

# Public Service (Amendment) Bill

## NOTES ON CLAUSES

*Clause 1* states the short title of the Act.

*Clause 2* states that the several provisions of the Bill shall come into operation on days to be proclaimed.

*Clause 3* names the principal Act.

*Clause 4* amends the interpretation provisions contained in section 3 of the principal Act. It substitutes new interpretations of "Classification", "Employee", "Officer", "Minister" and "Public notice". It adds new interpretations of "Designation", "Public Service Notices", "Public statutory authority", "Relevant chief administrator", "Senior office", "Senior officer" and "This Act".

*Clause 5* amends the provisions of section 6 of the principal Act which deals with the composition of the Board when it is dealing with Mental Health or Mental Retardation matters and the election by employees of the Elected Member of the Board who participates in the consideration of such matters. The amendments are consequential upon the abolition of the existing divisional structure provided for elsewhere in the Bill.

*Clause 6* amends section 13 of the principal Act so as to clarify the Public Service Board's ability to delegate any of its powers duties or functions under the principal Act or under any other Act. The amendments to section 13 also clarify the Board's ability to delegate a power, duty or function which is exercisable after receiving a report, recommendation, opinion or advice of the person to whom a delegation is to be made.

*Clause 7* inserts a new section 15A into the principal Act so as to give statutory recognition and force to certain principles of administration. The proposed section 15A states those principles and requires them to be given effect by the Board and all chief administrators.

*Clause 8* amends section 16 of the principal Act so as to enlarge the Board's powers of inquiry, to give the Chairman certain powers of inquiry and to broaden its advisory role. Officers and employees of administrative units and public statutory authorities into which the Board or Chairman is conducting an inquiry or review under section 16 shall not fail or refuse to give reasonable assistance to the Board and may be disciplined, suspended or removed from office for failure to so assist.

The clause also amends section 16 of the principal Act to enable the Board to enter into formal agreements for the provision of personnel and management advisory services to administrative units.

*Clause 9* amends section 18 of the principal Act so as to require the Board to report specifically upon the adherence to and implementation of the principles of administration spelt out in section 15A of the principal Act.

*Clause 10* substitutes a new Division 1 of Part III of the principal Act.

Proposed new section 21 provides that the public service shall consist of chief administrators, persons employed in administrative units and certain other persons.

Proposed new section 22 provides for the creation and abolition of administrative units and the alteration of names of such units. It also provides that the functions of administrative units may be specified from time to time by Orders in Council.

Proposed new section 23 makes special provision with respect to the delegation by the Public Service Board of any of its powers duties or functions to the chief administrator of an administrative unit listed in Schedule 3.

Proposed new section 23A provides that there shall be a chief administrator for each administrative unit specified in Schedule 2 to the principal Act and makes provision for the addition to or deletion from that Schedule of offices of chief administrator and for the alteration of the names of such offices. The proposed new section also provides that there shall be a chief administrator for each administrative unit specified in Schedule 3 to the Principal Act. The proposed new section also provides for the delegation by chief administrators of their powers duties and functions.

Proposed new section 23B provides for the addition to or deletion from Columns 3 and 4 of Schedule 2 of associated administrative units and the principal offices thereof and makes provision as to the powers under the principal Act of the holders of such offices.

Proposed new section 23C makes special provision for certain offices set out in Schedule 3A of the principal Act, namely the Auditor-General, the Director of Public Prosecutions and the Chairman, Public Service Board.

Proposed new section 23D deals with prescribed offices. A prescribed office is defined as meaning—

- certain offices specified in Schedules 2 and 3 of the Act
- offices in the Senior Executive Service which are specifically designated as prescribed offices
- offices in public statutory authorities specially designated as prescribed offices.

The proposed new section 23D makes special provision as to the manner of appointment of persons to prescribed offices, the tenure of such persons, their terms and conditions including their rights at the expiration of their terms of office and the method by which they may be transferred to other prescribed offices.

