from the APS before the election is accepted, he or she is taken to have resigned from the APS when the election is accepted.

50. New section (3) provides that where a person elects to be covered by Part IV before his or her employment with the authority ceases, the person (who by virtue of his or her election becomes a person to whom Division 3 applies) will be regarded as a person to whom new section 87SA applies at the time the election is made.

Proposed section 87UB: Excess officer failing to apply for appointment to an office in the Service

51. This section requires an officer to make an election, within a 60 day period, to resume duty in the APS or stay with the authority without a right of resumption in the APS.

52. New subsection (1) applies the section to a person to whom the ORD Act applies who, after the commencement of this section, becomes excess and is notified of the effect of the section in accordance with the regulations and who does not before the end of 60 days after he or she became excess or was so notified (whichever is the later), exercise his or her right to appointment under the ORD Act.

53. New subsection (2) provides that unless the officer resigned from the APS or made an election to be covered by

Division 3 earlier, he or she is taken to have resigned from the APS at the end of that 60 day period.

54. New subsection (3) provides that where an officer makes an election within the 60 day period to have Part IV coverage subsection 87SB has effect as if Division 3 applied when the person became excess.

55. New subsection (4) provides that where an officer ceases to be excess and continues in employment with the authority then the provisions of the section do not apply and are taken never to have applied to the officer.

Subclause 9(2) - Proposed section 87UC: Excess officer
applying for appointment to an office in the
Service

56. Subclause 9(2) inserts new section 87UC into Division 4 of Part IV of the Act.

57. The new section prevents an officer who is excess to the requirements of an authority and who has resumed duty in the APS from gaining access to 2 sets of entitlements under 2 sets of redundancy arrangements.

58. New subsection (1) applies the section to an officer to whom the ORD Act applies who, after the commencement of this section, becomes excess with an authority, is notified of the effect of the section in accordance with the regulations and who applies to be appointed to an office in the Service before the end of 60 days after he or she became excess or was so notified (whichever is the later), and is so appointed.

59. New subsection (2) provides that where, in the 60 day period, an officer makes an election to have Part IV coverage subsection 87SC(1) has effect as if Division 3 applied when the person became excess.

60. New subsection (3) provides that if the office to which the officer is appointed in the APS is abolished within 14 days after the officer's appointment to the office then any action taken by the authority in relation to the person's retirement or retrenchment is to be treated as if it had been done under the Public Service Redundancy Award. Further, the person's retention period in the APS is to be taken to have begun when he or she became excess with the authority and where a person is paid by an authority an amount in lieu of a retention period, then the retention period in respect of the person's employment in the APS is taken to have expired.

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