



Public Service Legislation (Streamlining) Act 1986

No. 153 of 1986

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Public Service Legislation (Streamlining) Act 1986

No. 153 of 1986

An Act to amend certain legislation relating to the Australian Public Service, and for related purposes

[Assented to 18 December 1986]

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 Legislation (Streamlining) Act 1986*.

Commencement

2. (1) Sections 1, 2, 3, 103, 126, 130, 132 and 134 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Section 20, sub-section 22 (2), sections 36, 38 to 41 and 44, sub-sections 45 (1) and (3) and sections 46, 102 and 105 shall come into operation on a day to be fixed by Proclamation.

(3) Section 43, sub-section 45 (2), sections 70 to 76, 78, 87, 113, 115 and 116, sub-section 122 (2) and sections 123, 125, 129 and 131 shall come into operation on a day to be fixed by Proclamation.

(4) Sections 110 and 112 shall come into operation on a day to be fixed by Proclamation.

(5) 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—AMENDMENTS OF PUBLIC SERVICE ACT 1922

Principal Act

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

Repeal of section 5

4. Section 5 of the Principal Act is repealed.

Interpretation

5. Section 7 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “Appeal Board” and substituting the following definitions:

“‘Agency’ means the Merit Protection and Review Agency established by the Merit Protection Act;

‘authorised medical practitioner’ means a medical practitioner authorised, by the Secretary to the Department of Health, to—

(a) perform medical examinations; and

(b) make recommendations in relation to redeployment or retirement,

under this Act;”;

(b) by omitting from sub-section (1) the definition of “Chief Officer”;

(c) by inserting after the definition of “industrial award” in sub-section (1) the following definition:

“‘Merit Protection Act’ means the *Merit Protection (Australian Government Employees) Act 1984*;”;

(d) by omitting sub-sections (3) and (4) and substituting the following sub-section:

“(3) An officer of a Department is an excess officer for the purposes of a provision of this Act if—

(a) the officer is included in a class of officers employed in the Department, which class comprises a greater number of officers than is necessary for the efficient and economical working of the Department;

- (b) the services of the officer cannot be effectively used because of technological or other changes in the work methods of the Department or changes in the nature, extent or organisation of the functions of the Department; or
- (c) where the duties usually performed by the officer are to be performed at a different locality and the Board has determined that the provision applies in relation to the re-location of the performance of those duties—the officer is not willing to perform duties at that locality.”.

Officers of the Parliament

6. Section 9 of the Principal Act is amended by omitting from subsection (2AA) and paragraph (2A) (b) “or Chief Officer”.

7. Section 10 of the Principal Act is repealed and the following section is substituted:

Constitution of the Australian Public Service

- “10. The Australian Public Service is constituted by—
- (a) the Secretaries specified in Schedule 3;
 - (b) Senior Executive Service officers;
 - (c) other officers; and
 - (d) employees.”.

8. (1) Section 12 of the Principal Act is repealed and the following section is substituted:

Head of the Public Service Board

“12. (1) The Governor-General shall appoint one of the 3 members of the Board to be the Head of the Public Service Board.

“(2) The Head may be referred to as the Chairman or Chairwoman, as the Head prefers.”.

(2) The person who, immediately before the commencement of this section, held office as the Chairman holds office, after the commencement of this section, as the Head of the Public Service Board.

(3) A reference in the *Public Service Act 1922*, in any other law or in any instrument to the Chairman of the Public Service Board shall, except in relation to matters that occurred before the commencement of this section, be read as a reference to the Head of the Public Service Board.

Acting appointments of members of the Board

9. (1) Section 12A of the Principal Act is amended—
- (a) by omitting “Governor-General” (wherever occurring) and substituting “Prime Minister”; and
 - (b) by omitting “Chairman” (wherever occurring) and substituting “Head of the Public Service Board”.

(2) An appointment by the Governor-General under section 12A of the Principal Act that was in force immediately before the commencement of this section shall, after that commencement, be deemed to be an appointment by the Prime Minister under section 12A of the *Public Service Act 1922*.

10. Section 13 of the Principal Act is repealed and the following section is substituted:

Remuneration and allowances for members of the Board

“13. Subject to the *Remuneration Tribunals Act 1973*, a member of the Board shall be paid—

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.”

Delegation by Board, &c.

11. (1) Section 16 of the Principal Act is amended—

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

“(1A) Where the Board delegates a power or function to a Secretary, the Secretary may, unless the instrument of delegation prohibits it, sub-delegate the power or function, by instrument in writing signed by the Secretary, to a person other than a person engaged as a consultant under section 4 of the *Members of Parliament (Staff) Act 1984*.

“(1B) A Secretary is not empowered to sub-delegate a power or function under sub-section (1A) to a person who is not—

- (a) an officer or an employee; or
- (b) a person appointed to an office, under a law of the Commonwealth, by the Governor-General or a Minister,

unless the Board approves, in writing, the delegation of the power or function to that person.

“(1C) A power or function delegated under sub-section (1) or sub-delegated under sub-section (1A), when exercised or performed by the delegate or sub-delegate, shall, for all purposes, be deemed to have been exercised or performed by the Board.”;

- (b) by omitting from sub-section (2) “under this section” and substituting “under sub-section (1)”;
- (c) by inserting before paragraph (2) (a) the following paragraph:

“(aa) may be absolute or conditional;”;

and
- (d) by omitting sub-sections (2A) and (3) and substituting the following sub-sections:

“(3) A sub-delegation of a power or function by the Secretary of a Department under sub-section (1A)—

- (a) may be absolute or conditional;
- (b) does not prevent the exercise of the power or the performance of the function by the Board or by the Secretary;
- (c) subject to paragraph (d), continues in force notwithstanding any change in the membership of the Board or the appointment of another person as the Secretary of the Department; and
- (d) may be revoked by instrument in writing signed by the Secretary for the time being of the Department.