Proposed new section 23E makes provision for the secondment of officers of administrative units to other administrative units, public statutory authorities and other public services.

*Sub-clause 2 of clause 10* specifically saves the entitlements of the holders of offices which are affected by the provisions of the Bill.

*Clause 11* repeals Division 2 of Part III of the principal Act, being the division by which the public service was formerly divided into three divisions.

*Clause 12* of the principal Act substitutes a new division for Division 3 of Part III.

Proposed new section 28 enables the Board to create and abolish offices, to allocate duties to offices and to transfer offices from one administrative unit to another. It also permits the Board to declare offices to be part-time offices.

Proposed new section 28A makes provision for classifications to be accorded by the Board to particular offices.

Proposed new section 28B makes provision for a senior executive service within the public service.

*Clause 13* substitutes a new division for Division 4 of Part III of the Public Service Act.

Proposed new section 29 deals with the initial appointment of officers.

Proposed new section 30 specifies the basic requirements for appointment to the public service. To be eligible a person must be a permanent resident of Australia, of sound physical and mental health, of suitable character and to have attained such experience or educational standards as are prescribed in relation to the particular office. The Board may appoint a person who is not a permanent resident if it considers that it is in the interests of the State so to do.

Proposed new section 31 enables the Board to determine basic classification levels at which recruitment will be made. The section enables the Board to determine the eligibility of persons for appointment by reference to examination results, interview results, standards of education or experience and other prescribed criteria. The Board is required to offer appointment to qualified applicants in order having regard to the relative merits of the applicants as determined by the Board and the nature of a particular vacancy in question. The section also provides for the declaration of disadvantaged groups and for the Board to determine special qualifications and skills for determining the eligibility for appointment of persons within such groups.

Proposed new section 32 enables the Board to appoint persons who are not officers to vacant positions in the public service under certain specified conditions. In particular the Board must be satisfied that any such person must be substantially superior in efficiency to every officer within the Service who sought promotion or transfer to the vacancy.

Proposed new section 33 re-enacts the existing provisions relating to the appointment of discharged servicemen.

Proposed new section 34 requires initial appointments to the public service to be on probation and makes provision for the extension of probationary periods and the confirmation or annulment of the appointment of probationers.

Proposed new section 35 entitles the Board to annul the appointment of any person who has given false or misleading information to the Public Service Board or to a medical practitioner in connexion with his appointment.

Proposed new section 36 provides that the Board is not to be under an obligation to make any appointment to a vacant position.

*Clause 14* makes a number of amendments to section 37 of the principal Act. In particular it specifies the steps to be taken in the filling of vacant offices and in relation to the advertising in the Press of vacancies distinguishes between senior offices and other offices. A senior office may be advertised simultaneously in the Press and the Public Service Notices but, except in special circumstances, no other office may be advertised in the Press unless it has first been advertised in the Public Service Notices and the chief administrator has formed the view that, having considered the merits of all applicants for transfer or promotion from within the service, there is still sufficient reason to advertise in the Press. A chief administrator is required to recommend the most efficient of the non-officer applicants. Certain transfers will initially be provisional only in order to permit appeals.

*Clause 15* makes a number of amendments to section 38 of the principal Act. Seniority is abolished as a ground of appeal against promotion and the only ground of appeal is to be superior efficiency. Section 38 is also amended to make a number of additions to the powers of Promotions Appeal Boards and provision is made for the constitution of more than one Promotions Appeal Board. The section is also amended to allow for hearing of appeals against transfers. Amendments are also made as a consequence of the abolition of divisions within the public service.

*Clause 16* inserts a new section 38A in the principal Act. The proposed new section sets out the circumstances in which the Public Service Board is empowered to cancel a provisional promotion. The proposed new section also provides that an officer promoted shall be entitled to receive the remuneration payable for the office to which he is promoted from the date on which the provisional promotion was made or the date on which the position became vacant, whichever is the later.

