

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

PUBLIC SERVICE AND STATUTORY AUTHORITIES
AMENDMENT BILL 1980

EXPLANATORY MEMORANDUM

(CIRCULATED BY AUTHORITY OF THE MINISTER FOR
EMPLOYMENT AND YOUTH AFFAIRS AND
MINISTER ASSISTING THE PRIME MINISTER
IN PUBLIC SERVICE MATTERS, THE
HONOURABLE R.I. VINER)

PUBLIC SERVICE AND STATUTORY AUTHORITIES AMENDMENT BILL 1980

GENERAL OUTLINE

The principal amendments proposed by the Bill -

- . empower the Public Service Board and specified Statutory Authorities to declare that certain of their officers or employees are not to be paid salary where those officers or employees refuse to, or fail to comply with, an authorised work direction.
- . require that such declarations be written, and be signed by a member of the Public Service Board/Commissioner of the Authority (or their authorised delegates).
- . ensure that such declarations remain in force in circumstances where an officer or employee, who is the subject of a declaration, attends for duty but either performs work other than that which he has been directed to perform, or complies only in part with the direction.
- . provide that the Public Service Board and the Statutory Authorities may vary or revoke declarations at any time. Furthermore, the Board and Authorities will be required to revoke declarations once they are satisfied that the officer or employee has or will comply with the authorised work direction. The revocation is to apply from the time of compliance.

- . provide that the power to declare that an officer or employee is not to be paid salary, is in addition to and not in substitution for any other powers now held by the Public Service Board and the Statutory Authorities. It is further provided, however, that this new power and the existing disciplinary powers are not to be used concurrently in respect of the same refusal or failure.
- . provide that the period during which an officer or employee is the subject of a declaration shall count as a period of service for superannuation purposes but shall not count as service for any other purpose, unless otherwise determined.
- . provide that the power to declare that officers or employees who refuse to or fail to comply with an authorised work direction shall not be paid salary is to have full force and effect notwithstanding any inconsistency with
 - any other provision of the Principal Acts
 - any other law of the Commonwealth enacted before the commencement of these amendments
 - any award/determination made before or after the commencement of these amendments.
- . ensure that these amendments shall be 'prescribed provisions' for the purposes of the Principal Acts, the Public Service Arbitration Act 1920 (s.22(2)) and the Conciliation and Arbitration Act 1904 (s.41A(1)); thereby preventing those tribunals from making an Award/Determination which is not in accord with these amendments.

- provides, within the Superannuation Act 1976, that an officer or employee who is the subject of a declaration pursuant to the 'no work as directed - no pay' power shall be regarded for that period as if he was on leave of absence without pay.

The Bill also amends the Public Service Act to -

- empower the Public Service Board to determine terms and conditions of employment - subject to disallowance by either House of Parliament.
- require members of the Public Service Board to declare pecuniary interests
- provide a statutory basis for the Staff Suggestion Scheme.
- confer the powers of a Permanent Head on the head of a statutory authority.

BACKGROUND

- No Work As Directed - No Pay Amendments

The statutory provision of a 'no work as directed - no pay' (NWAD-NP) power has been made necessary because of legal doubts concerning the continued access of the Public Service Board, Departments of State and certain Statutory Authorities to the common law principle of NWAD-NP, arising from a recent case in the New South Wales Supreme Court (known as the Bennett case).

In that case the Public Service Board's use of the common law principle was held to be unauthorised, as the Public Service Act and Regulations constituted an 'exclusive code' and that in law disciplinary provisions contained therein could have been used against an officer of the Department of Employment and Youth Affairs who had refused to comply with an authorised work direction. The decision also raised legal doubts, by analogy, as to whether NWAD-NP would be available at common law to other Commonwealth employment bodies which have comprehensive disciplinary codes.

The Bill removes the doubts arising from the Bennett case by making statutory provision for NWAD-NP within the following Acts and in respect of the following employing bodies:

Act	Employer
. Public Service Act 1922	Departments of State
. Broadcasting and Television Act 1942	Australian Broadcasting Commission
. Commonwealth Banks Act 1959	Commonwealth Banking Corporation
. Commonwealth Teaching Service Act 1972	Commonwealth Teaching Service
. Overseas Telecommunications Act 1946	Overseas Telecommunications Commission

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|--------------------------|-------------------------------|
| • Postal Services Act | Australian Postal Commission |
| 1975 | |
| • Telecommunications Act | Australian Telecommunications |
| 1975 | Commission |

Public Service Act Determining Power and Miscellaneous Amendments.

In the interests of greater flexibility the Bill introduces provisions to empower the Public Service Board to determine terms and conditions of employment instead of the existing Regulation making power in relation to these matters. The Determinations, like the Regulations, will be subject to disallowance by either House of Parliament. The proposed determination making power will not deal with matters provided for by other legislation (eg Long Service Leave and Superannuation) nor with the discipline or promotion processes under the Public Service Act.

Similar changes are proposed in the Bill in relation to the determination of terms and conditions of the Parliamentary Departments. These changes have been discussed with the Presiding Officers.

The Bill also makes a number of other amendments to the Public Service Act, including the provision of a statutory basis for the Staff Suggestion Scheme, the conferring of powers of a Permanent Head on the head of a statutory authority, and the inclusion of a requirement that the members of the Public Service Board declare pecuniary interests.

PUBLIC SERVICE AND STATUTORY AUTHORITIES AMENDMENT

ACT 1980

NOTES ON CLAUSES

PART 1: PRELIMINARY

Clause 1 Citation of Act

Clause 2 Commencement Provisions

PART 2: AMENDMENTS OF PUBLIC SERVICE ACT

Clause 3 Defines the Public Service Act as
the Principal Act for purposes of this part.

Clause 4

Amends section 7 (interpretation) so as to include a general definition of 'overseas' for the purpose of the Public Service Act. 'Overseas' is defined, as previously in other sections of the Act, to mean outside Australia and Australian Territories.

