



# Public Service and Statutory Authorities Amendment Act 1985

**No. 166 of 1985**

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# Public Service and Statutory Authorities Amendment Act 1985

No. 166 of 1985

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## An Act relating to employees of the Commonwealth

[Assented to 11 December 1985]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Public Service and Statutory Authorities Amendment Act 1985*.

#### Commencement

2. (1) Sections 1, 2, 3 and 5, sub-section 30 (8) and sections 31, 35, 40 and 43 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Section 24 shall be deemed to have come into operation on 15 March 1981.

(3) Sections 12 and 15 shall be deemed to have come into operation on 22 December 1984.

(4) Section 44 shall be deemed to have come into operation on 21 July 1985.

(5) Sections 27, 28 and 29 shall come into operation, or shall be deemed to have come into operation, as the case requires, on the commencement of section 27 of the *Merit Protection (Australian Government Employees) Act 1984*.

(6) Sections 14, 18, 21 and 22, sub-sections 30 (1) to (7) (inclusive) and sections 32, 33, 34, 36, 37, 38 and 39 shall come into operation on a day, or on respective days, to be fixed by Proclamation.

(7) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

## **PART II—AMENDMENT OF PUBLIC SERVICE ACT 1922**

### **Principal Act**

3. The *Public Service Act 1922*<sup>1</sup> is in this Part referred to as the Principal Act.

### **Schedule 2—Departments**

4. Section 7A of the Principal Act is amended—

- (a) by omitting “upon the notification of the fact in the *Gazette*,”; and
- (b) by adding at the end the following sub-section:

“(2) As soon as practicable after the occurrence of an event referred to in sub-section (1), the Prime Minister shall cause a notice of the event to be published in the *Gazette*, specifying the date on which the event occurred.”.

### **Officers of the Parliament**

5. Section 9 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) For the purposes of Division 1A of Part III of the *Conciliation and Arbitration Act 1904*—

- (a) the President of the Senate shall be taken to be the Minister administering the Department of the Senate;

- (b) the Speaker of the House of Representatives shall be taken to be the Minister administering the Department of the House of Representatives; and
- (c) the President of the Senate and the Speaker of the House of Representatives shall be taken jointly to be the Minister administering the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department.”.

#### **Acting appointments of members of Board**

6. Section 12A of the Principal Act is amended by omitting sub-section (9).

#### **Board to submit reports to Governor-General**

7. Section 18 of the Principal Act is amended by adding at the end the following sub-section:

“(4) This section does not apply in relation to a matter to be dealt with by the Governor-General under section 11, 12, 12A, 13A, 14 or 15 or under Subdivision B of Division 4 of Part III.”.

#### **Equal employment opportunity programs**

8. Section 22B of the Principal Act is amended by adding at the end the following sub-sections:

“(16) Regulations made for the purposes of sub-section (14) in relation to persons referred to in paragraph (14) (c) or (d) have effect notwithstanding sub-section 42C (1) of the *Naval Defence Act 1910* or sub-section 10 (2) of the *Supply and Development Act 1939*, as the case may be.

“(17) Where the Minister for Defence, by instrument in writing, declares that, by reason of defence or civil emergency, it is necessary for staff employed under the *Naval Defence Act 1910* or the *Supply and Development*

*Act 1939* to be engaged in work in circumstances such that regulations made for the purposes of sub-section (14) should not apply in respect of those staff, those regulations shall not apply in respect of those staff until that instrument is revoked by the Minister.”.

### **Industrial democracy plans**

9. Section 22C of the Principal Act is amended by adding at the end the following sub-sections:

“(15) Regulations made for the purposes of sub-section (13) in relation to persons referred to in paragraph (13) (c) or (d) have effect notwithstanding sub-section 42C (1) of the *Naval Defence Act 1910* or sub-section 10 (2) of the *Supply and Development Act 1939*, as the case may be.

“(16) Where the Minister for Defence, by instrument in writing, declares that, by reason of defence or civil emergency, it is necessary for staff employed under the *Naval Defence Act 1910* or the *Supply and Development Act 1939* to be engaged in work in circumstances such that regulations made for the purposes of sub-section (13) should not apply in respect of those staff, those regulations shall not apply in respect of those staff until that instrument is revoked by the Minister.”.

### **Secretaries of Departments**

10. Section 25 of the Principal Act is amended—

(a) by omitting from sub-section (1) “upon the notification of the fact in the *Gazette*.”;

(b) by inserting after sub-section (1) the following sub-section:

“(1A) As soon as practicable after the occurrence of an event referred to in the proviso to sub-section (1), the Prime Minister shall cause a notice of the event to be published in the *Gazette*, specifying the date on which the event occurred.”; and

(c) by adding at the end the following sub-sections:

“(6) The Secretary of a Department shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister administering the Department a report on the operation of the Department during the year that ended on that 30 June.

“(7) A report prepared under sub-section (6) shall be in accordance with guidelines from time to time approved by the Prime Minister and presented to the Parliament.

