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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE SENATE

ADMINISTRATIVE ARRANGEMENTS BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of
the Prime Minister
the Hon. R.J.L. Hawke, AC, MP)

ADMINISTRATIVE ARRANGEMENTS BILL 1987

OUTLINE

This Bill gives effect to aspects of the major changes to the structure of Commonwealth administration announced by the Prime Minister on 14 July 1987. The Bill amends the Acts Interpretation Act 1901 and the Public Service Act 1922.

Amendments to the Acts Interpretation Act

The amendments to the Acts Interpretation Act 1901 are intended to clarify and put beyond doubt the scope of certain provisions of that Act in their application to the new ministerial arrangements. The amendments expressly recognise for the purposes of that Act the situations where a Minister administers two or more Departments or where a single Department is administered by two or more Ministers.

Amendments to the Public Service Act

The amendments to the Public Service Act 1922 give effect to the decision recommended in the Report of the Efficiency Scrutiny Unit to abolish the Public Service Board and to replace it by a Public Service Commissioner who will have independent statutory responsibility for the policy aspects of recruitment, promotion, mobility, discipline and retirement.

The Bill replaces the provisions constituting the Public Service Board with provisions establishing an office of Public Service Commissioner and provisions for the appointment, tenure, remuneration etc of the Commissioner. It also includes an interim provision so that all references to the Board in legislation and other instruments are to be read as references to the Commissioner. Further legislation will be required to effect the detailed distribution of the Board's powers and functions to the Public Service Commissioner, the Departments of Industrial Relations and Finance and to departments generally.

Financial Impact

Abolition of the Public Service Board, allocation of responsibility for its functions elsewhere and establishment of a Public Service Commissioner will eliminate duplication of functions while ensuring resource savings over time.

The Department of Finance estimates that the abolition of the Board will save the Commonwealth approximately \$8 million in 1987/88 and \$16.5 million in 1988/89.

NOTES ON CLAUSES

PART I : PRELIMINARY

Clause 1 - Short Title

Provides for the Act to be cited as the Administrative Arrangements Act 1987.

Clause 2 - Commencement

Subclause 2 (1) provides that the Act (other than that part relating to the Acts Interpretation Act 1901) shall come into operation on the day it receives the Royal Assent.

Subclause 2 (2) provides that the amendments to the Acts Interpretation Act 1901 contained in Part II of the Bill are deemed to have come into operation on 24 July 1987 which was the day of the swearing in of the new Ministry.

PART II : AMENDMENT OF ACTS INTERPRETATION ACT 1901

Clause 3 - Principal Act

Formal.

Clause 4 - Constitutional and official definitions

This clause repeals the definition of 'The Minister' in paragraph 17 (i) and the definition of 'The Department' in paragraph 17 (ia) of the Act. Revised definitions are substituted by clause 5.

Clause 5 - References to Ministers and Departments

This clause inserts a new section 19A with the heading 'References to Ministers and Departments'. It substitutes for the definitions of 'The Minister' and 'The Department' which appear in paragraphs 17 (i) and 17 (ia) respectively, definitions which expressly refer to the various administrative arrangements which can be made for the Ministerial administration of legislation and departments. The intention of the amendments is not to break new ground but to make it clear that references to 'the Minister' in relation to the administration of a provision of an Act refer, where that provision is administered by 2 or more Ministers in the same respect, to any one of those Ministers.

Proposed subsection 19A (4) declares for the avoidance of doubt that where a provision of an Act is administered by 2 or more Ministers, and by virtue of the application of proposed section 19A the provision requires or permits anything to be done by or in relation to any one of those

Ministers, proposed section 19A does not have the effect of requiring or permitting it to be done in any particular case by or in relation to more than one of those Ministers. This subsection is intended to ensure that the application of proposed section 19A will not give rise to unnecessary duplication or administrative uncertainty.

Clause 6 - Reference to Minister, Department etc. where no longer any such Minister, or Department abolished, etc.

Clause 7 - Reference to Minister, Department etc. inconsistent with changed administrative arrangements

Clauses 6 and 7 amend subsections 19B (1) and 19BA (1) of the Act respectively. These provisions permit the Governor-General to make orders converting outdated references to 'a particular Minister of State' in legislation into references consistent with the current Ministerial nomenclature and administrative arrangements. The amendments will ensure that, where appropriate, the Governor-General may make orders under sections 19B and 19BA converting references to a particular Minister into references to 2 or more Ministers where 2 or more Ministers administer the provision in which the outdated reference appears.