Clause 5

Amends section 8A of the Public Service Act to take account of the proposed power of the Public Service Board to determine terms and conditions of employment (section 82D). The amendment to section 8A, which provides for the exemption, upon the order of the Governor-General, of officers and employees from provisions of the Public Service Act and Regulations, in order that the Public Service Board can determine special terms and conditions, is required because it is proposed that terms and conditions determined under the proposed section 82D should not be covered by the special section 8A procedures. Accordingly, the proposed amendment excludes rates of payment from the exemption process

(clause 5(1)) and makes other technical amendments consequential on the proposed section 82D (clause 5(3)). Clause 5(2) provides that, except (as is presently the case) in relation to overseas conditions, where a determination under section 8A is inconsistent with a proposed section 82D determination, the former is to prevail. Clause 5(4), by enabling all existing determinations to continue in force, ensures that the present entitlements of officers and employees covered by section 8A determinations are preserved.

Clause 6

Repeal of section 8B of the Public Service Act consequent on the proposed determination-making power in section 82D. The powers conferred by section 8B on the Public Service Board to determine overseas conditions of service are to be included among those contained in the proposed section 82D.

To preserve the rights of officers and employees presently overseas, existing determinations under section 8B are to continue to operate unaffected by the repeal until the Board declares that the existing determinations do not apply in relation to a particular officer or employee (clauses 6(2) and 6(3)).

Clause 7

Amends section 9 of the Act (officers and employees of the Parliamentary Departments) to confer on the President of the Senate and the Speaker of the House of Representatives (in the same manner as the section enables the Presiding Officers to recommend to the Governor-General the making of

regulations in respect of officers and employees of the Parliament) the power to determine in relation to officers and employees of the Parliament those terms and conditions which the proposed section 82D confers on the Public Service Board in respect of APS officers and employees generally.

Clauses 7(1) and 7(2)(a) make amendments to section 9 which are purely consequential to the inclusion of the proposed determination-making power. Clause 7(2)(b) includes in section 9 new sub-sections (7A) - (7K) which confer the determination-making power on the Presiding Officers.

section 9 (7A): Enables the Presiding Officers to make determinations for Parliamentary staff in respect of the same terms and conditions for which the Public Service Board may make determinations under the proposed section 82D.

section 9(7B): Specifies that a determination under section 9(7A) is of no force or effect to the extent of any inconsistency with any provision in any Act or any of the Public Service Regulations applying to Parliamentary staff.

section 9(7C): Provides that the provisions of the proposed Division 10A of Part III of the Public Service Act, which are to control the Public Service Board's powers to make determinations, shall apply equally, mutatis mutandis, to determinations made under section 9(7A) - ie such determinations will be subject to the tabling and disallowance provisions of the Acts Interpretation Act 1901.

sections 9(7D),

(7E), (7F): Define the relationship between determinations under sections 9(7A) and 82D. Determinations under section 82D are to apply to Parliamentary Staff (section 9(7D) unless

- (a) they are inconsistent with determinations under section 9(7A) (section 9(7E)), or
- (b) the Presiding Officers declare that a particular determination under section 82D is not to apply to Parliamentary staff (section 9(7F)).

section 9(7G): Empowers the Governor-General to make regulations in respect of appeals by staff arising from determinations made under section 9(7A) equivalent provision in respect of Public Service Board determinations under section 82D is at clause 44(10).

sections 9(7H)

- (7K): General provisions enabling the Presiding Officers to delegate to an officer or employee of the Parliament their powers to make determinations under section 9(7A) and 9(7F).

Clause 8

Makes a technical amendment to section 11 of the Act (constitution of Public Service Board) consequential to the determination-making power in the proposed section 82D.

Clause 9

Repeals section 15 of the Act which deals with the compulsory termination of the appointment of members of the Board in certain circumstances. The proposed sub-section 15(1) re-enacts the provisions of the existing section 15 and specifies an additional ground for termination of appointment, viz - failure, without reasonable excuse, to disclose a direct or indirect pecuniary interest.

The proposed sub-section (2) requires a Board member to disclose all direct or indirect pecuniary interests, whether in a business or otherwise, which could conflict with his duties in relation to a matter under consideration by the Board. Such a disclosure is to be recorded in the minutes of the meeting and the member is to take no further part in the meeting; if the disclosure relates to a business interest the member is to be barred from taking further part in the Board's consideration of the matter relating to that interest - proposed sub-section 15(3).

The disclosure of interest provision is in accordance with the recommendations of the Report of the Committee of Inquiry into Public Duty and Private Interest (the 'Bowen Committee Report').

Clause 10

Amends section 16 of the Act to include a new sub-section (1AA) clarifying that the Board is to be able to delegate its power to make delegations in the same way as it is able to delegate its other powers and functions under the Act.

Clause 11

Amends section 25 of the Act (powers and functions of Permanent Heads). Clauses 11(a), (b) and (d) make technical amendments to section 25 consequential to the determination-making power in section 82D. Clause 11(c) inserts a new sub-section (4A) which provides that the Chairman of the Prices Justification Tribunal is to have all the powers and functions of a Permanent Head in relation to the APS staff employed by the Tribunal. This provision, which is consistent with provisions applying to statutory heads of Commonwealth authorities employing APS staff, is required now because of the change of status of the office of Chairman, Prices Justification Tribunal which is no longer held by a person of judicial rank.

Clause 12

Makes a technical amendment to section 26 of the Act (powers and functions of Chief Officers) consequential to the determination-making power in the proposed section 82D.

Clause 13

Formal amendment : Replaces the heading to Division 3 of Part III of the Act.

Clause 14

Repeals section 30(3) of the Act which provides that the salaries of officers of the Second and Third Divisions are to be as prescribed in the regulations. The power to set salaries is to be included in the determination-making power in the proposed section 82D, and sub-section 30(3) is no longer required.

Clause 15

Repeals the existing section 31 of the Act (payment of increments of salary) and substitutes a new section which takes account of the proposed arrangement that incremental rates are to be set by means of the determination-making power in proposed section 82D and that future provision for deprivation of increments and appeals against deprivation of increment is to be made in the Public Service Regulations (Clause 13(1)).

Clause 13(2) ensure that entitlements to increments, deprivation of increments and appeals against deprivation determined or made under the existing section 31 are able to continue unaffected by the proposed repeal of the section.