“(8) The Minister administering a Department shall cause a copy of a report furnished to him under sub-section (6) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

“(9) In sub-clause (6), ‘Department’ means a Department referred to in paragraph (a) of the definition of ‘Department’ in sub-section 7 (1).”.

**Administrative re-arrangements**

**11. Section 29 of the Principal Act is amended—**

- (a) by omitting from sub-section (2) all the words before paragraph (a) and substituting the following:

“Where, by virtue of administrative arrangements approved by the Governor-General or the Prime Minister, or by virtue of the establishment, by an Act, of a Department of a kind referred to in paragraph (b) of the definition of ‘Department’ in sub-section 7 (1), a matter is to be dealt with by a different Department (in this sub-section referred to as the ‘gaining Department’) from the Department (in this sub-section referred to as the ‘losing Department’) by which that matter was dealt with immediately before that approval or establishment, as the case may be, the Prime Minister may, in writing—”;

- (b) by omitting from paragraph (2) (a) “second-mentioned” (twice occurring) and substituting “losing”;
- (c) by omitting from sub-paragraph (2) (a) (ii) “ancillary” and substituting “ancillary”; and
- (d) by omitting from paragraph (2) (b) “first-mentioned” (twice occurring) and substituting “gaining”.

**Interpretation**

**12. Section 33AAA of the Principal Act is amended by omitting from sub-section (1) the definition of “promotion” and substituting the following definition:**

“‘promotion’, in relation to an officer, means a movement of the officer within the Service for the purpose of holding—

- (a) an office of a higher classification than that of the office held by the officer immediately before the movement took place; or
- (b) an office in respect of which the rate of salary payable is higher than the rate of salary that was payable in respect of the office held by the officer or, in the case of an unattached officer, to or in respect of the officer, immediately before the movement took place;”.

**Certain provisions not to apply to appointments under this Subdivision**

**13. Section 41 of the Principal Act is amended by omitting “18.”.**

14. After section 42 of the Principal Act the following section is inserted:

**Appointment of certain continuing employees**

“42A. (1) Where the Prime Minister, by notice in the *Gazette*, declares that this section applies to a specified class of persons employed under section 82AC, the Board may appoint to an office in the Service (other than the office of Secretary) a person included in that class.

“(2) An appointment of a person under sub-section (1) may be made—

- (a) on probation or otherwise;
- (b) in accordance with such procedure (whether or not complying with paragraph 33 (1) (a)) as the Board thinks fit; and
- (c) whether or not the person is ineligible for appointment by reason of section 34.

**Day on which promotion takes effect**

15. Section 50E of the Principal Act is amended by omitting from sub-paragraph (1) (a) (i) “appeal” (last occurring) and substituting “promotion”.

16. Section 50G of the Principal Act is repealed and the following section is substituted:

**Cancellation of promotion**

“50G. (1) Notwithstanding any other provision of this Subdivision, if, at any time after the making of a promotion of an officer to a vacant office under section 50 or 50DA but before the day on which the promotion takes effect, the Board is satisfied that notification or further notification of the vacancy is desirable, the Board may cancel the promotion.

“(2) If a promotion of an officer under section 50 or 50DA that has not taken effect ceases, by reason of a change in rates of salary, to be a promotion of that officer, the promotion shall be deemed to be cancelled.

“(3) Where a promotion is cancelled by or under this section, any appeal under section 50B against the promotion shall be deemed to lapse on the date of the cancellation.”.

**Administrative re-arrangements**

17. Section 51AA of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:

“(2) Where the former office was, at the time when it ceased to exist, occupied by an officer, the officer is, by force of this section, transferred to the substituted office.”; and

- (b) by omitting sub-section (4).

**Application to certain employees**

18. Section 63T of the Principal Act is amended—

- (a) by omitting from the end of paragraph (b) “and”; and
- (b) by inserting after paragraph (b) the following word and paragraph:



“; and (ba) a person who has been engaged under section 82AE, where—

- (i) the period of engagement (including the period as extended under sub-section 82AE (7));
- (ii) any other period of employment of the person under Division 10 of Part III; and
- (iii) any period of service of the person as an officer,

being periods that are continuous with one another, aggregate not less than 1 year; and”.

### **Benefits**

**19.** Section 76Q of the Principal Act is amended by omitting from paragraph (1) (b) “a declared officer” and substituting “an officer to whom notice has been given under section 76L”.

### **Repeal of Divisions 9A to 9E of Part III**

**20.** Divisions 9A to 9E (inclusive) of Part III of the Principal Act are repealed.

**21.** Sections 82 and 82A of the Principal Act are repealed and the following sections are substituted:

### **Interpretation**

“82. (1) In this Division, unless the contrary intention appears—

‘ability’, means skills, aptitude, qualifications or experience, or any combination of any of them;

‘continuing employee’ means a person employed under section 82AC;

‘fixed-term employee’ means a person employed under section 82AE;

‘overseas employee’ means a person employed under section 82AF;

‘short-term employee’ means a person employed under section 82AD.

