

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIME MINISTER AND CABINET LEGISLATION AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

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



PRIME MINISTER & CABINET LEGISLATION AMENDMENT BILL 1991

OUTLINE

This Bill is an omnibus Bill for legislation administered within the portfolio of the Prime Minister. Its purpose is to make a number of amendments to existing legislation. The amendments are contained in Schedules 1, 2 and 3 to the Bill.

In accordance with Government policy, it is proposed to remove gender specific references throughout the Acts or parts of Acts being amended, where appropriate.

The Bill makes the following amendments.

Complaints (Australian Federal Police) Act 1981

This amendment empowers the Ombudsman to seek advisory opinions from the Administrative Appeals Tribunal about matters which are being investigated by the Internal Investigation Division of the Australian Federal Police or the Ombudsman under the Act.

Governor-General Act 1974

This amendment omits a provision which removes the entitlement of the surviving spouse of a retired Governor-General to an allowance on remarriage.

Inspector-General of Intelligence and Security Act 1986

These amendments enable the appointment of an acting Inspector-General in the event of the absence of the Inspector-General or of a temporary vacancy in that office, and also enable the Inspector-General to require the intelligence and security agencies to supply copies of annual or periodic reports and, where relevant, ministerial directions or guidelines.

Maternity Leave (Commonwealth Employees) Act 1973

This amendment ensures that a woman taking leave under the Act cannot be declared unattached without her consent in writing.

Merit Protection (Australian Government Employees) Act 1984

These amendments are intended to enable Agency members to hold meetings by electronic means, e.g. conference telephones, and to enable a pecuniary penalty to be imposed in the event of the breach of an order of a Disciplinary Appeal Committee or of a Redeployment and Retirement Appeal Committee restricting or prohibiting the publication of evidence.

Ombudsman Act 1976

The amendments to this Act empower the Ombudsman to seek advisory opinions from the Administrative Appeals Tribunal about matters which the Ombudsman is investigating, clarify the Ombudsman's power to obtain documents, and enable the Ombudsman to take further action on a matter which is the subject of a report to Parliament.

Public Service Act 1922

The major amendments to the Act reflect the Government's decision to restructure the Senior Executive Service (SES) into three Bands and introduce the SES (Specialist) category. Other important amendments relate to the role of the Public Service Commissioner in the termination of SES officers on probation and the extension of fixed-term appointments.

~~The Bill also makes a number of technical and procedural amendments. They include amendments to replace references to the former Public Service Board with references to the Public Service Commissioner in the sections which are otherwise being amended.~~

Public Service Reform Act 1984

The Bill repeals subsection 151(6) of the Act. This provision is unproclaimed and is no longer required.

Resource Assessment Commission Act 1989

The purpose of this amendment is to exclude the Norfolk Island Government from the definition of "Commonwealth authority" in the Act, ensuring that a decision of that Government cannot be reviewed by the Commission.

Amendments of certain legislation relating to the approval of the Public Service Board

The Bill also provides for the removal of the requirement for a number of Government agencies and authorities to obtain approval from the Public Service Commissioner for terms and conditions of employment for staff.

The practical implications of these amendments will be to remove a layer of administrative processes for those authorities affected. However, all statutory authorities will remain covered by the Government's general industrial relations coordination arrangements, which ensure the consistent application of the Government's wages and industrial relations policies.

FINANCIAL IMPACT STATEMENT

The ability to hold meetings of the Merit Protection and Review Agency by conference telephone will save the Agency from incurring unnecessary expenditure by holding an Agency meeting in person for the purpose of performing its functions where such other means would achieve the same purpose.

The financial impact of the amendments to legislation to delete references to the approval role of the former Public Service Board, and of the amendments to the *Complaints (Australian Federal Police) Act*, the *Maternity Leave (Commonwealth Employees) Act*, the *Ombudsman Act*, the *Public Service Act*, the *Public Service Reform Act* and the *Resource Assessment Commission Act*, are expected to be inconsequential.

In the case of the *Inspector-General of Intelligence and Security Act*, appointment of an acting Inspector-General is likely to be a rare event, so that the financial impact will be minimal.

NOTES ON CLAUSES

Clause 1: Short title

1. The Act will be called the *Prime Minister and Cabinet Legislation Amendment Act 1991*.

Clause 2: Commencement

2. Subsection (1) provides that the Act will commence on the day on which it receives Royal Assent.

3. Subsection (2) provides that the amendment to section 4 of the *Governor-General Act 1974* will not apply to the widow of a Governor-General if that widow remarried before the commencement of the provision.

Clause 3: Amendments of various Acts

4. Provides that the *Complaints (Australian Federal Police) Act 1981*, the *Inspector-General of Intelligence and Security Act 1986*, the *Maternity Leave (Commonwealth Employees) Act 1973*, the *Merit Protection (Australian Government Employees) Act 1984*, the *Ombudsman Act 1976*, the *Public Service Act 1922*, the *Public Service Reform Act 1984* and the *Resource Assessment Commission Act 1989* are to be amended as set out in Schedule 1.

Clause 4: Amendment of certain legislation relating to approval of the Public Service Board

5. Subsection (1) provides that the Acts set out in column 1 of Schedule 2 are amended by deleting words requiring that the terms and conditions of staff employed in statutory authorities be approved by the former Public Service Board.