Clause 16

Inserts into the Public Service Act new sections 32A and 32B which apply the 'no work as directed - no pay provisions' to staff employed under the Public Service Act. Notes on the proposed sections follow hereunder.

32A(1) Basic power enabling the Public Service Board to declare that an officer or employee who does not perform his work as directed is not to be paid salary.

32A(2) Provides that a declaration under sub-section 32A(1) is to take effect from the time specified in the declaration (which is not to be a time earlier than the time at which the officer or employee first failed to perform his work as directed) and is to remain in force until revoked.

32A(3) The officer or employee is not entitled to salary for as long as a declaration is in force.

32A(4) Enables the Board to vary or revoke at any time a direction under sub-section 32A(1) and requires the Board, once it is satisfied that an officer or employee has been complying or will comply with all relevant directions to perform work, to revoke the declaration with effect from the time of compliance.

32A(5) Clarification provision. A declaration under sub-section 32A(1) continues to have full force and effect even though the officer or employee performs duties

(a) outside the ambit of the relevant direction(s)

(b) within the ambit of the relevant direction(s) where the officer or employee does not comply with the whole of the direction(s).

32A(6) Procedural provision. A declaration under sub-section 32A(1) is to be in writing and signed by the person exercising the power, ie a member of the Board or a person to whom the Board has, pursuant to its powers under section 16 of the Act, delegated its power under this section.

32A(7) Clarification provision. The powers conferred on the Board under this section do not supplant other powers conferred elsewhere in the Act.

32A(8)

and

32A(9) Technical provisions. Prohibit the taking of action under this section and the taking of disciplinary action concurrently in respect of the same refusal or failure by an officer or employee to perform duties as directed.

32A(10) Procedural provision. The Board is to give notice to the officer or employee of the making of a declaration under sub-section 32A(1) or of its variation or revocation.

32A(11) Clarification provision. The period for which a declaration under sub-section 32A(11) is in force is to count as part of an officer's or employee's service for superannuation purposes but shall not count as service for any other purpose unless the Board otherwise determines.

32A(12) Definition. In section 32A -

'direction' is defined to include any order or instruction

'salary' is defined to include all remuneration and such allowances (ie those in the nature of salary) as are prescribed. Where a declaration is in force the officer or employee will not be entitled to receive allowances prescribed for the purposes of the sub-section.

32B(1) Ensures that section 32A and declarations under that section have full force and effect and that where section 32A or any declarations are inconsistent with -

. other provisions in the Public Service Act

. previously enacted laws, or

. existing or future industrial awards

they are to prevail notwithstanding the inconsistency. The overriding of awards in particular is necessary as they generally provide for the payment of salaries/wages and may so provide without the necessity for the performance of work.

- 32B(2) Prescribes section 32A for the purposes of sub-section 22(2) of the Public Service Arbitration Act and sub-section 41A(1) of the Conciliation and Arbitration Act; thereby prohibits the Public Service Arbitrator or the Conciliation and Arbitration Commission from making determinations or awards which are not in accord with that section.
- 32B(3) Clarification provision. Except as specified in sub-section 32B(1), a declaration under section 32A is not to effect other conditions of service or the operation of any laws or awards.
- 32B(4) Definition. Award is defined to include all determinations and instruments affecting terms and conditions.

Clause 17 and Clause 19

Amend sections 34 (requirements for appointment) and 47 (appointment on probation) of the Act to clarify the administrative practice that where an officer is appointed to the Service on probation, the officer is not required to have satisfied the Board of his medical fitness prior to appointment but must satisfy all requirements relating to medical fitness before the time for confirmation of his appointment (proposed sub-section 47(8A)) or have his appointment annulled. The amendments do not in any

way affect officers who are appointed without probation. (Proposed sub-section 34(2)). Clause 17(2) ensures that officers appointed to the Service in the past in pursuance of the administrative practice are as validly appointed as officers appointed subsequent to the proposed amendment.

Clause 18

Drafting amendment to section 35 of the Act (educational qualifications) to take account of insertion of definition of 'overseas' in section 7 (interpretation).

Clause 19

See notes on clause 17.

Clause 20

Repeals sections 47E, 48, 48AA which provide that the prior service of an officer or employee in certain public employment is to be recognised as service under the Public Service Act. These sections are no longer required as the determination-making powers in proposed section 82D will include the power to recognise prior service.

Clauses 20(2) and (3) provide savings provisions ensuring that the entitlements of APS staff presently covered by sections 47E, 48 and 48AA are not affected by the repeal.

Clause 21

Drafting amendment.

Clause 22

Amendment to section 51A of the Act (temporary performance of duties) to repeal the power to make provision in the regulation for the payment of higher duties allowance; the allowance is to be provided for in the determination-making power in proposed section 82D.

Clause 23

Makes a technical amendment to section 56(f)(i) of the Act (meaning a failure to fulfil duty as officer) consequential to the determination-making power in proposed section 82D.

Clause 24

Makes a technical amendment to section 63J(1)(4) of the Act (Definition of unattached officer for discipline provisions) consequential to the determination-making power in proposed section 82D.

Clause 25

Formal amendment : amendment of heading to Division 8 of Part III of the Act.

Clauses 26-30 and 32

Repeal of existing provisions, sections 68-68D and 68F of the Act, governing the grant of recreation leave to officers. As the determination-making power in proposed section 82D is to enable the Public Service Board to make determinations in respect of all matters provided for by sections 68-68D and 68F the sections are no longer required. The sections are specified in separate clauses to enable a gradual transition to the determination of terms and conditions.

Clause 31

Repeals the existing section 68E (liability of officers in respect of excess recreation leave in certain cases) and substitutes a new provision empowering the Board to make determinations under proposed section 82D providing for the forfeiture of excess recreation leave credits granted to certain officers as a result of the change of the date of accrual of leave credits in 1967. The existing authority for forfeiture of credits is section 68A which is to be repealed by clause 27. The proposed section 68E confers on the Board the same powers as presently exist.

Clause 32

See note on clauses 26-30.