“(2) For the purposes of this Division—

(a) the definition of ‘relevant staff organization’ in sub-section 7 (1) has effect as if references in that definition to an office were references to employment in a particular capacity; and

(b) a reference to the principal relevant staff organization, in relation to employment in a particular capacity, is a reference to the relevant staff organization that is declared by the regulations to be the principal relevant staff organization in relation to employment in that capacity.

### **Categories of employees**

“82AA. Subject to section 82AG, a person employed under this Division shall be employed in one of the following categories of employees:

- (a) continuing employees;

- (b) short-term employees;
- (c) fixed-term employees;
- (d) overseas employees.

### **Declaration of classes of continuing employees**

“82AB. (1) Subject to this section, the Board may, by instrument published in the *Gazette*, declare a specified class of employees (not being persons engaged overseas to perform duties overseas) to be a class of employees for the purposes of section 82AC.

“(2) A declaration made in pursuance of this section (including a declaration referred to in paragraph (a) or (b)) shall not continue in operation for a period exceeding 3 years, but this sub-section does not prevent the making of—

- (a) a further declaration; or
- (b) a declaration extending the period of operation of an existing declaration.

“(3) The Board shall not declare a class of employees under sub-section (1) unless—

- (a) it is satisfied that the provisions of this Act relating to the appointment, promotion and transfer of officers are not appropriate to be applied to persons in the proposed class of employees; and
- (b) if there is or are one or more relevant staff organizations—it has obtained the agreement of the principal relevant staff organization.

“(4) Sub-section (3) does not apply in relation to the declaration, at a particular time, of a class of employees, if the duties of the employees in that class are to be the same as the duties of the employees in one or more classes previously declared under this section, being a class or classes that existed immediately before that time.

### **Employment of continuing employees**

“82AC. (1) Subject to this section, the Secretary of a Department may engage persons as continuing employees in the Department.

“(2) A Secretary shall not engage a person as a continuing employee unless the person is engaged in a class of employees declared under section 82AB.

“(3) A Secretary shall not engage a person as a continuing employee unless the Secretary is satisfied that the person has the ability necessary for the performance of the relevant duties.

“(4) Where—

- (a) a person is employed as a continuing employee in a particular class of employees declared under section 82AB; and
- (b) the declaration lapses at any time,

the lapse of the declaration does not prevent the continuation of the employment of the person as a continuing employee.

**Employment of short-term employees**

“82AD. (1) Subject to this section, the Secretary of a Department may engage persons as short-term employees in the Department.

“(2) The Secretary of a Department shall not employ a person under sub-section (1) unless satisfied—

- (a) that the Department requires assistance of a temporary nature in the performance of particular duties;
- (b) having considered the need to maintain the service as a career service—that it would not be appropriate to use the services of an officer to perform those duties; and
- (c) having considered the need to maintain a stable work-force—that it would not be appropriate to use the services of a continuing employee to perform those duties.

“(3) A person who is to be employed as a short-term employee—

- (a) shall, subject to sub-section (10), be selected from a register of applicants for short-term employment; or
- (b) if no suitable person is available from such a register—shall be a person who the Secretary is satisfied has the ability necessary for the performance of the relevant duties.

“(4) Subject to sub-section (7), the period of engagement of a short-term employee shall not exceed—

- (a) if a period (being less than 12 months) is approved by the Board in relation to the class of employee in which the person is included—that period; or
- (b) in any other case—3 months.

“(5) If—

- (a) for the purposes of paragraph (4) (a), the Board proposes to approve, in relation to a class of short-term employees, a period exceeding 3 months; and

- (b) there is or are one or more relevant staff organizations,

the Board shall not approve the period except after consultation with the principal relevant staff organization or organizations.

“(6) Where the period of engagement of a short-term employee in a Department expires, the employment of the employee is not thereby terminated, but the Secretary of the Department shall—

- (a) if the Department no longer requires assistance of a temporary nature in the performance of the duties of the employee—terminate the employment of the employee; or
- (b) in any other case—recommend to the Board that the employment be extended.

“(7) On receipt of a recommendation under paragraph (6) (b) in relation to the employment of a short-term employee, the Board shall—

(a) if it is satisfied—

(i) having considered the need to maintain the service as a career service—that it would not be appropriate to use the services of an officer to perform the duties of the employee; and

(ii) having considered the need to maintain a stable work-force—that it would not be appropriate to use the services of a continuing employee to perform those duties,

extend the period of engagement of the employee for such further period as it thinks appropriate; and

(b) in any other case—terminate the employment of the employee with effect from such date as it thinks fit and, if the period of the engagement of the employee has expired, or would expire before that date, extend the period of engagement until that date.

“(8) The Board may, at a particular time, extend a period of engagement under sub-section (7) notwithstanding that the period has expired before that time.