“(4) Where—

- (a) the exercise of a power or function by the Board is dependent upon the opinion, belief or state of mind of the Board in relation to a matter; and
- (b) the power or function has been delegated or sub-delegated under this section,

the power or function may be exercised by the delegate or sub-delegate upon the opinion, belief or state of mind of the delegate or sub-delegate, as the case may be, in relation to the matter.

“(5) Where the Board has delegated a power or function to a person under sub-section (1)—

- (a) the Board may give directions to the delegate with respect to the exercise of the power or the performance of the function; and
- (b) if the delegate has sub-delegated the power or function under sub-section (1A), the delegate—
 - (i) shall, if the Board has given a direction to the delegate under paragraph (a) with respect to the exercise of the power or the performance of the function, give a corresponding direction to the sub-delegate; and
 - (ii) may, subject to any direction given to the delegate by the Board under paragraph (a), give directions to the sub-delegate with respect to the exercise of the power or the performance of the function.”.

(2) An appointment to the Service made or purported to be made, before the commencement of this section, by a person acting pursuant to a delegation by the Board is, and shall be deemed to have been, for all purposes, as valid as if it had been made by the Board.

Repeal of section 18

12. Section 18 of the Principal Act is repealed.

Joint Council

13. Section 19A of the Principal Act is amended—

- (a) by omitting from sub-section (1) “and of Classification Committees”;
- and

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

Equal employment opportunity programs

14. Section 22B of the Principal Act is amended—

- (a) by inserting in sub-section (13) “, subject to such modifications (if any) as are prescribed,” after “shall”;
- (b) by omitting from paragraph (13) (d) “(7),”;
- (c) by omitting from sub-section (14) “and adaptations”; and
- (d) by omitting sub-section (15) and substituting the following sub-section:

“(15) In sub-sections (13) and (14), ‘modifications’ includes additions, omissions and substitutions.”

Industrial democracy plans

15. Section 22C of the Principal Act is amended—

- (a) by inserting in sub-section (12) “, subject to such modifications (if any) as are prescribed,” after “shall”;
- (b) by omitting from sub-section (13) “and adaptations” and “by the regulations”; and
- (c) by omitting sub-section (14) and substituting the following sub-section:

“(14) In sub-sections (12) and (13), ‘modifications’ includes additions, omissions and substitutions.”

Secretaries of Departments

16. Section 25 of the Principal Act is amended—

- (a) by omitting sub-sections (3), (5) and (5A); and
- (b) by omitting from sub-section (4) “Chairman” and substituting “Head of the Public Service Board”.

Delegation by Secretaries of Departments

17. Section 26 of the Principal Act is amended—

- (a) by omitting sub-section (3) and substituting the following sub-sections:

“(3) A delegation of a power or function by the Secretary of a Department under sub-section (1)—

- (a) may be absolute or conditional;
- (b) does not prevent the exercise of the power or the performance of the function by the Secretary;
- (c) subject to paragraph (d), continues in force notwithstanding the appointment of another person as the Secretary of the Department; and
- (d) may be revoked by instrument in writing signed by the Secretary for the time being of the Department.

“(3A) Where a Secretary has delegated a power or function to a person under sub-section (1), the Secretary may give directions to the delegate with respect to the exercise of the power or the performance of the function.”; and

- (b) by omitting sub-section (5).

Repeal of section 26A

18. (1) Section 26A of the Principal Act is repealed.

(2) A reference in any Act, in any instrument under an Act or in any industrial award to a Chief Officer shall, except in relation to matters that occurred before the commencement of this section, be read as a reference to the relevant Secretary.

(3) Where, immediately before the commencement of this section, a person was entitled to exercise a power or perform a function by virtue of—

- (a) being a Chief Officer under section 26A of the Principal Act; or
(b) holding, or performing all or part of the duties of, a prescribed office under that section,

the person may, after that commencement, continue to exercise the power or perform the function as if the power or function had been delegated to the person by the relevant Secretary under the *Public Service Act 1922*.

(4) Where, immediately before the commencement of this section, a person was entitled to exercise a power or perform a function by virtue of a delegation, authorisation or appointment made by a Chief Officer, the person may, after that commencement, continue to exercise the power or perform the function as if the delegation, authorisation or appointment had been made by the relevant Secretary under the *Public Service Act 1922*.

(5) Where sub-section (3) or (4) empowers a person to continue to exercise a power or function as if the power or function had been delegated to the person by the relevant Secretary or as if the relevant Secretary had authorised or appointed the person to exercise the power or perform the function, the relevant Secretary shall be deemed for all purposes to have so delegated the power or function or so authorised or appointed the person.

Repeal of Division 3 of Part III

19. (1) Division 3 of Part III of the Principal Act is repealed.

(2) A determination in force under section 32 of the Principal Act immediately before the commencement of this section shall be deemed to have been made under sub-section 33A (1A) of the *Public Service Act 1922*.

Interpretation

20. Section 33AAA of the Principal Act is amended—

- (a) by inserting after the definition of “Committee” in sub-section (1) the following definition:

“‘non-appellable promotion’ means a promotion under section 50 to an office having—

(a) a classification equal to or higher than the classification of Clerical Administrative Class 9; or

(b) a classification equivalent to a classification referred to in paragraph (a), being a classification prescribed, or included in a class of classifications prescribed, by the regulations,

being a promotion notified in the *Gazette* after the commencement of section 20 of the *Public Service Legislation (Streamlining) Act 1986*”;

(b) by omitting “or 50DA (8)” from sub-paragraph (b) (i) of the definition of “prescribed day” in sub-section (1) and substituting “, 50DA (8) or 50DB (8)”;

(c) by omitting paragraphs (4) (e) and (f) and substituting the following word and paragraph:

“or (e) the promotion against which the appeal was made lapses under regulations made under section 50E.”.

Application of merit principle, prohibition of patronage, &c.