*Clause 17* amends section 39 of the principal Act so as to provide that superior efficiency shall be the only criterion to be applied in promotional and appeal processes.

*Clause 18* repeals certain provisions in section 40 of the principal Act which relate to temporary employment.

*Clause 19* inserts new sections 40A and 40B into the principal Act which deal with the terms and conditions of temporary employment.

*Clause 20* inserts a new Division 8 into Part III of the principal Act and repeals section 4(1)(k). Proposed new section 41A provides for declarations to be made that the provisions of the principal Act shall not apply to specified officers, employees and persons and provides for the salaries, wages, remuneration and terms and conditions of employment of such persons to be determined by the Public Service Board.

*Clause 21* makes a number of amendments to section 42 of the principal Act. The classification powers formerly contained in that section are repealed in consequence of the inclusion of those powers in proposed new section 28A. The section is also amended to extend the degree of retrospectivity which may be included in determinations of the Public Service Board.

*Clause 22* substitutes a new section for section 43 of the principal Act so as to clarify the powers of chief administrators in relation to the granting, refusal or deferring of increments and the rights of appeal of officers affected by decisions of chief administrators.

*Clause 23* amends section 44 of the principal Act so as to remove any limit on the amount of accrued recreation leave for which payment may be made to the estate of a deceased officer.

*Clause 24* amends section 46 of the principal Act to authorize the prescription by regulation of terms and conditions on which leave may be granted under that section.

*Clause 25* amends section 60 of the principal Act so as to make a number of changes to the procedures which may be followed where officers have been charged with offences against section 59 of the principal Act or with criminal offences punishable by imprisonment, pending the final disposition of the charges, the amendments provide, *inter alia*, that in those circumstances an officer may be transferred to another office, directed to take leave or suspended with or without pay but an officer may be transferred to another administrative unit or suspended without pay only by the Board after receiving a request from the relevant chief administrator.

*Clause 26* inserts new Parts 6A and 6B into the principal Act. Proposed new section 64A requires Ministers responsible for public statutory authorities and the Chairman of the Public Service Board to notify proposals or changes that will cause redundancies to the Governor as to the making of Orders under proposed new section 64B.

Proposed new section 64B empowers the Governor in Council to make Orders authorizing the employment of persons in administrative units or public statutory authorities notwithstanding the provisions of the principal Act or any other Act.

Proposed new Part 6B and new section 64C empower the Governor by Order in Council to specify policies in relation to personnel and management processes which are to apply generally in relation to persons employed in the public service or on public statutory authorities. An Order under the proposed new section is not to affect the operation of any Order made by a Commonwealth or State Industrial Tribunal.

*Clause 27* substitutes new Schedules Two, Three and Three A of the principal Act.

Proposed new Schedule Two specifies the administrative units within the public service, the offices of chief administrators, associated administrative units within the public service and the principal offices of associated administrative units. Proposed new Schedule Three specifies the other administrative units for the purposes of the Act and the chief offices thereof and proposed new Schedule Three A specifies the Audit Office, the Office of the Director of Public Prosecutions and the Office of the Public Service Board and the offices of Auditor-General, Director, Public Prosecutions and Chairman, Public Service Board.

*Clause 28* makes a number of amendments to the principal Act which are mainly consequential upon the change in terminology from departments to administrative units and permanent heads to chief administrators.

*Clause 29* of the principal Act make the changes necessary to the principal Act to substitute the word "employee" for the word "employé" throughout the principal Act.

*Clause 30* is a transitional provision dealing specifically with the application of the amendments to the processes of vacant offices.

*Clause 31* of the principal Act makes consequential alterations to the *Administrative Arrangements Act 1983*.

*Clause 32* of the principal Act amends the *Freedom of Information Act 1982* in consequence of the changes in terminology from department to administrative unit and from permanent head to chief administrator.

*Clause 33* repeals section 13 of the *Alpine Resorts Act 1983* as a consequence of the inclusion of the Alpine Resorts Commission in Schedule Three.