“(9) Where at any time—

(a) as a result of an extension of the period of engagement of a person under sub-section (7), the person is employed as a short-term employee; and

(b) the period of engagement of the person (including the period as so extended) has subsisted for the period of 1 year immediately preceding that time,

any continuation of the employment of the person from that time shall be deemed to be employment as a continuing employee.

“(10) The Board shall, by notice published in the *Gazette*, notify—

(a) the manner in which persons shall be selected under paragraph (3) (a); and

(b) the manner in which registers of applicants for short-term employment shall be kept for the purposes of that paragraph.

### **Employment of fixed-term employees**

“82AE. (1) Subject to this section, the Secretary of a Department may, with the approval of the Board, engage persons as fixed-term employees in the Department.

“(2) A person shall not be employed as a fixed-term employee in a Department except where—

(a) the person is required to perform duties in connection with a project or task that has a fixed duration (whether or not its duration is known at the relevant time) and—

- (i) the duties require ability that cannot be made available from within the Service; and
- (ii) the services of the person are not likely to be required after the project or task is completed;
- (b) the person could be appointed as an officer or engaged as a continuing employee in the Department, but employment as a fixed-term employee is preferred by the person; or
- (c) the person is not an Australian citizen, but has been selected for appointment to the Service on the understanding that appointment will be made on the grant of Australian citizenship.

“(3) A Secretary shall not employ a person as a fixed-term employee unless the Secretary is satisfied that the person has the ability necessary for the performance of the relevant duties.

“(4) A person shall not be employed by virtue of paragraph (2) (a) as a fixed-term employee in a particular capacity in a particular component of a Department unless the principal relevant staff organization has been consulted in connection with employment of persons as fixed-term employees in that capacity in that component.

“(5) Subject to sub-section (7), the period of engagement of a fixed-term employee shall not exceed 5 years.

“(6) Subject to sub-section (7), on the expiration of the period of engagement of a fixed-term employee (including the period as extended or further extended under that sub-section), the employment of the employee is terminated.

“(7) On the expiration of the period of engagement of a fixed-term employee (including the period as extended or further extended under this sub-section), the relevant Secretary may, subject to sub-section (2), extend or further extend the period for a period not exceeding 5 years.

#### **Employment of overseas employees**

“82AF. (1) Subject to sub-section (2), the Secretary of a Department may engage persons overseas to perform duties overseas.

“(2) A Secretary shall not employ a person as an overseas employee unless the Secretary is satisfied that the person has the ability necessary for the performance of the relevant duties.

“(3) This section shall not be taken to prevent the engagement in Australia, under another provision of this Division, of a person to perform duties overseas.

#### **Special employment programs**

“82AG. The Secretary of a Department may employ persons in the Department to perform duties under a prescribed scheme, being a scheme for enabling persons to gain ability for the purpose of participating in the Australian work-force.

### **Termination of employment**

“82AH. (1) Subject to this section, the Secretary of a Department may at any time terminate the employment of an employee in the Department.

“(2) Where, under the regulations, Division 6 of Part III applies in relation to an employee in a Department, the Secretary shall not terminate the employment of the employee under this section—

- (a) by reason only of the fact that the employee has done, or omitted to do, an act or thing in respect of which a charge could be laid against the employee; or
- (b) on the ground that a court has convicted the employee of a criminal offence within the meaning of that Division, or found, without recording a conviction, that the employee has committed such an offence.

“(3) The employment of an employee to whom the *Commonwealth Employees (Redeployment and Retirement) Act 1979* applies shall not be terminated under this section except on the ground that the employee—

- (a) has wilfully disobeyed, or wilfully disregarded, a direction given by a person having authority to give the direction, being a direction with which it is the employee’s duty to comply;
- (b) is inefficient or incompetent for reasons or causes within the employee’s own control;
- (c) is negligent or careless in the discharge of the employee’s duties;
- (d) has engaged in improper conduct as an employee;
- (e) has engaged in improper conduct otherwise than as an employee, being conduct that adversely affects the performance of the employee’s duties or brings the Service into disrepute;
- (f) has contravened—
  - (i) a provision of this Act, of the regulations or of a determination in force under sub-section 9 (7A) or section 82D; or
  - (ii) the terms and conditions upon which the employee is employed;
- (g) has, whether before or after becoming an employee, wilfully supplied to an officer or another person acting on behalf of the Commonwealth incorrect or misleading information in connection with the employee’s being accepted as an employee; or
- (h) a court has, after 15 September 1980, convicted the employee of a criminal offence or found, without recording the conviction, that the employee has committed such an offence, and the nature and seriousness of the offence, the circumstances in which it was committed, and the nature of the employee’s duties, are such that it is in the interests of the Service that the employment of the employee should be terminated.”.

**Employment of persons who have resigned to become candidates at elections**

22. Section 82B of the Principal Act is amended by omitting from sub-section (1) "section 82" and substituting "this Division".