Clauses 33-35

Repeal sections 70 (sick leave), 71 (other leave of absence) and 76 (public holidays) of the Act. The powers contained in these sections are included in the scope of the determination-making power in proposed section 82D.

Clause 36

Technical amendment to section 81ZS of the Act (rate of remuneration for persons transferred with their function into the APS) consequent to the inclusion of the determination-making power in proposed section 82D.

Clause 37

Amends section 82 of the Act (temporary employment) so as to repeal provisions dealing with terms and conditions of temporary employment which are to be included within the determination-making power in proposed section 82D.

Clause 38

Inserts into Part III of the Public Service Act a new Division 10A which provides that the Public Service Board may determine specified terms and conditions of employment of APS staff.

Section 82C Definition provision for Division 10A -

'determination' is defined so as to be a reference to a determination made under Division 10A

'salary' is defined to include wages.

Section 82D(1) General power enabling the Board to determine terms and conditions of employment, including employment overseas.

Section 82D(2) Inconsistency provision - except as provided in sub-section 82D(3) where a determination is inconsistent with a provision in the Public Service Act, the Public Service Regulations or any other Act, the determination is, to the extent of the inconsistency, to have no force and effect.

Section 82D(3) Specifies 2 exceptions to the inconsistency provisions:

- (1) a determination is not to be considered inconsistent with section 97(1) of the Act (regulation-making power) merely because it deals with a matter which could be prescribed by regulation. (This will permit the

progressive determination of terms and conditions of service and consequent repeal of regulations otherwise prevented by the broad heads of power contained in section 97(1).

- (2) determinations on terms and conditions of employment overseas are not to be considered inconsistent with the regulations - thereby preserving the existing provision in section 8B (overseas conditions of service).

Section 82D(4)(a) Specifies those terms and conditions of employment on which the Board may make determinations:

- (i) salaries and allowances
- (ii) attendance
- (iii) overtime
- (iv) recognition of prior employment or training for specified purposes
- (v) leave of absence
- (vi) forfeiture of salary for unauthorised attendance
- (vii) studies assistance

(viii) employment overseas - including provision of accommodation and allowances for dependants of officers and employees performing duties overseas.

(ix) welfare of officers and employees

(x) payment of expenses arising from the death of an officer or employee

(xi) reduction of recreation leave credits from certain officers in cases where over-credits were obtained during changeover of accrual dates during 1966-1968.

Existing provisions of the Public Service Act, the Public Service Regulations and the Public Service (Salaries) Regulations deal with these terms and conditions and will be repealed upon implementation of the determination-making power.

Section 82D(4)(b)

and (c) Clarify the scope of determinations dealing with the grant of recreation leave, sick leave and other leave. These provisions replace existing provisions in the Act and Regulations relating to the grant of leave.

- Section 82D(5) Enables determinations relating to overseas employment to be made in respect of officers and employees travelling to or from overseas posts; thereby replacing existing sub-section 8B(4).
- Section 82D(6) Technical : determinations can be made general or in respect of a particular case or a class of cases.
- Section 82D(7) Technical provision enabling the Board to take account of prior matters : determinations may take account of (1) past service of officers and employees in the Service, and (2) leave granted prior to the making of a determination.
- Section 82D(8) Technical : a determination is to take effect on the day it is made or, if another day is specified in the determination, that day.
- Section 82D(9) Technical : a determination is not to have retrospective effect if it would prejudice the rights or increase the liabilities of a person (other than the Commonwealth).
- Section 82D(10) Determinations made in each year commencing 1 January are to be numbered consecutively in the order in which they are made.
- Section 82D(11) Manner of citation of determinations.

Section 82D(12) Notice of (1) making of determination, and (2) places where copies can be obtained are to be published in the Gazette.

Section 82E Specifies the manner in which determinations may refer to Acts, awards and other determinations.

Determinations may refer to -

- . Acts, regulations and rules, and
- . determinations of the Public Service Arbitrator, awards of the Conciliation and Arbitration Commission and awards of other tribunals prescribed under the section, as amended from time to time. All other instruments may be referred to as existing at the time at which the determination is made.

Section 82F(1) Tabling and disallowance provisions : sections 48(1)(c), (3)-(6), 49 and 50 of the Acts Interpretation Act 1901 are to apply. Briefly, these sections require the tabling of determinations in both Houses of Parliament for 15 sitting days during which period they may be disallowed in the same manner as regulations; disallowed determinations are not to be re-made within six months without the approval of the disallowing House of the Parliament; the repeal of determinations is not to affect any rights, penalties, procedures etc.

Section 82F(2) Specifies that where a provision in a determination is amended or revoked by a later determination which is subsequently disallowed, the fact of disallowance revives the former provision and does not create a void.

Section 82F(3) Determinations are not to be deemed to be Statutory Rules.

Section 82G For evidentiary purposes. Determinations are to be regarded as being made under the authority of a Minister, thereby enabling ministerial certification to be evidence of a determination's identity.

Clause 39

Technical amendment to section 87B(6)(f)(ii) of the Act (entitlements of officer transferring to eligible public employment). The amendment results from the inclusion of a determination-making power in proposed section 82D.

Clause 40

Drafting amendment.

Clause 41

Technical amendment to section 87E(3)(b) of the Act (leave entitlements of officer transferring to eligible public employment). The amendment results from the inclusion of a determination-making power in proposed section 82D.

Clause 42

Drafting amendment.

Clause 43

Consequential amendment to section 90(3) of the Act (authorisation of payments to officers), resulting from the proposed change from regulations to determinations as the basis for authorising salaries, allowances and other payments.

As the terms and conditions of employees are, with the introduction of the determination-making power (section 82D), to be authorised by the same provisions, employees are to be covered also by section 90(3) thereby enabling the section to be the authority for act of grace payments to both officers and employees.