6. Subsection (2) provides that the Acts listed in Schedule 3 are amended to delete references to the approval role of the former Public Service Board.

SCHEDULE 1 - AMENDMENTS OF PRIME MINISTER AND CABINET PORTFOLIO LEGISLATION AND MATERNITY LEAVE (COMMONWEALTH EMPLOYEES) ACT 1973

Complaints (Australian Federal Police) Act 1981

New sections 27A and 28

7. The existing section 28 is replaced by proposed sections 27A and 28.

New section 27A

8. The new section 27A provides that the Ombudsman may refer a question to the Administrative Appeals Tribunal (AAT) for an advisory opinion about matters that are being investigated by the Ombudsman or the Internal Investigation Division of the Australian Federal Police. The proposed amendment acknowledges that, although the Ombudsman may currently ask the Commissioner of the Australian Federal Police to refer a question to the AAT, the Ombudsman is the real applicant and should be able to make application direct to the AAT if the Ombudsman thinks it appropriate.

New section 28

9. Proposed section 28 provides that, where the Ombudsman recommends, in writing, that the Commissioner refer a question to the AAT for an advisory opinion, the Commissioner must refer the question within thirty days, or such longer period as is agreed to by the Ombudsman and the Commissioner. The making of a recommendation under section 28 does not affect the Ombudsman's power to refer a question to the AAT under section 27A.

Governor-General Act 1974
Subsection 4(2)

10. This subsection is amended to omit the provision which removes the entitlement of the surviving spouse of a retired Governor-General to an allowance when the surviving spouse remarries. The Attorney-General's Department has advised that a similar limitation in the *Judges' Pensions Act 1968* is contrary to the *Sex Discrimination Act 1984*, as it discriminates on the basis of marital status.

Inspector-General of Intelligence and Security Act 1986
New section 6A

11. The new section 6A provides for the appointment of an acting Inspector-General of Intelligence and Security in the event of a temporary vacancy in that office or the absence, due to illness or otherwise, of the Inspector-General. The Prime Minister must consult the Leader of the Opposition on the proposed appointment.

Subsection 7(1)

12. This subsection is amended to allow a person appointed to act as Inspector-General of Intelligence and Security, and who is also the holder of a judicial office, to continue to enjoy the rights and privileges of that judicial office while acting as Inspector-General.

New section 32A

13. The new section 32A enables the Inspector-General to require the heads of the Australian Security Intelligence Organization, the Australian Secret Intelligence Service, the Office of National Assessments, the Defence Intelligence Organisation and the Defence Signals Directorate to provide a copy of the agencies' annual or periodic reports. The requirement does not come into operation until the head of the agency has given the report to the responsible Minister.

New section 32B

14. The proposed section 32B requires the responsible Minister to provide the Inspector-General with copies of guidelines and directions issued by the Minister to the Australian Secret Intelligence Service and the Defence Signals Directorate. In the case of guidelines issued on or after the commencement of the *Prime Minister and Cabinet Legislation Amendment Act 1991*, the direction or guideline must be provided as soon as practicable after it is issued; otherwise the direction or guideline must be provided as soon as practicable after the commencement of the Act.

Maternity Leave (Commonwealth Employees) Act 1973

New subsection 8(1A)

15. The proposed subsection provides that, when a woman takes maternity leave, the office which she holds may not be declared vacant under subsection (1) unless she has consented in writing to the declaration.

16. The amendment brings the arrangement for the unattachment of officers on unpaid maternity leave into line with arrangements applying to other forms of leave without pay and removes a perceived form of discrimination, as staff on other forms of leave without pay cannot be declared unattached unless the period of leave exceeds 12 months.

Merit Protection (Australian Government Employees) Act 1984

New subsection 71(2A)

17. The proposed subsection enables meetings of the Agency to be held either in person or by electronic means (for example by telephone); or a combination of them.

New paragraph 85(2)(ga)

18. The proposed paragraph 85(2)(ga) allows a pecuniary penalty to be imposed in the event of a breach of an order made by a Disciplinary Appeal Committee, under Merit Protection Regulation 16, which relates to the persons who may be present at a review or hearing of the Committee, or which prohibits or restricts the publication of evidence given to the Disciplinary Appeal Committee. An amendment to this effect was requested by the Senate Standing Committee on Regulations and Ordinances in April 1988.

New paragraph 85(2)(ja)

19. The proposed paragraph 85(2)(ja) allows a pecuniary penalty to be imposed in the event of a breach of an order made by a Retirement and Redeployment Appeal Committee, under Merit Protection Regulation 31, which relates to the persons who may be present at a review or hearing of the Committee, or which prohibits or restricts the publication of evidence given to the Committee. An amendment to this effect was requested by the Senate Standing Committee on Regulations and Ordinances in April 1988.

Ombudsman Act 1976

Paragraphs 9(4)(a) and (b)

20. The paragraphs are replaced by new paragraphs 9(4)(a) and (b).

New paragraph 9(4)(a)

21. The proposed paragraph 9(4)(a) ensures that a person is not excused from furnishing information to the Ombudsman on the grounds that to do so would contravene the provisions of any other enactment, whether enacted before or after the commencement of the *Prime Minister and Cabinet Legislation Amendment Act 1991*. The amendment is intended to make it clear that paragraph 9(4)(a) overrides provisions of other enactments no matter when enacted.