23. After section 82B of the Principal Act the following section is inserted in Division 10 of Part III:

**Administrative re-arrangements**

"82BA. (1) Where—

- (a) a Department is abolished; or
- (b) by virtue of administrative arrangements approved by the Governor-General or the Prime Minister, or by virtue of the establishment, by an Act, of a Department of a kind referred to in paragraph (b) of the definition of 'Department' in sub-section 7 (1), a matter is to be dealt with by a different Department (in this section referred to as the 'gaining Department') from the Department (in this section referred to as the 'losing Department') by which that matter was dealt with immediately before that approval or establishment, as the case may be,

sub-section (2) has effect.

"(2) The Board may direct in writing that—

- (a) where paragraph (1) (a) applies—a person who was employed in the abolished Department immediately before the time of the abolition is to be employed in another Department; or
- (b) where paragraph (1) (b) applies—a person who was employed in the losing Department immediately before the time of the approval or establishment, as the case may be, referred to in that sub-section is to be employed in the gaining Department,

and thereupon the person shall be deemed as from that time to be employed as so directed, in the same capacity and subject to the same conditions as were applicable immediately before that time.

**Interpretation**

24. (1) Section 87 of the Principal Act is amended—

- (a) by omitting from sub-section (6) "*Commission*"; and
- (b) by inserting after sub-section (6) the following sub-section:

"(6A) Where—

- (a) at any time (whether before, on or after the commencing day), in pursuance of an arrangement under sub-section 21 (1) of the *Commonwealth Legal Aid Act 1977*, a person who was an officer employed in the Australian Legal Aid Office has become a member of the staff of an approved legal aid commission; and
- (b) at a later time, the person has become the holder of a statutory office within the meaning of that Act,

then, for the purposes of this Part, the person shall be deemed to have become, at that later time, the holder of an approved statutory office within the meaning of that Act.”.

**Employment of officers by certain authorities, &c., upon transfer of functions**

**25.** Section 87J of the Principal Act is amended—

- (a) by inserting in sub-section (3) “notifies the Prime Minister that it” after “Board” (first occurring);
- (b) by omitting from sub-section (3) “the Board may, with the approval of the Governor-General” and substituting “the Prime Minister may”;
- (c) by inserting in sub-section (4) “notifies the Prime Minister that it” after “Board” (first occurring);
- (d) by omitting from sub-section (4) “Board” (second occurring) and substituting “Prime Minister”; and
- (e) by omitting from sub-section (4) “, with the approval of the Governor-General”.

**Persons to whom Division applies**

**26.** Section 87K of the Principal Act is amended by omitting from sub-sections (9) and (10) “*Commission*”.

**Application for re-appointment to Service**

**27.** Section 87N of the Principal Act is amended by omitting “Re-appointments” (wherever occurring) and substituting “Re-appointment”.

**Application for re-instatement as person to whom Division applies**

**28.** Section 87P of the Principal Act is amended by omitting from sub-sections (5), (7) and (8) “Re-appointments” and substituting “Re-appointment”.

**Re-appointment to Service**

**29.** Section 87Q of the Principal Act is amended by omitting from sub-sections (1) and (5) “Re-appointments” and substituting “Re-appointment”.

**Transitional**

**30. (1)** In this section, “commencement” means the commencement of section 21.

**(2)** Notwithstanding the repeal of section 82 of the Principal Act by this Act, that section shall be deemed to continue in force, for the purposes of sub-section (3) of this section, as if it had not been repealed, but it has effect after the commencement as if the references in sub-sections (4), (6) and (6A) of that section to a Chief Officer were references to the relevant Secretary.



**(3)** Subject to sub-sections (4), (5) and (6), where, immediately before the commencement—

- (a) a person was employed under section 82 of the Principal Act; and
- (b) the services of the person had not been dispensed with under that section,

the person continues to be employed under that section as continued in force by this section.

**(4)** Where, immediately before the commencement—

- (a) a person who had been engaged overseas under section 82 of the Principal Act was employed under that section to perform duties overseas; and
- (b) the services of the person had not been dispensed with under that section,

the employment of the person from the commencement shall be deemed to be employment under section 82AF of that Act as amended by this Act.

**(5)** Where, immediately before the commencement—

- (a) a person (other than a person to whom sub-section (4) applies) was employed under section 82 of the Principal Act;
- (b) the services of the person had not been dispensed with under that section;
- (c) the person was not—
  - (i) employed subject to a condition specified in sub-section (4) of that section; or
  - (ii) employed under a contract of employment for a term of less than 1 year or for a term of years; and
- (d) the person had, for the immediately preceding period of 1 year, been an employee, an officer, or both,

the employment of the person from the commencement shall be deemed to be employment under section 82AC of that Act as amended by this Act.

**(6)** Where, at any time after the commencement—

- (a) a person is employed under section 82 of the Principal Act as continued in force by this section;
- (b) the person is not—
  - (i) employed subject to a condition specified in sub-section (4) of that section; or
  - (ii) employed under a contract of employment for a term of less than 1 year or for a term of years; and
- (c) the person has, for the immediately preceding period of 1 year, been an employee, an officer, or both,

any continuation of the employment of the person from that time shall be deemed to be employment under section 82AC of that Act as amended by this Act.