21. Section 33 of the Principal Act is amended—

(a) by omitting from sub-paragraph (1) (b) (ii) “and other attributes” and substituting “, personal qualities and potential for development”;

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

“(2) Without limiting the generality of sub-section (1), powers under this Act shall be exercised without patronage or favouritism.”;

(c) by omitting from sub-section (3) “in accordance with procedures that preclude” and substituting “without”;

(d) by omitting from paragraph (3) (b) “and” and substituting “or”; and

(e) by adding at the end the following sub-section:

“(6) A reference in this section to the exercise of a power under this Act includes a reference to the making of a report or recommendation in relation to the exercise of such a power.”.

Notification of certain matters related to appointment, transfer, promotion or advancement

22. (1) Section 33A of the Principal Act is amended—

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

“(1A) Where a scale of rates of salary is applicable to an office, or offices included in a class of offices, the Board may, by instrument in writing published in the *Gazette*—

- (a) determine that an officer occupying that office, or an office included in that class of offices, shall, upon compliance with such conditions as are specified in the instrument, be paid salary at such rate in that scale as is specified or referred to in the instrument; and
- (b) determine that an officer occupying that office, or an office included in that class of offices, shall not be paid salary at a rate in that scale exceeding such rate as is specified or referred to in the instrument unless the officer has complied with such conditions as are specified in the instrument.”; and
- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) A qualification or condition set out in a notification under paragraph (1) (c) or (d), or a condition set out in an instrument under sub-section (1A), may be a qualification or condition that is defined or expressed by reference to the opinion of the Board, or the opinion of a person specified in the notification or instrument, in relation to a particular matter.”.

(2) Section 33A of the Principal Act is further amended—

- (a) by inserting after paragraph (1) (d) the following paragraph:
 - “(da) for the purpose of section 53, an examination or test in relation to offices included in a specified class of offices;”;
 - and
- (b) by omitting paragraph (1) (e) and substituting the following paragraph:
 - “(e) the circumstances in which a vacancy may be filled by a transfer or promotion under section 50DB or 53; or”.

Notification of vacancies in Senior Executive Service offices

23. Section 33AA of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) Sub-sections (1) and (2) do not apply to a vacancy in a Senior Executive Service office in a case where the vacancy occurred, after a previous vacancy in the office was filled by the appointment, promotion or transfer of a person to the office, without that person having started to perform the duties of the office but, if the Board so directs, the relevant Secretary shall comply with sub-section (2) in relation to the vacancy.”.

24. Section 33C of the Principal Act is repealed and the following section is substituted:

Unattached officers

“33C. (1) The Secretary of a Department may, with the consent in writing of an officer who holds an office in the Department, declare, in writing, that the officer shall, on a day specified in the declaration, become

an unattached officer and, if the Secretary does so, the office so held by the officer becomes vacant on the day so specified.

“(2) Except as otherwise directed by the Board under this or another provision of this Act, a person who is, or is deemed to be, an unattached officer of the Service is included in the Department in which the person last held an office.”.

25. Section 34 of the Principal Act is repealed and the following section is substituted:

Eligibility for appointment to the Service

“34. A person is not eligible for appointment to the Service unless the Board is satisfied that the person is a fit and proper person to be an officer of the Service.”.

Interpretation

26. Section 35 of the Principal Act is amended by omitting the definition of “Chairman”.

Appointment of Secretaries of Departments

27. Section 36 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “by instrument signed by him” and substituting “in writing”;
- (b) by omitting from sub-section (3) “unless he has received a report in writing from the Chairman” and substituting “unless the Prime Minister has received a report in writing from the Head of the Public Service Board”;
- (c) by omitting from sub-section (4) “Chairman” and substituting “Head of the Public Service Board”; and
- (d) by omitting from sub-section (5) “his” and substituting “the”.

Fixed-term appointments

28. Section 37 of the Principal Act is amended by omitting from sub-section (12) “unless he has received a report in writing from the Chairman” and substituting “unless the Prime Minister has received a report in writing from the Head of the Public Service Board”.

Superannuation benefits for fixed-term Secretaries of Departments

29. Section 38 of the Principal Act is amended—

- (a) by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) The Board may—

- (a) at the time when a relevant person is appointed to an office of Secretary under a fixed-term appointment within the meaning of section 37; or
- (b) as soon as practicable after the making of the appointment,

make a determination in writing in relation to the provision to the person of superannuation benefits or benefits in the nature of superannuation benefits.

“(4) Without limiting the generality of sub-section (3), a determination under that sub-section in relation to a relevant person may provide that the *Superannuation Act 1976* applies in relation to the person as if the person became an eligible employee within the meaning of that Act on a specified day, which may be on or after, or not earlier than 3 months before, the date of the determination, and where a determination so provides, the *Superannuation Act 1976* has effect accordingly.”; and

(b) by adding at the end the following sub-section:

“(6) The Board is not empowered to make a determination for the purposes of sub-section (3) except in accordance with arrangements approved by the Minister for Finance.”.

Acting appointments of Secretaries of Departments

30. (1) Section 39 of the Principal Act is amended—

- (a) by omitting from sub-sections (1) and (5) “Governor-General” and substituting “Prime Minister”;
- (b) by omitting from sub-section (1) “, by instrument, signed by him,” and substituting “, in writing,”; and
- (c) by omitting sub-section (4) and substituting the following sub-section:

“(4) The Prime Minister may at any time, in writing, terminate an appointment under sub-section (1).”.

(2) An appointment by the Governor-General under section 39 of the Principal Act that was in force immediately before the commencement of this section shall, after that commencement, be deemed to be an appointment by the Prime Minister under section 39 of the *Public Service Act 1922*.

Special appointments

31. Section 43 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “, after obtaining a report from the Secretary of the Department concerned,”; and
- (b) by omitting from sub-section (3) “report and”.

Superannuation benefits for fixed-term Senior Executive Service officers

32. Section 45 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) Without limiting the generality of sub-section (3), a determination under that sub-section in relation to a relevant person may provide that the *Superannuation Act 1976* applies in relation to the person as if the person became an eligible employee within the meaning of that Act on a specified

day, which may be on or after, or not earlier than 3 months before, the date of the determination, and where a determination so provides, the *Superannuation Act 1976* has effect accordingly.”.