Clause 8 - References in agreements to a Department, Minister, officer or body

This clause is intended to ensure that section 19C which deals with situations where the functions of a Department in relation to the administration of matters to which an agreement relates are allotted to another Department is capable of appropriate application where 2 or more Ministers administer the Department to which the function has been allotted.

PART III : AMENDMENTS OF PUBLIC SERVICE ACT 1922

Clause 9 - Principal Act

Formal.

Clause 10 - Interpretation

An amendment to the definition of "The Minister" is required to reflect the new administrative arrangements under which some departments are administered by more than one Minister.

The definition of "The Board" is omitted to reflect the abolition of the Public Service Board and a new definition of "Commissioner" is inserted.

Clause 11 - Repeal of sections and substitution of new sections

Subclause (1) repeals sections 11 to 17 (inclusive) of the Principal Act which sections provided for the constitution, appointment, duties etc of the Public Service Board.

New sections are substituted providing for an office of Public Service Commissioner as follows -

Section 11 - Public Service Commissioner

Proposed subsections (1), (2) and (3) provide for appointment of a Public Service Commissioner by the Governor-General on a full-time basis for a period not exceeding 5 years.

Provision is made in subsection (4) so that a person over 65 may not be appointed as, or remain in the office of, Commissioner. Subsection (5) provides that the Commissioner will hold office on such terms and conditions in respect of matters not provided for by the Act as are determined by the Prime Minister. Subsection (6) provides that where an officer of the Australian Public Service is appointed as Commissioner, the person shall be deemed to become an unattached Secretary.

Section 12 - Remuneration

This section provides for the method of determining the remuneration and allowances payable to the Commissioner. As is usual with statutory office holders, remuneration is to be determined by the Remuneration Tribunal and allowances are to be as prescribed.

Section 13 - Leave of absence

Provides for the Commissioner to be granted leave by the Prime Minister on such terms and conditions as to remuneration or otherwise as the Prime Minister determines.

Section 14 - Disclosure of interests

Requires the Commissioner to give written notice to the Prime Minister of all direct or indirect pecuniary interests in any business.

Section 15 - Annual report by Commissioner

Requires the Commissioner to prepare and furnish an annual report to the Prime Minister.

Section 16 - Resignation

Provides for resignation by the Commissioner.

Section 17 - Suspension and removal

Provides tenure provisions appropriate to the independence of the office of Public Service Commissioner similar to those applying to the Ombudsman.

Section 18 - Delegation by the Commissioner

The section provides the Commissioner with the same broad powers of delegation as the Board had under former section 16 of the Act.

Section 18A - Acting Commissioner

Subsection (1) enables the Prime Minister to appoint a person to act as Commissioner during a vacancy in the office or during periods when the Commissioner is unable to perform the duties of the office.

Subsection (2) provides that such an appointment may be expressed to have effect only in certain specified circumstances.

Subsection (3) provides that an acting appointment during a vacancy in the office may not continue for more than 12 months. Subsection (4) provides that where an acting appointment has been made and the office becomes vacant then the person may continue to act until the Prime Minister directs otherwise, the vacancy is filled or a period of 12 months from the date the vacancy occurs expires, whichever first occurs.

Subsection (5) provides that where a person is acting as Commissioner he or she may exercise all the powers and shall perform all the functions of the Commissioner.

Subsection (6) enables the Prime Minister to determine the terms and conditions of an appointment to act and to terminate such an appointment at any time.

Subsection (7) enables a person appointed to act as Commissioner to resign by giving the Prime Minister a signed notice of resignation.

Subsection (8) provides that anything done by or in relation to a person purporting to act is not invalid on certain grounds.

Section 18B - Staff

Subsection (1) provides that the staff required to assist the Commissioner shall be persons appointed or employed under the Public Service Act 1922.

Subsection (2) provides for the Commissioner to have all the powers of a Secretary in relation to his or her staff.

Subclauses 11 (2), (3), (4), (5) and (6) save delegations, sub-delegations and instruments made under the repealed provisions.

Subclause (7) provides that a reference in legislation and other legal provisions to the Board shall be construed as a reference to the Commissioner. This is an interim provision pending further legislation which will effect the detailed formal distribution of the Board's powers and functions to other agencies.

Subclauses (8) and (9) deem the members of the Public Service Board following their resignation from the Board to be unattached Secretaries, putting them on the same footing as former Secretaries who have been assigned duties as Associate Secretaries.

Subclause (10) provides for offices in the Office of the Public Service Board to become offices in the new Public Service Commission.

Subclause (11) defines certain terms for the purposes of the section.

Clause 12 - Powers of Commissioner

Amends section 19 to replace references to the Board by references to Commissioner. The opportunity has also been taken to bring the penalty provision up to date by increasing it from \$40 to \$1000 or 6 months imprisonment or both.