(7) The repeal of section 82 of the Principal Act by this Act does not affect the application after the commencement, in relation to persons referred to in sub-section (3) of this section, of a determination in force immediately before the commencement under section 82D of that Act.

(8) Until the commencement—

(a) the Secretary of a Department may employ persons in the Department to perform duties under a scheme prescribed by the Board by notice published in the *Gazette*, being a scheme for enabling persons to gain skills, aptitude, qualifications or experience, or any combination of any of them, for the purpose of participating in the Australian work-force; and

(b) persons so employed shall be deemed to be employees within the meaning of the Principal Act as amended by this Act.

### **PART III—AMENDMENT OF COMMONWEALTH EMPLOYEES (REDEPLOYMENT AND RETIREMENT) ACT 1979**

#### **Principal Act**

31. The *Commonwealth Employees (Redeployment and Retirement) Act 1979*<sup>2</sup> is in this Part referred to as the Principal Act.

#### **Persons in relation to whom this Act applies**

32. Section 5 of the Principal Act is amended—

(a) by omitting from paragraph (1) (c) “or an officer and then an employee” and substituting “an officer, or both”;

(b) by omitting from the end of paragraph (2) (d) “or”; and

(c) by omitting paragraph (2) (e) and substituting the following paragraphs:

“(e) a person who is employed under section 82AD, 82AE, 82AF or 82AG of the *Public Service Act 1922*; or

(f) a person who is employed under section 82 of the *Public Service Act 1922* as continued in force by section 29 of the *Public Service and Statutory Authorities Amendment Act 1985*, being—

(i) a person who was engaged overseas to perform duties overseas; or

(ii) a person whose employment is subject to a condition specified in sub-section (4) of that section as so continued in force.”.

#### **Objects of Part**

33. Section 7 of the Principal Act is amended—

(a) by omitting sub-paragraph (1) (b) (iii) and substituting the following sub-paragraph:

“(iii) for the reason that the employee is—

- (A) inefficient; or
  - (B) not qualified to perform his or her duties;”;
- (b) by omitting sub-section (2) and substituting the following sub-sections:

“(2) For the purposes of this section, an employee is inefficient if and only if the employee fails, in the performance of the duties that he or she is required to perform, to attain or sustain a standard of efficiency that a person may reasonably be expected to attain or sustain in the performance of those duties.

“(3) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether an employee has failed, in the performance of the duties that he or she is required to perform, to attain or sustain the standard of efficiency referred to in sub-section (2)—

- (a) regard shall be had to—
  - (i) any written selection criteria or job specifications applicable to those duties;
  - (ii) any duty statement describing those duties; and
  - (iii) any written work standards and instructions relating to the manner of performance of those duties; and
- (b) regard may be had to—
  - (i) any written selection criteria or job specifications applicable to similar duties;
  - (ii) any duty statements describing similar duties; and
  - (iii) any written work standards and instructions relating to the manner of performance of similar duties.

“(4) A reference in sub-section (3) to similar duties, in relation to an employee employed in a Department or authority, is a reference to similar duties that other employees employed in that Department or authority are required to perform.

“(5) For the purposes of this section, an employee is not qualified to perform his or her duties if and only if, in relation to those duties—

- (a) the employee ceases to hold, or becomes unable or ineligible to hold or to use and enjoy, an essential qualification; or
- (b) a court, person, authority or body that is competent to do so suspends, cancels, revokes, rescinds or otherwise withdraws an essential qualification.

“(6) A reference in sub-section (5) to an essential qualification, in relation to an employee, is a reference to any statutory, professional, academic, commercial, technical, trade, health or other qualification the holding of which is a prerequisite to the practice of a profession, trade or occupation, the exercise of a right or the

performance of a function or duty, being a profession, trade, occupation, right, function or duty that it is necessary for that employee to practice, exercise or perform in the course of his or her employment.”.

**Retirement of employees who cannot be redeployed**

**34. Section 19 of the Principal Act is amended—**

(a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Subject to this section, where—

- (a) the Secretary of a Department receives a certificate issued under section 11 or 14 in respect of an employee; and
- (b) the Secretary is not able, consistently with the achievement of the first object of Part II, to employ the employee in the Department on duties which the Secretary considers the employee is competent to perform and can reasonably be required to perform,

the Secretary may retire the employee from the Australian Public Service on a day to be specified by the Secretary.

“(2) Subject to this section, where—

- (a) a prescribed Commonwealth authority receives a certificate issued under section 11 or 14 in respect of an employee; and
- (b) the employee cannot, consistently with the achievement of the first object of Part II, be employed by the authority in the performance of duties which the authority considers that the employee is competent to perform and can reasonably be required to perform,

the authority may retire the employee, or cause the employee to be retired from his or her employment, on a day to be specified by the authority.