22. The Attorney-General's Department has advised that the reference to "public interest" in existing paragraph 9(4)(a) included legal professional privilege, and that therefore material subject to legal professional privilege would be included in the current provision on the basis

that its disclosure would be "contrary to the public interest". However, out of an abundance of caution, it has been decided to include proposed paragraph 9(4)(a) to make clear that access cannot be refused to material because it is subject to legal professional privilege.

New paragraph 9(4)(aa)

23. The proposed paragraph re-enacts in part the provisions of existing paragraph 9(4)(a) and ensures that a person is not excused from furnishing information to the Ombudsman on the grounds that to do so might tend to incriminate the person or make the person liable to a penalty.

New subparagraph 9(4)(ab)(i)

24. The proposed subparagraph 9(4)(ab)(i) re-enacts the existing paragraph 9(4)(b) and ensures that a person is not excused from furnishing information to the Ombudsman on the grounds that to do so would involve disclosure of a legal advice given to a Minister, a Department or a prescribed authority.

New subparagraph 9(4)(ab)(ii)

25. The proposed subparagraph 9(4)(ab)(ii) inserts a new provision ensuring that a claim of legal professional privilege cannot be used to refuse the Ombudsman information which has passed between an officer of a Department or of a prescribed authority and another person or body.

New paragraph 9(4)(b)

26. The proposed paragraph 9(4)(b) ensures that any communication not covered in paragraphs 9(4)(a), (aa) and (ab), but whose disclosure would be otherwise contrary to the public interest, is not immune from disclosure to the Ombudsman.

New subsection 9(5A)

27. The proposed subsection 9(5A) provides that the furnishing to the Ombudsman of material which, but for paragraph 9(4)(ab)(ii), would be protected by a claim of legal professional privilege, does not otherwise prevent any claim of legal professional privilege in relation to that material.

Section 11

28. The existing section 11 is replaced by new sections 10A and 11.

New section 10A

29. The proposed section 10A provides that, where the Ombudsman is investigating the taking of action by a Department or prescribed authority, the Ombudsman may refer a question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal (AAT) for an advisory opinion.

30. The proposed amendment acknowledges that, although the Ombudsman may currently ask the principal officer of an agency to refer a question to the AAT, the Ombudsman is the real applicant and should be able to apply direct to the AAT if the Ombudsman thinks it appropriate.

New section 11

31. The proposed section replaces section 11. The new section provides that the Ombudsman may recommend that the principal officer of a Department or agency refer a

question to the AAT, and that when such a recommendation is made, the principal officer must refer the question within thirty days or such longer period as is agreed to by the Ombudsman and the principal officer. The making of a recommendation under section 11 does not affect the Ombudsman's power to refer a question to the AAT under section 10A. The wording of paragraph 11(2) is simplified.

New section 18

32. The proposed section will ensure that, after a report under section 17 of the Act in relation to action taken by a Department or prescribed authority has been presented to Parliament, the Ombudsman is able to discuss any matter to which the report relates with the principal officer of the Department or authority for the purpose of resolving the matter. The amendment is to ensure that the Ombudsman's role is not necessarily exhausted by the submission of a section 17 report to Parliament.

Public Service Act 1922

SECTION 7: INTERPRETATION

New subsection 7(1) (definition of "authorised medical practitioner")

33. A new definition of "authorised medical practitioner" is proposed. The new definition omits the specific reference to a Department and instead refers to the Department primarily responsible for public health matters. This amendment will prevent the Act becoming out of date when administrative rearrangements involve a renaming of the Department.

34. The definition is also being amended to enable the Commissioner, as well as the Secretary of the Department primarily responsible for public health matters, to authorise medical practitioners for the purposes of the Act; and to make provision for a further function in addition to those already specified, namely, to make recommendations in relation to the health and physical fitness of officers on probation.

Subsection 7(1) (paragraph (a) of the definition of "classification")

35. A new definition of "classification" in relation to an office is inserted. The new definition makes it clear that all offices within an SES Band have the same classification, notwithstanding that they may not have responsibilities of a similar level or duties which require work of similar value. The new definition is required to take account of the new classifications of Senior Executive Band 1, 2 and 3, and the power of a Secretary to determine, within a specified range of salaries, and in accordance with the work level of the duties of the office, the salary applicable to an SES office within one of the three Bands.

36. The new definition is also needed, in conjunction with the proposed amendments made to section 33AAA of the Act by this Bill, to enable a movement to a higher salary point within a Band to be regarded as a transfer and not a promotion.

Subsection 7(1) (paragraph (c) of the definition of "classification")

37. This amendment inserts a reference to subsection 81B(3A) into paragraph (c) of the definition of classification. It is consequential on the amendment to section 81B made by the Bill.

~~Subsection 7(1) (definitions of "Senior Executive Service office" and "Senior Executive Service officer")~~

38. New definitions are substituted to enable the use of the acronym "SES" in the Act. The term "SES office" includes an SES (Specialist) office and the term "SES officer" includes an SES (Specialist) officer.

39. New definitions are inserted in relation to the terms "Senior Executive (Specialist) office" or "SES (Specialist) office" and "Senior Executive (Specialist) officer" or "SES (Specialist) officer". They are defined by reference to the classifications of Senior Executive (Specialist) Band 1, Band 2 and Band 3.