Clause 44

Inserts into the Act a new section 90A empowering the Board to formulate and operate a Staff Suggestions Scheme to encourage officers and employees to make suggestions to improve -

- . efficiency and economy within the Service, and
- . the standards of safety within the Service. (section 90A(1) section 90B(1))

The Board is empowered to authorise payments to staff who make meritorious suggestions (section 90A(2)) and may vary or discontinue a Staff Suggestion Scheme at any time (section 90A(3))

Clause 45

Clauses 45(1)-45(9) provide for the repeal of those regulation-making powers contained in section 97(1) of the Act which are to be substituted by the determination-making power specified in the proposed section 82D(4). The regulation-making powers are listed individually so as to enable a gradual repeal of the powers as and when determinations covering the scope of each power are made.

The regulation-making powers to be repealed are listed hereunder:

section 97(1)(f) : studies assistance

section 97(1)(j) : payment of allowances

section 97(1)(ja) : provision for welfare of officers and employees

section 97(1)(jb) : payments in relation to the death of an officer or employee

section 97(1)(m) : hours of attendance and recording of attendance

section 97(1)(ma) : forfeiture of salary for unauthorised absences

section 97(1)(n) : leave of absence

section 97(1)(o) : overtime

section 97(1)(s) : appeals against deprivation of increments.

Clause 45(10) amends the regulation-making power, section 97(1), by inserting a paragraph 97(1)(sb) which enables the Public Service Board to make regulations providing for appeals arising from any matter relating to a determination made by the Board under the proposed section 82D.

Clause 46

Repeals Schedules 2 and 3 of the Public Service Act and substitutes new Schedules so as to update the lists of Departments and the offices of Permanent Heads of those Departments respectively.

Clause 47

Transitional provisions which ensure that the existing entitlements of all officers and employees are not adversely affected by the repeal by this Bill of sections of the Public Service Act or by the transition from regulations to determinations under section 82D. Clause 47(1)(a) provides that the first determinations on all terms and conditions under proposed section 82D are to be no less favourable to officers and employees than the previously existing arrangements. Clause 47(1)(b) provides that the first determinations in respect of recreation leave and sick leave are to preserve existing leave credits of all officers and employees.

Clause 48

Provides that any leave granted under provisions of the Public Service Act which are to be repealed as a consequence of the determination-making power is not to be affected by the repeal of those provisions.

PART III AMENDMENTS TO THE BROADCASTING AND TELEVISION ACT

Clause 49

Defines the Broadcasting and Television Act 1942 as the Principal Act for the purposes of this part.

Clause 50

Amends section 42 of the Act (preservation of certain awards) so as to ensure that the provisions of Division 2 of the Act, other than the proposed sections 44 and 44A which specifically override industrial awards and determinations, do not affect the operational of industrial awards and determinations.

Clause 51

Inserts into the Broadcasting and Television Act new Sections 44 and 44A which apply the 'no work as directed - no pay provisions' to staff employed by the Australian Broadcasting Commission. The provisions proposed in relation to the Broadcasting and Television Act are identical in substance to those introduced into the Public Service Act by clause 16 above. Notes on the proposed sections follow hereunder.

- 44(1) Basic power enabling the Australian Broadcasting Commission to declare that an officer or employee who does not perform his work as directed is not to be paid salary.
- 44(2) Provides that a declaration under sub-section 44(1) is to take effect from the time specified in the declaration (which is not to be a time earlier than the time at which the officer or employee first failed to perform his work as directed) and is to remain in force until revoked.
- 44(3) The officer or employee is not entitled to salary for so long as a declaration is in force.
- 44(4) Enables the Commission to vary or revoke at any time a direction under sub-section 44(1) and requires the Commission, once it is satisfied that an officer or employee has been complying or will comply with all relevant directions to perform work, to revoke the declaration with effect from the time of compliance.
- 44(5) Clarification provision. A declaration under sub-section 44(1) continues to have full force and effect even though the officer or employee performs duties
- (a) outside the ambit of the relevant direction(s)
 - (b) within the ambit of the relevant directions(s) where the officer or employee does not comply with the whole of the direction(s).

- 44(6) Procedural provision. A declaration under sub-section 44(1) is to be in writing and signed by the person exercising the power, ie a member of the Commission or a person to whom the Commission has delegated its power under this section.
- 44(7) Clarification provision. The powers conferred on the Commission under this section do not supplant other powers conferred elsewhere in the Act.
- 44(8) and
- 44(9) Technical provisions. Prohibit the taking of action under this section and the taking of disciplinary action concurrently in respect of the same refusal or failure by an officer to perform duties as directed.
- 44(10) Procedural provision. The Commission is to give notice to the officer or employee of the making of a declaration under sub-section 44(1) or of its variation or revocation.
- 44(11) Clarification provision. The period for which a declaration under sub-section 44(1) is in force is to count as part of an officer's or employee's service for superannuation purposes but shall not count as service for any other purpose unless the Commission otherwise determines.
- 44(12) Definition. In section 44-

'direction' is defined to include any order or instruction

'salary' is defined to include all remuneration and such allowances (ie those in the nature of salary) as are prescribed; where a declaration is in force the officer or employee will not be entitled to receive allowances prescribed for the purposes of the sub-section.

44A(1) Ensures that section 44 and declarations under that section have full force and effect and that where section 44 or any declarations are inconsistent with

- . other provisions in the Broadcasting and Television Act
- . previously enacted laws, or
- . existing or future industrial awards

they are to prevail notwithstanding the inconsistency. The overriding of awards in particular is necessary as they generally provide for the payment of salaries/wages and may so provide without the necessity for the performance of work.

44A(2) Prescribes section 44 for the purposes of sub-section 22(2) of the Public Service Arbitration Act and sub-section 41A(1) of the Conciliation and Arbitration Act; thereby prohibits the Public Service Arbitrator or the Conciliation and Arbitration Commission from making determinations or awards which are not in accord with that section.

44A(3) Clarification provision. Except as specified in sub-section 44A(1), a declaration under section 44 is not to effect other conditions of service or the operation of any laws or awards.

44A(4) Definition. Award is defined to include all determinations and instruments affecting terms and conditions.

PART IV AMENDMENTS OF THE COMMONWEALTH BANKS ACT

Clause 52

Defines the Commonwealth Banks Act 1959 as the Principal Act for the purposes of this part.