33. (1) Section 47 of the Principal Act is repealed and the following section is substituted:

Appointments to be on probation

“47. (1) Subject to sub-section (2), the appointment of a person to the Service as an officer (other than a Secretary) shall, in the first instance, be an appointment on probation.

“(2) The Board may appoint a person to the Service without probation, but—

- (a) shall not so appoint a person who is not an Australian citizen, except in accordance with arrangements approved by the Prime Minister; and
- (b) shall not so appoint a person unless the Board is satisfied—
 - (i) after the person has undergone a medical examination approved by the Board, as to the officer’s health and physical fitness; or
 - (ii) that in the circumstances it is unnecessary to require the person to undergo a medical examination.

“(3) The Board may, at any time within the period of 6 months after an officer is appointed to the Service on probation, confirm the appointment.

“(4) The relevant Secretary may, at any time after an officer is appointed to the Service on probation and before the appointment is confirmed, terminate the appointment.

“(5) The relevant Secretary may, at any time after the end of the period of 6 months after an officer is appointed to the Service on probation, confirm the appointment.

“(6) Where, at the end of the period of 12 months after an officer is appointed to the Service on probation, the appointment has been neither confirmed nor terminated, the relevant Secretary shall, as soon as practicable, confirm or terminate the appointment.

“(7) Where, at the end of the period of 2 years after an officer is appointed to the Service on probation, the appointment has been neither confirmed nor terminated, the appointment shall (unless the officer is not an Australian citizen) be deemed to have been confirmed.

“(8) Where an officer appointed to the Service on probation holds a training office—

- (a) the reference in sub-section (5) to the period of 6 months after an officer is appointed to the Service shall be read as a reference to the period starting when the officer is appointed and ending when the officer completes the course of training concerned;

- (b) the reference in sub-section (6) to the period of 12 months after an officer is appointed to the Service shall be read as a reference to the period starting when the officer is appointed and ending 6 months after the officer completes the course of training concerned; and
- (c) the reference in sub-section (7) to the period of 2 years after an officer is appointed to the Service shall be read as a reference to the period starting when the officer is appointed and ending 12 months after the officer completes the course of training concerned.

“(9) The Board shall not, under sub-section (3), and the Secretary shall not, under sub-section (5) or (6), confirm the appointment to the Service of an officer unless the Board or Secretary, as the case may be, is satisfied, after the officer has undergone a medical examination approved by the Board, as to the officer’s health and physical fitness.

“(10) The Board shall not, under sub-section (3), and the Secretary shall not, under sub-section (5) or (6), confirm the appointment to the Service of an officer who is not an Australian citizen, except in accordance with arrangements approved by the Prime Minister.

“(11) A Secretary may, under sub-section (4) or (6), terminate an officer’s appointment to the Service on any of the following grounds:

- (a) that the Secretary is not satisfied, after receiving a report from an authorised medical practitioner, as to the officer’s health and physical fitness;
- (b) that the Secretary considers, after receiving a report from the officer’s supervisor or another appropriate officer, that the manner of the officer’s performance of duties has not been satisfactory;
- (c) that the Secretary considers that the officer is not a fit and proper person to remain an officer of the Service;
- (d) that the Secretary is satisfied that the officer is an excess officer;
- (e) in the case of an officer who is not an Australian citizen, that the Secretary is satisfied—
 - (i) that the person has been refused Australian citizenship;
 - (ii) that the person is unlikely to be granted Australian citizenship within a reasonable time; or
 - (iii) that the person is not seeking a grant of Australian citizenship with appropriate diligence.

“(12) An officer whose appointment has been terminated is not, unless the Board otherwise determines, eligible for appointment to the Service within the period of 12 months immediately after the termination.

“(13) In this section—

‘appointment’ includes re-appointment;

‘training office’ means an office that is specified in a determination made by the Board under sub-section 53A (1) as an office the occupant

of which is required to undergo a course of training lasting at least 12 months for the purpose of enabling the occupant to perform duties that require professional, technical or other knowledge.”.

(2) Where—

- (a) before the commencement of this section, a person was appointed to the Service on probation under section 47 of the Principal Act; and
- (b) immediately before that commencement, the person’s appointment had not been confirmed or annulled,

section 47 of the *Public Service Act 1922* as enacted by sub-section (1) of this section shall be deemed to have been in force, in relation to that person, on and from the day when the person was so appointed and the person shall be deemed to have been appointed to the Service on probation under section 47 as so deemed to have been in force.

(3) Where—

- (a) a person who was not an Australian citizen was engaged as an employee under section 82 of the *Public Service Act 1922* as in force before 1 July 1986, or engaged as a fixed-term employee under section 82AE of the *Public Service Act 1922*, on the understanding that the person would be appointed as an officer on being granted Australian citizenship; and
- (b) immediately before the commencement of this section, the person was still so engaged and had not been granted Australian citizenship,

section 47 of the *Public Service Act 1922* as enacted by sub-section (1) of this section shall be deemed to have been in force, in relation to that person, on and from the day when the person was so engaged, and the person shall be deemed to have been appointed to the Service on probation under section 47 as so deemed to have been in force.

34. (1) Section 47C of the Principal Act is repealed and the following section is substituted:

Re-appointment of unsuccessful election candidates

“47C. (1) Where the Board is satisfied that—

- (a) a person who was an officer—
 - (i) resigned in order to become a candidate for election as a member of a House of the Parliament of the Commonwealth or of a State, of the Legislative Assembly for the Northern Territory or of a prescribed legislative or advisory body for another Territory;
 - (ii) was a candidate at the election; and
 - (iii) failed to be elected; and
- (b) the resignation took effect not earlier than 6 months before the date on which nominations for the election closed,

the Board shall, upon application by the person within 2 months after the declaration of the result of the election, re-appoint the person to the Service to fill the office occupied by the person immediately before resigning or an equivalent office or, if such an office is not available, as an unattached officer having the same classification as the person had immediately before resigning.