Subsection 7(3)(c) – Definition of "excess officer"

40. A reference to "Commissioner" is substituted for the reference to "Board".

SECTION 9: OFFICERS OF THE PARLIAMENT

Subsection 9(2AA) and paragraph 9(2A)(a)

41. References to "Commissioner" are substituted for the references to "Board".

Subsection 9(6)

42. This amendment is consequential upon the amendment to section 97 made by section 17 of the *Administrative Arrangements Act 1987*. Section 17 of the *Administrative Arrangements Act* replaced the Public Service Board's regulation-making power, which was subject to the approval of the Governor-General, with a regulation-making power vested in the Governor-General.

43. As presently expressed, the regulation-making power in relation to officers of the Parliament is limited to matters in relation to which the "Board" (which is to be read as the Commissioner by virtue of the provision in the *Administrative Arrangements Act*) may make regulations and is thus inoperable. The amendment will permit the Governor-General on the recommendation of the President or the Speaker, or the President and the Speaker, to make regulations in relation to the same matters as are provided for under subsection 97(1), which is the general regulation-making power in the Act.

Subsection 9(7) and paragraph 9(7B)(c)

44. References to regulations made by the Board are removed and references to regulations made by the Governor-General inserted.

Subsection 9(7C)

45. A reference to "Commissioner" is substituted for the reference to "Board".

SECTION 25: SECRETARIES OF DEPARTMENTS

Subsection 25(7)

46. Subsection 25(7) provides that Annual Reports by Secretaries of Departments must accord with guidelines presented to the Parliament by the Prime Minister after approval by the Joint Committee of Public Accounts. In response to recommendations of the Senate Standing Committee on Finance and Public Administration and the Joint Committee of Public Accounts, the Government agreed to an amendment substituting for the reference to "guidelines" in subsection 25(7) a reference to "requirements". The subsection is amended accordingly.

SECTION 26AA: THE SENIOR EXECUTIVE SERVICE

Paragraph 26AA(2)(b)

47. Section 26AA, which describes the Senior Executive Service, is amended to take account of the mobility arrangements relating to transfers within and between Departments involving the SES (Specialist) officer classification. The Public Service Commissioner will, in future, exercise the power of transfer in relation to some transfers within departments. The new procedures are explained more fully below.

SECTION 33AAA: INTERPRETATION

Subsection 33AAA(1) (paragraph (a) of the definition of "non-appellable promotion")

48. The definition of "non-appellable promotion" in subsection 33AAA(1) is amended to replace the reference to "Clerical Administrative Class 9" with a reference to "Senior Officer Grade C". The reference to Clerical Administrative Class 9 is obsolete and the amendment reflects the new Senior Officer structure. Senior Officer Grade C is the equivalent classification to Clerical Administrative Class 9.

Subsection 33AAA(1) (definition of "promotion")

49. The existing definition of promotion is amended so that it applies only to officers other than SES officers.

50. A new definition of promotion is inserted in relation to SES officers. The new definition is required to ensure that a movement of an SES officer within a Band to an office in relation to which a salary has been determined by the Secretary that is higher than the salary applying to the office held by the officer, is not a promotion. Such a movement will be a transfer for the purposes of the Act.

SECTION 33: APPLICATION OF MERIT PRINCIPLE, PROHIBITION OF PATRONAGE, &c.

Paragraph 33(4)(b)

51. This paragraph is amended to permit discrimination in transfers and promotions, as well as in relation to appointment, in accordance with certain prescribed programs to encourage the appointment of women, or persons in a designated group, to the Service. The effect of the amendment will be to ensure that certain programs designed to encourage the appointment of people who are members of designated groups are available only to those persons, in particular the Aboriginal Cadetship Program, the Aboriginal Technical Traineeship Program, the Graduate Administrative Assistant (Aboriginal Services) Program and Administrative Service Officer (Aboriginal Services) Class 1 Program.

SECTION 33AA: NOTIFICATION OF VACANCIES IN SES OFFICES

Subsection 33AA(1)

52. A reference to "Commissioner" is substituted for the reference to "Board".

Subsection 33AA(2)

53. This subsection relates to the requirement to notify SES vacancies. The subsection provides an exemption to the general requirement to advertise a vacancy where the Secretary proposes to transfer an officer to the vacant position under section 49. The subsection is amended to take account of the restructuring of section 49 and the new arrangements in relation to transfers to be put in place by this Bill.

54. In future, the exemption from the requirement to notify in the case of transfers will continue, except where it is proposed to transfer an SES (Specialist) officer (from inside the Department or from another Department) to an office other than an SES (Specialist) office.

Subsections 33AA(3) and (4)

55. References to "Commissioner" are substituted for the references to "Board".

SECTION 44: FIXED-TERM APPOINTMENTS TO THE SES

56. The section is amended to provide for a fixed-term appointment of less than 5 years of an SES officer to be extended to a maximum of 5 years by the Public Service Commissioner, on the recommendation of a Secretary, without the need for a further merit selection.

Subsection 44(1)

57. A reference to "Commissioner" is substituted for the reference to "Board".

New subsection 44(1A)

58. The proposed subsection will allow the Commissioner to extend the period of the fixed-term appointment of an SES officer where the period of the person's appointment is less than 5 years and the relevant Secretary recommends that it should be extended.