Clause 53

Inserts into the Commonwealth Banks Act new Sections 89A and 89B which apply the 'no work as directed - no pay provisions' to staff employed under the Commonwealth Banks Act. The provisions proposed in relation to the Commonwealth Banking Corporation are identical in substance to those introduced into the Public Service Act by Clause 16 above. Notes on the proposed sections follow hereunder.

89A(1) Basic power enabling the Commonwealth Banking Corporation to declare that an officer or employee who does not perform his work as directed is not to be paid salary.

- 89A(2) Provides that a declaration under sub-section 89A(1) is to take effect from the time specified in the declaration (which is not to be a time earlier than the time at which the officer or employee first failed to perform his work as directed) and is to remain in force until revoked.
- 89A(3) The officer or employee is not entitled to salary for so long as a declaration is in force.
- 89A(4) Enables the Corporation to vary or revoke at any time a direction under sub-section 89A(1) and requires the Corporation, once it is satisfied that an officer or employee has been complying or will comply with all relevant directions to perform work, to revoke the declaration with effect from the time of compliance.
- 89A(5) Clarification provision. A declaration under sub-section 89A(1) continues to have full force and effect even though the officer or employee performs duties
- (a) outside the ambit of the relevant direction(s) and
 - (b) within the ambit of the relevant direction(s) where the officer or employee does not comply with the whole of the direction(s).
- 89A(6) Procedural provision. A declaration under sub-section 89A(1) is to be in writing and signed by the person exercising the power, ie the Corporation's Managing Director or a person authorised by the Managing Director.

89A(7) Clarification provision. The powers conferred on the Corporation under this section do not supplant other powers conferred elsewhere in the Act.

89A(8) and

89A(9) Technical provisions. Prohibit the taking of action under this section and the taking of disciplinary action concurrently in respect of the same refusal or failure by an officer or employee to perform duties as directed.

89A(10) Procedural provision. The Corporation is to give notice to the officer or employee of the making of a declaration under sub-section 89A(1) or of its variation or revocation.

89A(11) Clarification provision. The period for which a declaration under sub-section 89A(1) is in force is to count as part of an officer's or employee's service for superannuation purposes but shall not count as service for any other purpose unless the Corporation otherwise determines.

89A(12) Definition. In section 89A -

'direction' is defined to include any order or instruction

'salary' is defined to include all remuneration and such allowances (ie those in the nature of salary) as are prescribed. Where a declaration is in force the officer or employee will not be entitled to receive allowances prescribed for the purposes of the sub-section.

89B(1) Ensure that section 89A and declarations under that section have full force and effect and that where section 89A or any declarations are inconsistent with other provisions in the Commonwealth Banks Act:

- . previously enacted laws, or
- . existing or future industrial awards

they are to prevail notwithstanding the inconsistency.

The overriding of awards in particular is necessary as they generally provide for the payment of salaries/wages and may so provide without the necessity for the performance of work.

89B(2) Prescribes section 89A for the purposes of sub-section 22(2) of the Public Service Arbitration Act and sub-section 41A(1) of the Conciliation and Arbitration Act; thereby prohibiting the Public Service Arbitrator or the Conciliation and Arbitration Commission from making determinations or awards which are not in accord with that section.

89B(3) Clarification provision. Except as specified in sub-section 89B(1), a declaration under section 89A is not to effect other conditions of service or the operation of any laws or awards.

89B(4) Definition. Award is defined to include all determinations and instruments affecting terms and conditions.

PART V AMENDMENT OF THE COMMONWEALTH TEACHING SERVICE ACT

Clauses 54-55

Inserts into the Commonwealth Teaching Service Act 1972 new Section 23A and 23B which apply the 'no work as directed - no pay provisions' to staff employed under the Teaching Service Act. The provisions proposed in relation to the Commonwealth Teaching Service are identical in substance to those introduced into the Public Service Act by clause 16 above. Notes on the proposed sections follow hereunder.

- 23A(1) Basic power enabling the Commissioner to declare that a member of the Service who does not perform his work as directed is not to be paid salary.
- 23A(2) Provides that a declaration under sub-section 23A(1) is to take effect from the time specified in the declaration (which is not to be a time earlier than the time at which the member first failed to perform his work as directed) and is to remain in force until revoked.
- 23A(3) The officer or employee is not entitled to salary for so long as a declaration is in force.
- 23A(4) Enables the Commissioner to vary or revoke at any time a direction under sub-section 23A(1) and requires the Commissioner, once he is satisfied that a member has been

complying or will comply with all relevant directions to perform work, to revoke the declaration with effect from the time of compliance.

23A(5) Clarification provision. A declaration under sub-section 23A(1) continues to have full force and effect even though the officer or employee performs duties

- (a) outside the ambit of the relevant direction(s)
- (b) within the ambit of the relevant direction(s) where the member does not comply with the whole of the direction(s).

23A(6) Procedural provision. A declaration under sub-section 23A(1) is to be in writing and signed by the person exercising the power, ie the Commissioner or a person to whom the Commissioner has, pursuant to his powers under the Act, delegated his power under this section.

23A(7) Clarification provision. The powers conferred on the Commissioner under this section do not supplant other powers conferred elsewhere in the Act.

23A(8) and

23A(9) Technical provisions. Prohibit the taking of action under this section and the taking of disciplinary action concurrently in respect of the same refusal or failure by a member who is an officer to perform duties as directed.

23A(10) Procedural provision. The Commissioner is to give notice to the member of the making of a declaration under sub-section 23A(1) or of its variation or revocation.

23A(11) Clarification provision. The period for which a declaration under sub-section 23A(1) is in force is to count as part of an officer's or employee's services for superannuation purposes but shall not count as service for any other purpose unless the Commissioner otherwise determines.

23A(12) Definition. In section 23A -

'direction' is defined to include any order or instruction

'salary' is defined to include all remuneration and such allowances (ie those in the nature of salary) as are prescribed. Where a declaration is in force the officer or employee will not be entitled to receive allowances prescribed for the purposes of the sub-section.