“(2) The reference in sub-section (1) to the declaration of the result of the election shall, in relation to an election the result of which is challenged, be read as a reference to the determination of the challenge by a court of disputed returns or the lapsing of the challenge, whichever happens first.

“(3) Where—

(a) a person who resigned from the Service as mentioned in subparagraph (1)(a)(i) was appointed to the Service on probation and, at the time of the resignation, the person’s appointment had not been confirmed; and

(b) the person is re-appointed to the Service under this section,

section 47 applies in relation to the person as if the person had not resigned but, for the purpose of calculating periods for the purposes of that section, the period between the person’s resignation and the re-appointment under this section shall be disregarded.

“(4) In this section, ‘officer’ does not include a Secretary or an unattached Secretary.”.

(2) Section 47C of the *Public Service Act 1922* as enacted by sub-section (1) of this section applies in relation to any resignation of a person, before or after the commencement of this section, in order to become a candidate at an election, unless the result of the election was declared more than 2 months before that commencement.

Promotions to Senior Executive Service offices

35. Section 49B of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) For the purpose of satisfying itself in relation to the matters specified in paragraph (3)(a), the Board may, if it considers it appropriate, in relation to a vacancy in an office occurring, after a previous vacancy in the office was filled by the appointment, promotion or transfer of a person to the office, without that person having started to perform the duties of the office, have regard to the procedures followed in relation to the previous vacancy and, where it does so, the Board need not have regard to any procedures followed in relation to the first-mentioned vacancy.”.

36. (1) Section 49D of the Principal Act is repealed and the following section is substituted:

Day on which transfer or promotion takes effect

“49D. (1) The transfer of an officer under sub-section 49 (1) takes effect—

- (a) if the officer is not entitled to apply, or does not apply, under sub-section 52 (1), for permission to decline the transfer, or the officer does so apply and the Board or the relevant Secretary, as the case requires, notifies the officer, not later than the prescribed day, that permission is refused—on the prescribed day; or
- (b) if the officer applies under sub-section 52 (1) for permission to decline the transfer and the Board or the relevant Secretary, as the case requires, notifies the officer, after the prescribed day, that permission is refused—on the day when the officer is so notified.

“(2) The promotion of an officer under sub-section 49B (1) takes effect on the prescribed day, and salary at the rate applicable to the office concerned is payable to the officer on and from that day.”.

(2) Notwithstanding the repeal made by sub-section (1), section 49D of the Principal Act continues to apply in relation to promotions and transfers made before the commencement of this section.

Subdivision D not to apply

37. Section 49E of the Principal Act is amended by inserting “51,” after “sections”.

Transfers and promotions

38. Section 50 of the Principal Act is amended—

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

“(1) The Secretary of a Department shall not, except in prescribed circumstances, fill, by promotion, a vacant office in the Department (other than an office of Secretary or a Senior Executive Service office) unless the Secretary has caused notification of the vacancy to be given in the *Gazette*.”;
- (b) by omitting from sub-sections (3) and (4) “vacancy” (wherever occurring) and substituting “vacant office”; and
- (c) by omitting sub-section (6).

39. (1) Section 50A of the Principal Act is repealed and the following section is substituted:

Selection of officers for promotion

“50A. (1) For the purpose of exercising the power under sub-section 50 (3) or section 50DA or 50DB to promote an officer to fill a vacant office, a Secretary shall select the officer who is, in the opinion of the Secretary, the most efficient of the officers who have applied for promotion to the vacant office.

“(2) For the purpose of forming an opinion as to the most efficient of the officers who have applied for promotion to a vacant office, the Secretary shall have regard to—

- (a) the abilities, qualifications, experience, standard of work performance and personal qualities of each officer, to the extent that the Secretary considers that those matters are relevant to the performance of the duties of the office; and
- (b) the potential of each officer for further career development in the Service, and the ability of each officer to perform the duties of other offices in the Department of the same or equal classification, to the extent (if any) that the Secretary considers that those matters are relevant to the selection of an officer to hold the office.

“(3) A reference in sub-section (2) to the abilities, qualifications, experience, standard of work performance, personal qualities, potential for further career development in the Service, or ability to perform the duties of other offices in a Department is, in relation to an officer who is a returned soldier or who is or has been absent on specified defence service, a reference to the abilities, qualifications, experience, standard of work performance, personal qualities, potential for future career development in the Service, or ability to perform the duties of the offices concerned that, in the opinion of the Secretary, the officer would have had but for the absence of the officer on active service or on specified defence service.”

(2) Notwithstanding the repeal made by sub-section (1), section 50A of the Principal Act continues to apply in relation to—

- (a) the filling of a vacancy notified in the *Gazette* before the commencement of this section; and
- (b) the filling of a vacancy that was not notified in the *Gazette*, where the interviewing of applicants for promotion or transfer to the vacant office began before the commencement of this section.

Appeals

40. Section 50B of the Principal Act is amended—

- (a) by inserting in sub-section (1) “, subject to sub-sections (1A) and (1B),” after “may”; and
- (b) by inserting after sub-section (1) the following sub-sections:

“(1A) Except in prescribed circumstances, an officer is not entitled to appeal against a particular promotion unless the officer applied for that promotion.

“(1B) An officer is not entitled to appeal against a non-appellable promotion.”

41. (1) Sections 50D, 50DA, 50E, 50EA and 50EB of the Principal Act are repealed and the following sections are substituted:

Determination of appeals

“50D. (1) Where an appeal is or appeals are made under section 50B in respect of a promotion, the Committee shall form an opinion as to the most efficient of the officers concerned, namely the officer promoted and the officer or officers who has or have appealed.

“(2) For the purpose of forming an opinion as to the most efficient of the officers concerned, the Committee shall have regard to—

- (a) the abilities, qualifications, experience, standard of work performance and personal qualities of each officer, to the extent that the Committee considers that those matters are relevant to the performance of the duties of the office; and
- (b) if and only if the Secretary who made the promotion has indicated that, for the purpose of forming an opinion under section 50A, the Secretary had regard to the potential of officers for further career development in the Service, or the ability of officers to perform the duties of other offices in the Department of the same or equal classification—that matter.