New subsection 44(1B)

59. The proposed subsection will provide that the extension of a fixed-term appointment must be made before the end of the fixed-term appointment.

New subsection 44(1C)

60. The effect of this new subsection is to ensure that the period of the extension is regarded as part of the term of the original appointment.

New subsection 44(1D)

61. The proposed subsection will provide that a fixed-term appointment may not be extended for a period that will result in the total period of appointment exceeding 5 years. Further, the appointment may not be extended beyond the day on which the person turns 65.

New subsection 44(2)

62. A new subsection 44(2) is substituted to ensure that provision for compensation where a person is retired before the end of the term of an appointment is also available where a fixed-term appointment is extended and the person is retired before the end of the term so extended.

Paragraph 44(3)(b) and subsection 44(4)

63. A reference to "Commissioner" is substituted for the reference to "Board".

SECTION 47: APPOINTMENTS TO BE ON PROBATION

64. This section relates to the appointment of officers on probation and for the termination and confirmation of the appointment of officers on probation. It is to be amended to provide that only the Public Service Commissioner may terminate the appointment of an SES officer on probation.

Subsections 47(2) and (3)

65. References to "Commissioner" are substituted for the references to "Board".

Subsection 47(4)

66. The subsection provides for the termination by the Secretary of the appointment of an officer who is on probation. The subsection is amended so that it no longer applies to officers who are SES officers.

New subsection 47(4A)

67. The new subsection will provide that the Public Service Commissioner may terminate the appointment of an SES officer on probation. Transfer of this power from Secretaries to the Commissioner in relation to SES officers is consistent with the Commissioner's powers in relation to the promotion, appointment, retirement and, in some circumstances, the transfer of SES officers.

Subsection 47(6)

68. The subsection is amended to reflect the changed arrangements for the termination of SES officers on probation. The subsection is amended to require that, at the end of a period of 12 months after an SES officer is appointed, the Secretary must, as soon as practicable, confirm the appointment or advise the Commissioner that he or she does not intend to confirm the appointment.

New section 47(6A)

69. The proposed subsection will provide that the Public Service Commissioner must terminate or confirm the appointment of an SES officer after the relevant Secretary has given written notice to the Commissioner under paragraph 47(6)(c).

Subsections 47(9) and (10)

70. The subsections are amended to take account of the new arrangements in subsection (6A).

~~Subsection 47(11)~~

71. The subsection is repealed and a new subsection substituted. The proposed subsection takes account of the changed arrangements for the termination of SES officers on probation.

Subsections 47(12) and subsection 47(13)

72. A reference to "Commissioner" is substituted for the reference to "Board".

SECTION 49: TRANSFERS OF SES OFFICERS

73. The section is amended to take account of the new classifications of Senior Executive (Specialist) Band 1, Band 2 and Band 3 and the transfer arrangements that are to apply to them. The new arrangements give the Commissioner the power to transfer SES officers from specialist offices to other SES offices.

Subsection 49(1)

74. The subsection is amended because the existing arrangements, whereby a Secretary may transfer an SES officer within a Department and the Commissioner may transfer an SES officer between Departments, are no longer to apply.

New subsection 49(1A)

75. The proposed subsection provides that a Secretary may transfer an SES (Specialist) officer to another SES (Specialist) office within the Department. A Secretary may also transfer officers between offices that are not specialist offices within the Department.

76. The subsection does not enable a Secretary to transfer officers between specialist and other SES offices or to transfer officers between Departments.

New subsection 49(1B)

77. The proposed subsection provides that the Public Service Commissioner may transfer:

- . an SES (Specialist) officer to a specialist office in another Department;
- . an SES officer who is not a specialist to any SES office (specialist or otherwise) in another Department or to a specialist office within the Department; and
- . an SES (Specialist) officer to an office that is not a specialist office within the Department or in another Department.

Subsection 49(2)

78. The subsection provides for the matters which the Secretary or the Commissioner must have regard to where it is proposed to transfer an SES officer. The effect of the amendment is to exclude the operation of the subsection where the Commissioner proposes to transfer a specialist officer to an office other than a specialist office either within the Department or in another Department. These transfers are to be subject to a merit selection process, with procedures similar to those which are applicable in the case of promotions (see proposed section 49AA and the related amendments to section 49C below).

79. A reference to "Commissioner" is substituted for the reference to "Board".

Subsection 49(3)

80. This subsection is amended to remove the reference to subsection 49(1) as the head of power for a transfer and to replace references to "Board" with references to "Commissioner".

Subsection 49(4)

81. The subsection is amended to take account of the new subsections (1A) and (1B).

Subsection 49(5)

82. A reference to "Commissioner" is substituted for the reference to "Board".

New section 49AA: Certain transfers only after merit selection

83. This proposed section mirrors the promotion procedures provided for in section 49B of the Act, but with appropriate minor changes to apply them to a proposed transfer by the Commissioner of a specialist officer to an office which is not a specialist office, either within the Department or in another Department. It is to be read with the proposed amendment to section 49C.

84. The section will, in effect, provide that the Commissioner may only refuse to transfer an officer under paragraph 49(1B)(c) in accordance with the recommendation of a Secretary if he or she is satisfied that the procedures followed by the Secretary for advertising the vacancy, or for considering applications, were inadequate; or that further notification of the vacancy is desirable in the interests of the Service; or that the officer recommended is not suitable for the particular position or for positions generally at the level of the vacancy; or that the redeployment of an officer to the vacancy would better promote the efficiency of the Service.