“(2A) In determining whether to retire an employee under sub-section (1) or (2), a Secretary of a Department or a prescribed Commonwealth authority, as the case requires, shall have regard to—

- (a) the nature and duration of the employee’s past service with the Australian Public Service or the authority, or with both, as the case may be;
- (b) the period within which the employee may reasonably be expected to retire;
- (c) the extent to which the employee is able, or is likely, with retraining or rehabilitation, to be able, to perform duties as a person employed in the Department, or by the authority, as the case may be, and the nature of those duties; and
- (d) any other matter that the Secretary or authority, as the case may be, considers relevant.”; and

- (b) by omitting from sub-section (4) "date" (wherever occurring) and substituting "day".

**PART IV—AMENDMENT OF LONG SERVICE LEAVE  
(COMMONWEALTH EMPLOYEES) ACT 1976**

**Principal Act**

35. The *Long Service Leave (Commonwealth Employees) Act 1976*<sup>3</sup> is in this Part referred to as the Principal Act.

**Interpretation**

36. Section 4 of the Principal Act is amended by omitting from sub-section (1) the definition of "public authority of the Commonwealth" and substituting the following definition:

"'public authority of the Commonwealth' means an authority established or constituted by or under a law of the Commonwealth or of the Australian Capital Territory;"

**Meaning of authority of a State or of the Northern Territory**

37. Section 6 of the Principal Act is amended by adding at the end the following sub-section:

"(2) This section has effect as if the Northern Territory were a State."

**Regulations with respect to previous service with prescribed authorities, &c.**

38. Section 7 of the Principal Act is amended by adding at the end the following sub-section:

"(4) This section has effect as if the Northern Territory were a State".

**Period of service**

39. Section 11 of the Principal Act is amended—

- (a) by omitting paragraph (2) (ca) and substituting the following paragraph:

"(ca) any service of an authority of the Northern Territory, not being employment at a time when the authority was a public authority of the Commonwealth;" and

- (b) by inserting in paragraph (3) (a) "(ca)," after "(c),".

**PART V—AMENDMENT OF PUBLIC SERVICE AND  
STATUTORY AUTHORITIES AMENDMENT ACT 1980**

**Principal Act**

40. The *Public Service and Statutory Authorities Amendment Act 1980*<sup>4</sup> is in this Part referred to as the Principal Act.

**Officers of the Parliament**

**41.** Section 7 of the Principal Act is amended by omitting sub-section (3).

**Transfers, promotions and appeals**

**42.** Section 21 of the Principal Act is amended by omitting sub-section (2).

**PART VI—AMENDMENT OF PUBLIC SERVICE REFORM ACT 1984**

**Principal Act**

**43.** The *Public Service Reform Act 1984*<sup>5</sup> is in this Part referred to as the Principal Act.

**Saving of certain proceedings**

**44.** Section 159 of the Principal Act is amended by omitting from sub-section (1) “sub-section 43 (1)” and substituting “sub-section 43 (2)”.

**PART VII—AMENDMENT OF VARIOUS LAWS**

**Engagement of consultants**

**45. (1)** The Acts specified in the Schedule are amended as set out in the Schedule.

**(2)** Anything done before the commencement of this section under a provision referred to in the Schedule continues to have effect after that commencement as if it had been done under that provision as amended or substituted in accordance with the Schedule.

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**SCHEDULE**

Section 45

**ENGAGEMENT OF CONSULTANTS**

***Aboriginal Development Commission Act 1980***

**Sub-section 35 (2)—**

Omit “with the approval of the Public Service Board”.

***Aboriginal Land Rights (Northern Territory) Act 1976***

**Sub-section 27 (2)—**

Omit “approved by the Public Service Board”, substitute “approved by—  
(a) in the case of staff—the Public Service Board; and  
(b) in the case of consultants—the Land Council.”.

**Sub-section 60 (1)—**

Omit “, with the approval of the Public Service Board,”.

**Sub-section 60 (2)—**

Omit “with the approval of the Public Service Board”.

***Audit Act 1901***

**Sub-section 48K (4)—**

Omit “with the approval of the Public Service Board”.

***Australia-Japan Foundation Act 1976***

**Section 22—**

Omit “, with the approval of the Public Service Board,” (wherever occurring).

***Australian Centre for International Agricultural Research Act 1982***

**Sub-section 32 (1)—**

Omit “with the approval of the Public Service Board,”.

**Sub-section 32 (2)—**

Omit “, subject to the approval of the Public Service Board”.

***Australian Heritage Commission Act 1975***

**Sub-section 46 (2)—**

Omit “with the approval of the Public Service Board”.

***Australian Institute of Multicultural Affairs Act 1979***

**Sub-section 37 (2)—**

Omit “, subject to the approval of the Public Service Board,”.

***Australian Science and Technology Council Act 1978***

**Section 21—**

Omit “, with the approval of the Public Service Board,” (wherever occurring).