“(3) A reference in sub-section (2) to the abilities, qualifications, experience, standard of work performance, personal qualities, potential for further career development in the Service, or ability to perform the duties of other offices in a Department is, in relation to an officer who is a returned soldier or who is or has been absent on specified defence service, a reference to the abilities, qualifications, experience, standard of work performance, personal qualities, potential for future career development in the Service, or ability to perform the duties of the offices concerned that, in the opinion of the Committee, the officer would have had but for the absence of the officer on active service or on specified defence service.

“(4) Where the Committee has formed an opinion as to the most efficient of the officers concerned, the Committee shall—

- (a) unless paragraph (b) applies—allow or disallow the appeal or appeals so as to give effect to its opinion; or
- (b) if the Committee has also formed the opinion that none of the officers concerned is capable of efficiently performing the duties of the office—disallow the appeal or appeals and cancel the promotion.

“(5) Where an appeal against a promotion is allowed—

- (a) the promotion is, by force of this sub-section, cancelled; and
- (b) the officer whose appeal is allowed is, by force of this sub-section, promoted to the office.

“(6) Where a promotion is cancelled under sub-section (4) or by force of sub-section (5), or an officer is promoted to an office by force of sub-section (5), the relevant Secretary shall cause notification of the cancellation, or of the promotion, to be given in the *Gazette*.

Review of non-appellable promotion decisions by Merit Protection and Review Agency

“50DAA. (1) An officer who applied unsuccessfully for a non-appellable promotion may, within the prescribed period, apply to the Agency for review of the promotion on the ground that it would be unreasonable for the promotion to stand because of—

- (a) a breach of section 33 in connection with the making of the promotion; or
- (b) a serious defect in the selection process.

“(2) An application for review of a promotion shall be in writing and shall include particulars of the alleged breach of section 33 or the alleged defect in the selection process.

“(3) Where an application is made to the Agency for review of a promotion, the Agency shall—

- (a) make such inquiries as it considers necessary to determine whether a recommendation should be made under sub-section (4) in relation to the promotion; and
- (b) make a decision in writing either—
 - (i) affirming the promotion; or
 - (ii) making a recommendation under sub-section (4) in relation to the promotion.

“(4) Where an application is made to the Agency for review of a promotion, the Agency shall, if it is satisfied that it would be unreasonable for the promotion to stand because of—

- (a) a breach of section 33 in connection with the making of the promotion; or
- (b) a serious defect in the selection process,

recommend to the Secretary who made the promotion that the promotion be cancelled.

“(5) The Agency shall cause a copy of its decision to be given to—

- (a) the officer who made the application;
- (b) the officer promoted; and
- (c) the Secretary who made the promotion.

“(6) Where the Agency recommends to the Secretary that a promotion be cancelled, the Secretary—

- (a) shall, having regard to the recommendation, reconsider the promotion; and
- (b) may cancel the promotion.

“(7) Where a Secretary cancels a promotion under sub-section (6)—

- (a) the officer promoted shall, for all purposes, be treated as having held the office concerned during the period beginning when the

promotion took effect and ending when the promotion is cancelled; and

- (b) upon the cancellation of the promotion, the Secretary shall transfer the officer to an office in the Secretary's Department having a classification that is the same as, or equal to, the classification that the officer had immediately before the promotion took effect, and, if necessary, the Secretary shall create such an office for the purpose.

“(8) The Agency shall refuse to consider or further consider an application for review of a promotion if the Agency is satisfied that the application is frivolous or vexatious or was not made in good faith.

“(9) Where 2 or more applications are made to the Agency for review of the same promotion, the Agency may consider those applications concurrently.

“(10) Division 7 of Part II of the Merit Protection Act applies in relation to a review under this section of a promotion in the same manner as it applies to a review of a decision under Division 3 of Part II of that Act.

Transfer or promotion on advice of Joint Selection Committee

“50DA. (1) Subject to sub-section (4) and to sub-section 50 (4) and section 50J, the Secretary of a Department in which an office (other than an office of Secretary or a Senior Executive Service office) is vacant may, instead of transferring or promoting an officer to fill the vacancy under section 50, transfer or promote an officer to fill the vacancy under this section.

“(2) A transfer or promotion of an officer under this section shall be a transfer or promotion made in accordance with the advice of a Joint Selection Committee.

“(3) Where a Secretary proposes that a vacancy be filled by a transfer or promotion under this section, the Secretary shall—

- (a) give notice in writing of the proposal to the organisation that is, in accordance with the regulations, the principal relevant staff organisation in relation to the office; and
- (b) if there is another relevant staff organisation or there are other relevant staff organisations—give notice in writing of the proposal to the other relevant staff organisation or organisations, such notice to include a statement to the effect that a relevant staff organisation may, by notice in writing to the Secretary before the expiration of the period prescribed by the regulations for the purposes of this paragraph, object to the proposal.

“(4) Where the principal relevant staff organisation consents to the proposal and—

- (a) there is no other relevant staff organisation; or

- (b) in a case to which paragraph (a) does not apply—no other relevant staff organisation objects to the proposal before the expiration of the period referred to in paragraph (3) (b),

the Secretary shall—

- (c) cause notification of the vacancy, being a notification indicating that the Secretary proposes that the vacancy be filled by a transfer or promotion under this section, to be given in the *Gazette*; and
- (d) arrange for the establishment of a Joint Selection Committee for the purpose of giving advice to the Secretary with respect to the filling of the vacancy.

“(5) A Joint Selection Committee shall be constituted for the purposes of this section by—

- (a) a Convenor nominated by the Agency;
- (b) a person nominated by the Secretary of the Department in which the vacancy exists; and
- (c) a person nominated by the organisation that is, in accordance with the regulations, the principal relevant staff organisation in relation to the office.