SECTION 49A: DUTIES TO BE PERFORMED BY SES OFFICERS

85. This section relates to the temporary performance by an SES officer of the duties of another office at the same level or of specified duties appropriate to an office at the same level.

Paragraph 49A(1)(b) and subsection 49A(2)

86. A reference to "Commissioner" is substituted for the reference to "Board".

New subsection 49A(2A)

87. The subsection is inserted to take account of the temporary performance of the duties of an office other than a specialist office by a specialist, and vice versa.

88. The new subsection imposes an additional matter in relation to which the Secretary or Commissioner will be required to be satisfied, where the direction involves an officer who is not a specialist undertaking specialist duties at the same level, or a specialist undertaking duties appropriate to an office that is not a specialist office at the same level. The subsection will require the Secretary or Commissioner to exercise the power of direction in these cases only after he or she is satisfied that the officer is capable of performing the duties specified or the duties of the office in which the officer is to be directed to act.

Subsections 49A(3) and (4)

89. References to "Commissioner" are substituted for the references to "Board".

~~SECTION 49B: PROMOTIONS TO SES OFFICES~~

Subsections 49B(1), (2) and (3)

90. A reference to "Commissioner" is substituted for the reference to "Board".

Paragraph 49B(3)(c)

91. This paragraph is omitted and proposed new paragraphs (c) and (ca) are inserted to allow for the implementation of the new specialist classifications. In the case of a promotion to any SES office, the Commissioner may decline to promote an officer in accordance with the recommendation of the Secretary if he or she is satisfied that the officer is not suitable for the discharge of the duties of the vacant office. However, in the case of a promotion to an office that is not a specialist office, the officer must also be suitable for positions generally at the level of the vacancy.

Subsection 49B(3A)

92. References to "Commissioner" are substituted for the references to "Board".

SECTION 49C: SELECTION OF OFFICERS FOR PROMOTION TO SES OFFICES

Subsection 49C(1)

93. The subsection is amended so that factors relevant to the selection of an officer for promotion to SES offices under section 49C are applied to transfers under new paragraph 49(1B)(c). These transfers are those involving the transfer by the Commissioner of a specialist officer to an office that is not a specialist office in the same Department or in another department.

Paragraphs 49C(2)(a) and (b)

94. These paragraphs are amended so that the definition of "efficiency" takes account of the introduction of the new specialist classifications. In the case of a promotion to a specialist office, suitability is to be assessed in relation to the duties of the vacant office. In the case of a transfer under paragraph 49(1B)(c) or a promotion to an office other than a specialist office, in addition to suitability for the vacant office, suitability is to be assessed in relation to other SES offices at the same level.

Paragraph 49C(2)(d)

95. This paragraph is amended to take account of the amendments to paragraphs (2)(a) and (b), namely the different meanings of the term "efficiency" in relation to a movement to a specialist or other SES office.

SECTION 49D: DAY ON WHICH TRANSFER OR PROMOTION TAKES EFFECT

Subsection 49D(1)

96. This is a consequential amendment to take account of the amendment to section 49.

Paragraphs 49D(1)(a) and (b)

97. References to "Commissioner" are substituted for the references to "Board".

SECTION 62: INQUIRIES INTO MISCONDUCT IN RELATION TO OFFICERS OTHER THAN SECRETARIES OF DEPARTMENTS

Subsection 62(10)

98. A new subsection is substituted. The proposed subsection corrects a defect which has meant there is no provision for the taking effect of certain forms of disciplinary direction.

99. Subsection 62(10) of the Act provides that a direction under section 62 takes effect either upon the lapsing, withdrawal or determination of any appeal against the direction, or upon the expiry of the appeal period in relation to the direction, but not otherwise. The *Public Service Legislation (Streamlining) Act 1986* removed the right of appeal against the less severe forms of disciplinary action which can be taken under section 62. However, that Act did not amend subsection 62(10) to make provision for the taking effect of those forms of disciplinary direction.

100. Subsection 62(10) is therefore amended to remedy this defect, by providing that, if the officer has no right of appeal against the direction, the direction takes effect on the day on which the officer is furnished with particulars of the reasons for the giving of the direction.

SECTION 63: CONVICTIONS BY COURTS OF OFFICERS OTHER THAN SECRETARIES OF DEPARTMENTS

Subsection 63(5)

101. A new subsection is substituted. The proposed subsection corrects a defect which has meant there is no provision for certain forms of disciplinary direction to take effect.

102. Subsection 63(5) of the Act provides that a direction under the section takes effect either upon the lapsing, withdrawal or determination of any appeal against the direction, or upon the expiry of the appeal period in relation to the direction, but not otherwise. The *Public Service Legislation (Streamlining) Act 1986* removed the right of appeal against the less severe forms of disciplinary action which can be taken under the section. However, that Act did not amend the section to make provision for the taking effect of those forms of disciplinary direction.

103. Subsection 63(5) is therefore amended to remedy this defect by providing that if the officer has no right of appeal against the direction, the direction takes effect on the day on which the officer is furnished with particulars of the reasons for the giving of the direction.