23B(1) Ensure that section 23A and declarations under that section have full force and effect and that where section 23A or any declarations are inconsistent with

- . other provisions in the Commonwealth Teaching Service Act
- . previously enacted laws, or
- . existing or future industrial awards

they are to prevail notwithstanding the inconsistency. The overriding of awards in particular is necessary as they generally provide for the payment of salaries/wages and may so provide without the necessity for the performance of work.

23B(2) Clarification provision. Except as specified, in sub-section 23B(1), a declaration under section 23A is not to effect other conditions of service or the operation of any laws or awards.

23B(3) Definition. Award is defined to include all determinations and instruments affecting terms and conditions.

Clause 56

Amends section 39 of the Act to prescribe section 23A for the purposes of that section and thereby prohibit the Conciliation and Arbitration Commission from making determinations or awards which are not in accord with that section.

PART VI AMENDMENT OF THE OVERSEAS TELECOMMUNICATIONS ACT

Clause 57

Defines the Overseas Telecommunications Act 1946 as the Principal Act for the purposes of this part.

Clause 58

Inserts into the Overseas Telecommunications Act new Sections 33AA and 33AB which apply the 'no work as directed - no pay' provisions to staff employed under the Overseas Telecommunications Act. The provisions proposed in relation to the Overseas Telecommunications Commission are identical in substance to those introduced into the Public Service Act by Clause 16 above. Notes on the proposed sections follow hereunder.

- 33AA(1) Basic power enabling the Overseas Telecommunications Commission to declare that an officer or employee who does not perform his work as directed is not to be paid salary.
- 33AA(2) Provides that a declaration under sub-section 33AA(1) is to take effect from the time specified in the declaration (which is not to be a time earlier than the time at which the officer or employee first failed to perform his work as directed) and is to remain in force until revoked.
- 33AA(3) The officer or employee is not entitled to salary for so long as a declaration is in force.
- 33AA(4) Enables the Commission to vary or revoke at any time a direction under sub-section 33AA(1) and requires the Commission, once it is satisfied that an officer or employee has been complying or will comply with all relevant directions to perform work, to revoke the declaration with effect from the time of compliance.

33AA(5) Clarification provision. A declaration under sub-section 33AA(1) continues to have full force and effect even though the officer or employee performs duties

- (a) outside the ambit of the relevant direction(s) and
- (b) within the ambit of the relevant direction(s) where the officer or employee does not comply with the whole of the direction(s).

33AA(6) Procedural provision. A declaration under sub-section 33AA(1) is to be in writing and signed by the person exercising the power, ie a Commissioner or a person to whom the Commission has, pursuant to its powers (under section 17 of the Act), delegated its power under this section.

33AA(7) Clarification provision. The powers conferred on the Commission under this section do not supplant other powers conferred elsewhere in the Act.

33AA(8) and

33AA(9) Technical provisions. Prohibit the taking of action under this section and the taking of disciplinary action concurrently in respect of the same refusal or failure by an officer or employee to perform duties as directed.

33AA(10) Procedural provision. The Commission is to give notice to the officer or employee of the making of a declaration under sub-section 33AA(1) or of its variation or revocation.

33AA(11) Clarification provision. The period for which a declaration under sub-section 32AA(1) is in force is to count as part of an officer's or employee's service for superannuation purposes but shall not count as service for any other purpose unless the Commission otherwise determines.

33AA(12) Definition. In section 33AA -

'direction' is defined to include any order or instruction

'salary' is defined to include all remuneration and such allowances (ie those in the nature of salary) as are prescribed. Where a declaration is in force the officer or employee will not be entitled to receive allowances prescribed for the purposes of the sub-section.

33AB(1) Ensure that section 33AA and declarations under that section have full force and effect and that where section 33AA or any declarations are inconsistent with other provisions in the Overseas Telecommunications Act,

- . previously enacted laws, or

- . existing or future industrial awards

they are to prevail notwithstanding the inconsistency.

The overriding of awards in particular is necessary as they generally provide for the payment of salaries/wages and may so provide without the necessity for the performance of work.

- 33AB(2) Prescribes section 33AA for the purposes of sub-section 22(2) of the Public Service Arbitration Act and sub-section 41A(1) of the Conciliation and Arbitration Act; thereby prohibiting the Public Service Arbitrator or the Conciliation and Arbitration Commission from making determinations or awards which are not in accord with that section.
- 33AB(3) Clarification provision. Except as specified in sub-section 33AB(1), a declaration under section 33AA is not to effect other conditions of service or the operation of any laws or awards.
- 33AB(4) Definition. Award is defined to include all determinations and instruments affecting terms and conditions.

PART VII AMENDMENT OF THE POSTAL SERVICES ACT

Clause 59

Defines the Postal Services Act 1975 as the Principal Act for the purposes of this part.

Clause 60

Inserts into the Postal Services Act new Sections 46A and 46B which apply the 'no work as directed - no pay provisions' to staff employed under the Postal Services Act. The provisions proposed in relation to the Australian Postal Commission are identical in substance to those introduced into the Public Service Act by Clause 16 above. Notes on the proposed sections follow hereunder.

- 46A(1) Basic power enabling the Australian Postal Commission to declare that an officer or employee who does not perform his work as directed is not to be paid salary.
- 46A(2) Provides that a declaration under sub-section 46A(1) is to take effect from the time specified in the declaration (which is not to be a time earlier than the time at which the officer or employee first failed to perform his work as directed) and is to remain in force until revoked.
- 46A(3) The officer or employee is not entitled to salary for so long as a declaration is in force.
- 46A(4) Enables the Commission to vary or revoke at any time a direction under sub-section 46A(1) and requires the Commission, once it is satisfied that an officer or employee has been complying or will comply with all relevant directions to perform work, to revoke the declaration with effect from the time of compliance.
- 46A(5) Clarification provision. A declaration under sub-section 46A(1) continues to have full force and effect even though the officer or employee performs duties
- (a) outside the ambit of the relevant direction(s) and
 - (b) within the ambit of the relevant direction(s) where the officer or employee does not comply with the whole of the direction(s).

46A(6) Procedural provision. A declaration under sub-section 46A(1) is to be in writing and signed by the person exercising the power, ie a Commissioner or a person to whom the Commission has, pursuant to its powers (under section 36 of the Act), delegated its power under this section.