“(6) If, for any reason, a Secretary—

- (a) is unable to arrange for the establishment of a Joint Selection Committee for the purpose of giving advice to the Secretary with respect to the filling of the vacancy; or
- (b) having arranged for the establishment of a Joint Selection Committee for such a purpose, is unwilling to transfer or promote an officer in accordance with the advice of the Committee,

the Secretary may transfer or promote an officer to fill the vacancy under section 50.

“(7) A promotion of an officer under this section in accordance with the advice of a Joint Selection Committee—

- (a) shall be notified in the *Gazette* as a promotion made in accordance with the advice of a Joint Selection Committee; and
- (b) is not subject to appeal under section 50B or review under section 50DAA.

“(8) An officer who is transferred under sub-section (1) shall be given notice in writing of the transfer.

“(9) Where a Joint Selection Committee has been constituted for the purpose of giving advice to a Secretary with respect to the filling of a vacancy under this section but, before the Committee gives advice with respect to the filling of that vacancy, a member of the Committee ceases to take part in the deliberations of the Committee, the Committee shall be reconstituted by the remaining 2 members and another member appointed or nominated in accordance with sub-section (5).

“(10) For the purpose of giving advice to a Secretary with respect to the filling of a vacancy under this section, where the members of the Committee do not concur in advice—

- (a) if a majority of the members concur in the advice—the advice of the majority shall be deemed to be the advice of the Committee; and
- (b) in any other case—the advice of the Convenor of the Committee shall be deemed to be the advice of the Committee.

Transfer or promotion on advice of management-initiated Joint Selection Committee

“50DB. (1) Subject to sub-sections (2) and (3), sub-section 50 (4) and section 50J, the Secretary of a Department in which an office (other than an office of Secretary or a Senior Executive Service office) is vacant may, instead of transferring or promoting an officer to fill the vacancy under section 50 or 50DA, transfer or promote an officer to fill the vacancy under this section.

“(2) A vacancy shall not be filled by a transfer or promotion under this section except in circumstances of a kind specified by the Board in a notification under paragraph 33A (1) (e).

“(3) Where a Secretary proposes that a vacant office be filled by a transfer or promotion under this section, the Secretary shall—

- (a) cause notice of the vacancy, and of the Secretary’s proposal that the office be filled by a transfer or promotion under this section, to be given in the *Gazette*;
- (b) notify the organisation that is, under the regulations, the principal relevant staff organisation of the Secretary’s proposal that the office be filled by a transfer or promotion under this section; and
- (c) arrange for the establishment of a Joint Selection Committee for the purpose of giving advice to the Secretary with respect to the filling of the office.

“(4) A Joint Selection Committee shall be constituted for the purposes of this section by—

- (a) a Convenor nominated by the Agency;
- (b) a person nominated by the Secretary of the Department in which the vacant office exists; and
- (c) if, within the prescribed period after being notified under paragraph (3) (b), the principal relevant staff organisation nominates a person—that person.

“(5) A promotion or transfer of an officer made in accordance with the unanimous advice of the members of a Joint Selection Committee constituted for the purpose of this section shall be deemed to have been made under section 50DA, and a promotion so made is not subject to appeal under section 50B or review under section 50DAA.

“(6) Where a Joint Selection Committee constituted for the purposes of this section gives advice to a Secretary with respect to the filling of a vacant office and—

- (a) the Secretary promotes or transfers an officer to fill the vacant office otherwise than in accordance with the advice; or
- (b) the advice is not unanimous, but the Secretary transfers or promotes an officer to fill the vacant office,

the promotion or transfer shall be deemed to have been made under section 50, and a promotion so made is subject to appeal under section 50B or review under section 50DAA, as the case requires.

“(7) A promotion of an officer under this section shall be notified in the *Gazette*, and the notice in the *Gazette* shall state whether or not the promotion is subject to appeal under section 50B or review under section 50DAA.

“(8) An officer who is transferred as mentioned in this section shall be given notice in writing of the transfer.

“(9) Where a Joint Selection Committee has been constituted for the purpose of giving advice under this section but, before the Committee gives that advice, the Convenor ceases to take part in the deliberations of the Committee, the Committee shall be reconstituted by the remaining members or member and another Convenor nominated by the Agency.

“(10) Where a Joint Selection Committee has been constituted for the purpose of giving advice under this section but, before the Committee gives that advice, the member of the Committee nominated under paragraph (4) (b) ceases to take part in the deliberations of the Committee—

- (a) if, within the prescribed period after the member so ceases to take part, the Secretary nominates another person—the Committee shall be reconstituted by the remaining members or member and that other person; or
- (b) in any other case, if there are 2 members of the Committee remaining—the Committee shall be reconstituted by the remaining members.

“(11) Where a Joint Selection Committee has been constituted for the purpose of giving advice under this section but, before the Committee gives that advice, the member of the Committee nominated under paragraph (4) (c) (if any) ceases to take part in the deliberations of the Committee, the Secretary shall notify the principal relevant staff organisation that the member has ceased to take part in those deliberations and—

- (a) if, within the prescribed period after being so notified by the Secretary, the principal relevant staff organisation nominates another person—the Committee shall be reconstituted by the remaining members and that other person; or
- (b) in any other case—the Committee shall be reconstituted by the remaining members.

Procedure of Joint Selection Committee

“50DC. (1) A Joint Selection Committee established for the purpose of giving advice to a Secretary with respect to the filling of a vacant office under section 50DA or 50DB shall assess the claims of the applicants for promotion or transfer to the office in such manner as the Committee considers necessary to establish their relative efficiency.

“(2) A Joint Selection Committee shall conduct its proceedings with as little formality and technicality, and as quickly, as a proper consideration of the applications permits.

“(3) Where a Joint Selection Committee is reconstituted pursuant to sub-section 50DA (9) or 50DB (9), (10) or (11), the Committee as reconstituted may have regard to the evidence given, the argument adduced and the reasons for any decision given during proceedings before the Committee as previously constituted.