Subsection 63(6)

104. A reference to "Commissioner" is substituted for the reference to "Board".

SECTION 64: ATTACHMENT OF SALARIES OF OFFICERS

New subsection 64(17A)

105. Section 64 of the Act relates to the attachment of salaries of officers. The proposed subsection will enable the Commonwealth to retain salary where it is a judgment creditor of an officer or employee. This corrects an anomaly in the section, whereby attachment of salaries is available to all creditors except the Commonwealth.

HEADING TO DIVISION 9A OF PART III

106. The heading is amended to take account of the amendment to section 81B to provide for the reintegration of certain persons into the Service.

SECTION 81B: APPOINTMENT OR EMPLOYMENT OF PERSONS WHERE FUNCTIONS TO BE PERFORMED BY COMMONWEALTH etc.

Subsections 81B(1),(2) and (3)

107. References to "Commissioner" are substituted for the references to "Board".

New subsection 81B(3A)

108. The proposed subsection will enable the Commissioner to reintegrate into the Service a person who is an unattached officer on leave without pay under Part IV of the Act or has rights under the repealed *Officers' Rights Declaration Act 1928*, where the Prime Minister certifies that it is in the interests of the Commonwealth to do so.

New subsection 81(3B)

109. The proposed subsection will enable the Commissioner to determine the classification an unattached officer is to have in the Service, or the office in which the officer is to resume duty, when he or she is reintegrated into the Service under subsection (3A).

Subsection 81B(5)

110. The section is amended to enable the Commissioner to also determine special terms and conditions that are to apply to persons reintegrated into the Service under proposed subsection (3A).

PROPOSED SECTION 82AJ: UNAUTHORISED ABSENCE FROM EMPLOYMENT TO BE TAKEN AS RETIREMENT

New section 82AJ

111. The proposed section mirrors the provisions of section 66A which relates to forfeiture of office, but with appropriate minor changes to apply the provisions to continuing employees.

New subsection 82AJ(1)

112. The new subsection provides for the section to apply to continuing employees and employees whose employment is deemed to be employment as a continuing employee under subsection 82AD(9).

New subsection 82AJ(2)

113. The new subsection provides for a Secretary, where an employee is absent from duty without permission for a period of not less than four weeks, to send a notice to the employee informing the employee that unless within a period of 2 weeks he or she returns to employment or explains their absence and seeks permission for a further period of absence, the employee will be taken to have retired.

New subsection 82AJ(3)

114. The new subsection provides for the employee to be taken to have retired if he or she does not respond appropriately to the notice issued under subsection (1).

New subsection 82AJ(4)

115. The new subsection provides for the Secretary to consider and act upon any response from the employee to the notice under subsection (1). In effect, the response can be accepted

or the employee can be told he or she has a further specified period of at least 2 weeks in which to return to duty.

New subsection 82AJ(5)

116. The new subsection provides for the employee to be taken to have retired from employment if he or she does not return to duty as required in accordance with subsection (4).

New subsection 82AJ(6)

117. The new subsection provides for the Commissioner to revoke a notice under the section.

New subsection 82AJ(7)

118. The new subsection provides for the manner of addressing notices issued under the section.

PROPOSED SECTION 82AK: EMPLOYMENT OF EMPLOYEE TAKEN TO HAVE RETIRED UNDER SECTION 82AJ

New subsection 82AK(1)

119. The new subsection provides for an employee who has been taken to have retired under proposed section 82AH to apply to the Secretary for employment.

New subsection 82AK(2)

120. The new subsection requires the Secretary, if he or she is satisfied the person had reasonable grounds for being absent, to employ the person in the Department in a similar capacity to that applicable to the person immediately before the person was taken to have retired.

121. If the Secretary is not satisfied the person had reasonable grounds for being absent, the Secretary must refuse the application.

New subsection 82AK(3)

122. Where the Secretary refuses an application under subsection (2), the Secretary is required to give notice to the applicant and the Commissioner and provide the reasons for the refusal.

123. An application may be made to the Merit Protection and Review Agency for review of the decision of the Secretary to refuse an application.

New subsection 82AK(4)

124. The new subsection provides for a decision to refuse an application to be reviewed under section 43 of the *Merit Protection (Australian Government Employees) Act 1984*. The Agency will be able to recommend reappointment to the Secretary.

New subsection 82AK(5)

125. Provision is made, where a person is employed under the section, for the person to be taken to have continued in employment and for the Secretary to determine whether the period of absence between the deemed retirement and the re-employment is to count as service, and for what purposes.

New subsection 82AK(6)

126. The new subsection defines "relevant Secretary" for the purposes of the section.

SECTION 82C: INTERPRETATION**Section 82C**

127. This section is an interpretative provision for the purposes of Division 10A of Part III of the Act, which relates to the determination of certain terms and conditions of employment. The section is amended to insert definitions of "award of a State industrial authority" and "State industrial authority" which are used in amended paragraph 82E(1)(a).

SECTION 82E: DETERMINATION OF MATTERS BY REFERENCE TO OTHER INSTRUMENTS**Paragraph 82E(1)(a)**

128. The paragraph is amended by including a reference to an award of a State industrial authority. The amendment will enable determinations of terms and conditions of employment under section 82D of the Act to apply, adopt, or incorporate, with or without modification, an award of a State industrial tribunal.