Clause 13 - Repeal of section 19A

Section 19A relating to the Joint Council is repealed. It is remade as proposed section 23 by clause 16.

Clause 14 - Records of officers

Amends section 21 to replace references to the Board by references to the Commissioner.

Clause 15 - Management Advisory Board

Repeals section 22 which required the Public Service Board to prepare an annual report. (The annual report provision for the Commissioner is in proposed section 15 inserted by clause 11). In its place a new section 22 is proposed:

Subsection (1) establishes the Australian Public Service Management Advisory Board.

Subsection (2) outlines the Board's functions: it will advise the Government on significant issues relating to the management of the Australian Public Service and be a forum for consideration of major management activities affecting the Service as a whole.

Subsections (3) to (6) provide for the Board to consist of the Secretary to the Department of the Prime Minister and Cabinet (Chairperson), the Public Service Commissioner, the Secretaries to the Departments of Industrial Relations and Finance, such other Secretaries as are nominated by the Prime Minister and at least 2 other persons nominated by the Prime Minister, one of whom is to have management expertise in the private sector and one of whom is to be nominated after consultation with the ACTU.

Clause 16 - Joint Council

Remakes former section 19A (repealed by clause 13) as new section 23 immediately after section 22C (relating to industrial democracy), which is a more appropriate location in the Act for this provision which enables regulations to be made to provide for the establishment of the Joint Council. Minor changes are made to the provision reflecting the replacement of the Board by the Commissioner.

Clause 17 - Regulations

Replaces the Board regulation-making power which was subject to approval by the Governor-General by the more usual Governor-General regulation-making power.

Subclause (2) is a savings provision to keep regulations made by the Board under section 97 in force.

Clause 18 - Amendments relating to the Board and the new Departmental structure

Provides for amendments as set out in the Schedule. These include replacing references to the Head of the Public Service Board in relation to the appointment of Secretaries by references to the Secretary to the Department of the Prime Minister and Cabinet.

New Schedules 2 and 3 are substituted for the existing Schedules 2 and 3 to the Principal Act to reflect the new departmental structure.

Clause 19 - References in instruments to Secretaries

Permits a portfolio Secretary to declare in the Gazette that references to the Secretary in instruments are to be read as, or are to include, a reference to an unattached Secretary or a Senior Executive Service officer.

The purpose of this provision is to enable officers who have been assigned duties as Associate Secretaries, or SES officers, for example Deputy Secretaries, to stand in for or otherwise perform the powers and functions of portfolio Secretaries.

This provision is additional to and not in substitution for the usual powers of delegation and is expected to be used only where there are insufficient powers of delegation to permit Secretaries adequately to devolve their responsibilities to Associate Secretaries or Deputy Secretaries.

PART IV: MODIFICATION OF ACTS

Clause 20 - Regulations modifying Acts

Permits the Governor-General to make regulations modifying Acts if this is necessary or convenient as a consequence of the new administrative arrangements.

The provision is subject to a 1 year sunset clause, during which time any necessary amendments can be made to the legislation affected.

THE SCHEDULE - AMENDMENTS OF THE PUBLIC SERVICE ACT 1922 RELATING TO THE BOARD AND THE NEW DEPARTMENTAL STRUCTURE

Subsection 25 (4)

Removes the provision that gave the Head of the Board the powers of a Secretary in relation to staff of the Board. These powers are provided to the Commissioner in new subsection 20 (2).

Subsections 36 (3) and (4)

Substitutes the Secretary to the Department of the Prime Minister and Cabinet for the Head of the Board in relation to reporting to the Prime Minister on the appointment of Secretaries. (The Public Service Commissioner will have this reporting role in relation to the appointment, or termination of the appointment, of the Secretary to the Department of the Prime Minister and Cabinet).

Subsection 36 (4) is also amended to provide flexibility so that in cases where there are changes to administrative arrangements, the report in relation to the appointment of a person as Secretary may be prepared after consultation with the person who comes to be a Minister administering the relevant department by the time the appointment is made.

Section 37

Substitutes the Secretary to the Department of the Prime Minister and Cabinet for the Head of the Board in relation to the making of reports on fixed-term Secretary appointments.

Section 76E

Substitutes the Secretary to the Department of the Prime Minister and Cabinet for the Head of the Board in relation to the making of reports on the termination of Secretary appointments.

Subsections 87B (1A) and (2)

These are consequential amendments reflecting the substitution of the Governor-General for the Board in the regulation making power in section 97.

Schedules 2 and 3

New Schedules 2 and 3 are substituted for the existing Schedules 2 and 3 to reflect the new departmental structure.