**SCHEDULE—continued**

***Australian War Memorial Act 1980***

**Sub-section 29 (1)—**

Omit “, with the approval of the Public Service Board,”.

**Sub-section 29 (2)—**

Omit “, subject to the approval of the Public Service Board,”.

***Automotive Industry Authority Act 1984***

**Sub-section 26 (2)—**

Omit “, with the approval of the Public Service Board,”.

***Broadcasting and Television Act 1942***

**Section 79Y—**

Omit “, with the approval of the Public Service Board,” (wherever occurring).

***Canned Fruits Marketing Act 1979***

**Sub-section 34 (1)—**

Omit “, with the approval of the Public Service Board,”.

**Sub-section 34 (2)—**

Omit “, subject to the approval of the Public Service Board,”.

***Commonwealth Electoral Act 1918***

**Sub-section 35 (2)—**

Omit “and with the approval of the Public Service Board”.

**Sub-section 35 (4)—**

Omit “with the approval of the Public Service Board”.

***Director of Public Prosecutions Act 1983***

**Sub-section 28 (2)—**

Omit “, with the approval of the Public Service Board”.

***Economic Planning Advisory Council Act 1983***

**Sub-section 24 (2)—**

Omit “, with the approval of the Public Service Board,”.

***Environment Protection (Alligator Rivers Region) Act 1978***

**Sub-section 26 (4)—**

Omit “, with the approval of the Public Service Board”.

***Family Law Act 1975***

**Sub-section 114M (2)—**

Omit the sub-section, substitute the following sub-section:

“(2) The terms and conditions of employment or engagement of persons under this section are such as are from time to time determined—

(a) in the case of members of the staff of the Institute—by the Director with the approval of the Public Service Board; and

(b) in any other case—by the Director.”.



**SCHEDULE—continued**

***Great Barrier Reef Marine Park Act 1975***

**Section 41—**

Omit “approved by the Public Service Board”, substitute “determined by the Authority”.

***Inter-State Commission Act 1975***

**Sub-section 27 (4)—**

Omit “approved by the Public Service Board”, substitute “determined by the President”.

***Museum of Australia Act 1980***

**Sub-section 32 (1)—**

Omit “, with the approval of the Public Service Board,”.

**Sub-section 32 (2)—**

Omit “, subject to the approval of the Public Service Board,”.

***Office of National Assessments Act 1977***

**Sub-section 17 (6)—**

Omit “, with the approval of the Public Service Board,”.

**Sub-section 17 (7)—**

Omit “, with the approval of the Public Service Board,”.

***Parliament House Construction Authority Act 1979***

**Sub-section 29 (2)—**

Omit “, subject to the approval of the Public Service Board,”.

***Pipeline Authority Act 1973***

**Sub-section 19A (2)—**

Omit “ with the approval of the Public Service Board”.

***Prices Surveillance Act 1983***

**Section 42—**

Omit “, with the approval of the Public Service Board,” (wherever occurring).

***Special Prosecutors Act 1982***

**Sub-section 17 (3)—**

Omit the sub-section, substitute the following sub-section:

“(3) The terms and conditions of employment or engagement of persons under this section are such as are from time to time determined—

- (a) in the case of persons employed by a Special Prosecutor under sub-section (1)—by that Special Prosecutor with the approval of the Public Service Board; and
- (b) in the case of persons engaged by a Special Prosecutor under sub-section (2)—by that Special Prosecutor.

**SCHEDULE—continued**

***Steel Industry Authority Act 1983***

**Sub-section 32 (1)—**

Omit “, with the approval of the Public Service Board.”.

**Sub-section 32 (2)—**

Omit “with the approval of the Public Service Board”.

***Trade Union Training Authority Act 1975***

**Sub-section 51 (2)—**

Omit “with the approval of the Public Service Board”.

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**NOTES**

1. No. 21, 1922, as amended. For previous amendments, see No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947; Nos. 35 and 75, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; No. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; No. 59, 1974; No. 40, 1975; Nos. 193 and 194, 1976; Nos. 6 and 80, 1977; Nos. 36 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 61, 1981; Nos. 26 and 80, 1982; No. 111, 1982 (as amended by No. 39, 1983); Nos. 39, 56 and 92, 1983; Nos. 63 and 165, 1984; and No. 65, 1985.
2. No. 52, 1979, as amended. For previous amendments, see No. 155, 1979; Nos. 26, 61 and 92, 1981; No. 111, 1982; Nos. 39 and 93, 1983; Nos. 63 and 165, 1984; and No. 65, 1985.
3. No. 192, 1976, as amended. For previous amendments, see No. 9, 1978; Nos. 52 and 155, 1979; Nos. 6 and 61, 1981; No. 141, 1983; and No. 63, 1984.
4. No. 177, 1980, as amended. For previous amendments, see No. 63, 1984.
5. No. 63, 1984, as amended. For previous amendments, see No. 165, 1984.

[*Minister's second reading speech made in—*

*Senate on 16 October 1985*

*House of Representatives on 29 November 1985]*