PROPOSED NEW SECTION 82F: DETERMINATION IS A DISALLOWABLE INSTRUMENT**New section 82F**

129. This section is repealed and a new section substituted. The proposed section reflects recent amendments to the *Acts Interpretation Act 1901*.

SECTION 82G: EVIDENCE**Section 82G**

130. This section is repealed as it will become obsolete with the insertion of proposed new section 82F.

SECTION 87J: EMPLOYMENT OF OFFICERS BY CERTAIN AUTHORITIES etc. UPON TRANSFER OF FUNCTIONS

131. This section deals with the rights of officers who are transferred from a Department to an independently staffed Commonwealth authority or to a non-Commonwealth authority as a result of the transfer of functions from the Commonwealth to that authority. The section is amended to enable the transfer of staff of the Australian Public Service to the Northern Territory Public Service in line with arrangements applying in the States.

Subsection 87J(1)

132. This subsection deals with interpretation and is amended to take account of the removal of the exclusion of the Northern Territory Public Service from the operation of the section.

New subsection 87J(2A)

133. The new subsection deals with interpretation and includes provision for references to "State" in the section to include a reference to the Northern Territory.

Paragraph 87J(4)(b)

134. The paragraph is amended to remove the exclusion of the Northern Territory Public Service.

SECTION 87N: APPLICATION FOR RE-APPOINTMENT TO SERVICE

135. This section provides for the circumstances and manner in which a person to whom Division 3 of Part IV of the Act may apply for re-entry to the APS.

Subsection 87N(1)

136. A reference to "Commissioner" is substituted for the reference to "Board".

Subparagraph 87N(7)(a)(i)

137. Subsection 87N(7) specifies the manner in which the Re-appointment Review Committee is required to deal with an application. The amendment will enable the Committee to determine that the applicant is eligible for re-appointment to the Service with a specified rate of salary as well as a specified classification.

Paragraph 87N(8)(b)

138. The reference to "Disciplinary Appeal Board" is updated to "Disciplinary Appeal Committee".

Public Service Reform Act 1984

Subsection 151(6)

139. The subsection is repealed. This provision is unproclaimed and is no longer required, as the subsection was intended to replace what was to have become a reference to "Permanent Head" in the *Bankruptcy Act 1966* with a reference to "Secretary" in line with the new terminology introduced by the Reform Act. A subsequent amendment to the *Bankruptcy Act* made subsection 151(6) redundant.

Resource Assessment Commission Act 1989

Paragraph 3(a)

140. The paragraph is amended to exclude the Norfolk Island Government from the definition of "Commonwealth authority" in the Act.

141. Under the present section 3 of the Act, the Norfolk Island Government is deemed to be a "Commonwealth authority" by reason of its status as an incorporated body. However, it was not intended that the Resource Assessment Commission be able to inquire into decisions of the Norfolk Island Government. The amendment will ensure that the Commission cannot receive a referral into a decision of the Administration of the Territory of Norfolk Island.

SCHEDULE 2 – AMENDMENTS OF CERTAIN LEGISLATION RELATING TO THE APPROVAL OF THE PUBLIC SERVICE BOARD

142. Schedule 2 amends legislation relating to certain Commonwealth authorities to remove the requirement for the Public Service Commissioner's approval for the terms and conditions of the staff of those authorities. (The current references to the "Public Service Board" are construed as references to the Public Service Commissioner by virtue of subsection 11(7) of the *Administrative Arrangements Act 1987*.)

SCHEDULE 3: AMENDMENTS OF CERTAIN LEGISLATION RELATING TO APPROVAL OF THE PUBLIC SERVICE BOARD**Aboriginal Land Rights (Northern Territory) Act 1976**

Subsection 27(2)

143. The subsection, which provides for the terms and conditions of staff and consultants employed or engaged by the Land Council and for terms and conditions of staff to be approved by the "Public Service Board" (now construed as the Public Service Commissioner), is omitted.

144. New subsections (2) and (2A) are inserted. Subsection (2) will provide for the terms and conditions of staff to be determined by the Land Council. Subsection (2A) will provide for the terms and conditions of experts engaged under paragraph (1)(b) to be approved by the Land Council.

Australian Institute of Marine Science Act 1972

Section 34

145. The section is amended to remove the requirement for the Public Service Commissioner's approval of terms and conditions of employment.

Subsection 35(2)

146. The subsection, which requires the selection of persons for engagement as temporary and casual employees to be in accordance with such requirements as the Public Service Commissioner determines, is omitted.

Subsection 35(4)

147. The subsection is amended to remove the requirement for the Public Service Commissioner's approval of the terms and conditions of employment of temporary and casual employees employed under section 35.

Family Law Act 1975

Subsection 114M(2)

148. The subsection is amended to remove the requirement for the Public Service Commissioner's approval of terms and conditions of employment.

Naval Defence Act 1910

Subsection 42A(2)

149. The subsection is omitted to remove the requirement for the authorized person, in determining salary under subsection (1), to be subject to the directions of the Public Service Commissioner.

Special Prosecutors Act 1982

New subsection 17(3)

150. A proposed subsection is substituted. The effect of the substitution is to remove the requirement for the Public Service Commissioner's approval of the terms and conditions of employment of persons employed under subsection 17(1) of that Act.