46A(7) Clarification provision. The powers conferred on the Commission under this section do not supplant other powers conferred elsewhere in the Act.

46A(8) and

46A(9) Technical provisions. Prohibit the taking of action under this section and the taking of disciplinary action concurrently in respect of the same refusal or failure by an officer or employee to perform duties are directed.

46A(10) Procedural provision. The Commission is to give notice to the officer or employee of the making of a declaration under sub-section 46A(1) or of its variation or revocation.

46A(11) Clarification provision. The period for which a declaration under sub-section 46A(1) is in force is to count as part of an officer's or employee's service for superannuation purposes but shall not count as service for any other purpose unless the Commission otherwise determines.

46A(12) Definition. In section 46A -

'direction' is defined to include any order or instruction

'salary' is defined to include all remuneration and such allowances (ie those in the nature of salary) as are prescribed. Where a declaration is in force the officer or employee will not be entitled to receive allowances prescribed for the purposes of the sub-section.

46B(1) Ensure that section 46A and declarations under that section have full force and effect and that where section 46A or any declarations are inconsistent with other provisions in the Postal Services Act,

- . previously enacted laws, or

- . existing or future industrial awards

they are to prevail notwithstanding the inconsistency.

The overriding of awards in particular is necessary as they generally provide for the payment of salaries/wages and may so provide without the necessity for the performance of work.

46B(2) Clarification provision. Except as specified in sub-section 46B(1), a declaration under section 46A is not to effect other conditions of service or the operation of any laws or awards.

46B(3) Definition. Award is defined to include all determinations and instruments affecting terms and conditions.

Clause 61

Amend section 70 of the Postal Services Act to prescribe section 46(A); thereby prohibiting the Conciliation and Arbitration Commission from making Awards which are not in accord with that section.

PART VIII. AMENDMENTS OF THE TELECOMMUNICATIONS ACT

Clause 62

Defines the Telecommunication Act 1975 as the Principal Act for the purposes of this part.

Clause 63

Inserts into the Telecommunications Act new Sections 43A and 43B which apply the 'no work as directed - no pay provisions' to staff employed under the Telecommunications Act. The provisions proposed in relation to the Australian Telecommunications Commission are identical in substance to those introduced into the Public Service Act above. Notes on the proposed sections follow hereunder.

43A(1) Basic power enabling the Australian Telecommunications Commission to declare that an officer or employee who does not perform his work as directed is not to be paid salary.

43A(2) Provides that a declaration under sub-section 43A(1) is to take effect from the time specified in the declaration (which is not to be a time earlier than the time at which the officer or employee first failed to perform his work as directed) and is to remain in force until revoked.

43A(3) The officer or employee is not entitled to salary for so long as a declaration is in force.

43A(4) Enables the Commission to vary or revoke at any time a direction under sub-section 43(1) and requires the Commission, once it is satisfied that an officer or employee has been complying or will comply with all relevant directions to perform work, to revoke the declaration with effect from the time of compliance.

43A(5) Clarification provision. A declaration under sub-section 43A(1) continues to have full force and effect even though the officer or employee performs duties

(a) outside the ambit of the relevant direction(s) and

(b) within the ambit of the relevant direction(s) where the officer or employee does not comply with the whole of the direction(s).

43A(6) Procedural provision. A declaration under sub-section 43A(1) is to be in writing and signed by the person exercising the power, ie a Commissioner or a person to whom the Commission has, pursuant to its powers (under section 33 of the Act), delegated its power under this section.

43A(7) Clarification provision. The powers conferred on the Commission under this section do not supplant other powers conferred elsewhere in the Act.

43A(8) and

43A(9) Technical provisions. Prohibit taking of action under this section and the taking of disciplinary action concurrently in respect of the same refusal or failure by an officer or employee to perform duties as directed.

43A(10) Procedural provision. The Commission is to give notice to the officer or employee of the making of a declaration under sub-section 43A(1) or of its variation or revocation.

43A(11) Clarification provision. The period for which a declaration under sub-section 43A(1) is in force is to count as part of an officer's or employee's service for superannuation purposes but shall not count as service for any other purpose unless the Commission otherwise determines.

43A(12) Definition. In section 43A -

'direction' is defined to include any order or instruction

'salary' is defined to include all remuneration and such allowances (ie those in the nature of salary) as are prescribed. Where a declaration is in force the officer or employee will not be entitled to receive allowances prescribed for the purposes of the sub-section.

43B(1) Ensure that section 43A and that declarations under that section have full force and effect and that where section 43A or any declarations are inconsistent with other provisions in the Telecommunications Act,

. previously enacted laws, or

. existing or future industrial awards

they are to prevail notwithstanding the inconsistency.

The overriding of awards in particular is necessary as they generally provide for the payment of salaries/wages and may so provide without the necessity for the performance of work.

46B(2) Clarification provision. Except as specified in sub-section 43B(1), a declaration under section 43A is not to effect other conditions of service or the operation of any laws or awards.

43B(3) Definition. Award is defined to include all determinations and instruments affecting terms and conditions.

Clause 64

Amends section 67 of the Telecommunications Act to precribe section 43A; thereby prohibiting the Conciliation and Arbitration Commission from making Awards which are not in accord with that section.

PART IX AMENDMENT OF THE SUPERANNUATION ACT

Clause 65

Defines the Superannuation Act 1976 as the Principal Act for the purposes of this Part.

Clause 66

Inserts a new section 16A into the Superannuation Act. The proposed section provides that where a Commonwealth employee who

- . is an eligible employee (ie a contributor to the Superannuation fund) for the purposes of the Superannuation Act and
- . becomes the subject of a declaration that he be taken off pay

is to be regarded, while he is deprived of pay, for the purposes of that Act as though he were on leave without pay. The effect of the provision is to require officers and employees to pay superannuation contributions for the first 3 months of any period during which they are deprived of salary.

The proposed section covers all Commonwealth employee deprived of salary in pursuance of the provisions contained elsewhere in this Bill or similar provisions contained in the terms and conditions of employment of other statutory authorities.