“(4) A transfer or promotion made under section 50DA or 50DB shall not be called in question because of a defect or irregularity in connection with the nomination of a member of the Joint Selection Committee.

“(5) A member of a Joint Selection Committee, while acting as such, is not subject to direction by any other person or by any body or authority other than a court.

Taking effect, &c., of promotions and transfers

“50E. (1) A promotion or transfer of an officer to an office takes effect as provided by the regulations.

“(2) Where a promotion under section 50 or 50DA of an officer to an office takes effect, salary at the rate applicable to that office is payable to the officer on and from the prescribed day.

“(3) Where, upon the determination of an appeal against the promotion under section 50 of an officer to an office, another officer is promoted to that office by force of sub-section 50D (5), salary at the rate applicable to that office is payable to that other officer on and from the prescribed day in respect of the first-mentioned promotion.”

(2) Notwithstanding the repeal made by sub-section (1)—

(a) section 50D of the Principal Act continues to apply in relation to—

(i) appeals against promotions to vacant offices the vacancies in which were notified; and

(ii) promotions notified,

before the commencement of this section; and

(b) section 50DA of the Principal Act continues to apply in relation to a Joint Selection Committee constituted before that repeal was made as if that repeal had not been made.

Cancellation of promotion or transfer

42. Section 50G of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Before the promotion or transfer of an officer to a vacant office in a Department takes effect, the Board, or the Secretary of the Department, may cancel the promotion or transfer.”.

Promotion appeal rights of certain officers

43. Section 50H of the Principal Act is amended—

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

“(1) This section applies to an officer who has been told by the relevant Secretary that the relevant Secretary is satisfied that the officer is an excess officer.”; and

(b) by omitting sub-sections (6) and (7) and substituting the following sub-section:

“(6) The making of an appeal under this section or section 50B by an officer to whom this section applies does not affect the operation of Division 8C.”.

Transfers of officers and employees between Departments

44. Section 51 of the Principal Act is amended by adding at the end the following sub-sections:

“(3) Where, in the opinion of the Board, it is necessary in the interests of the efficient administration of the Service to do so (including in a case to which section 76W applies), the Board may, after consulting with the Secretary of each of the Departments concerned—

(a) transfer an officer who holds an office, or is included, in a Department—

(i) to a specified office in another Department; or

(ii) to another Department as an unattached officer; or

(b) direct that an employee who is employed in a particular capacity in a Department be employed in an equivalent capacity in another Department.

“(4) Notwithstanding sections 49D and 50E, a transfer under paragraph (3) (a) takes effect as specified by the Board.”.

Officer may apply to decline transfer within Department, &c.

45. (1) Section 52 of the Principal Act is amended—

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

“(1) Where a decision is made to transfer an officer of a Department to another office in the Department, the officer may apply for permission to decline the transfer—

- (a) where the relevant Secretary made, or was personally involved in the making of, the decision—to the Board; or
 - (b) in any other case—to the relevant Secretary,
- and the Board or the Secretary may permit the officer to decline the transfer without prejudice to the officer's right of future promotion or transfer.

“(2) An application under sub-section (1) shall be made in writing and within the prescribed period.”; and

- (b) by omitting from sub-section (3) “promotion or” (wherever occurring).

(2) Section 52 of the Principal Act is further amended by omitting from sub-section (4) “and 8B and the *Commonwealth Employees (Redeployment and Retirement) Act 1979*,” and substituting “, 8B and 8C.”

(3) Notwithstanding the amendments made by sub-section (1), section 52 of the Principal Act continues to apply in relation to promotions or transfers made before the commencement of this section.

Transfers and promotions to specified offices may be made in accordance with order of passing examinations

46. Section 53 of the Principal Act is amended—

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

“(1) Where—

- (a) in circumstances specified in a notification under paragraph 33A (1) (e) in relation to a class of offices, there is a vacancy in an office or offices included in that class; and
- (b) an examination is specified in a notification under paragraph 33A (1) (da) in relation to that class of offices,

then, if the Secretary of the Department in which the vacant office exists or the vacant offices exist—

- (c) if only one officer has passed the examination and is otherwise eligible for transfer or promotion to that office—transfers or promotes that officer to that office or to one of those offices; or
- (d) if 2 or more officers have passed the examination and are otherwise eligible for transfer or promotion to that office or those offices—transfers or promotes those officers to that office or those offices in accordance with the order of merit in which they passed the examination,

the transfer or promotion, or each of the transfers or promotions, shall be deemed not to have been made under section 50 but to have been made under this section.”;

- (b) by omitting sub-section (2); and

- (c) by omitting sub-section (4) and substituting the following sub-section:

“(4) In this section—

- (a) ‘examination’ includes a test; and
(b) a reference to passing an examination includes a reference to completing satisfactorily any task required to be performed for the purposes of assessment.”.

Promotion of officers who complete courses of training for special positions

47. Section 53A of the Principal Act is amended by omitting from sub-section (8) “the Permanent Head” and substituting “a Secretary”.

Interpretation

48. Section 55 of the Principal Act is amended by omitting from sub-section (1) the definition of “Chief Officer”.

Meaning of failure to fulfil duty as officer

49. Section 56 of the Principal Act is amended by inserting after paragraph (e) the following paragraph:

“(ea) the officer engages in conduct (including patronage, favouritism or discrimination) in breach of section 33;”.

Disciplinary action

50. (1) Section 61 of the Principal Act is amended—

- (a) by omitting sub-section (1);
(b) by omitting from sub-sections (2) and (3) “Chief Officer” (wherever occurring) and substituting “relevant Secretary”; and
(c) by omitting from sub-section (2) “, whether by reason of his consideration of a report furnished under sub-section (1) or otherwise,”.

(2) Subdivision C of Division 6 of Part III of the *Public Service Act 1922* applies, after the commencement of this section, as if—

- (a) a reference to a charge, or to an officer being charged under section 61, included a reference to a charge made, or to an officer having been charged under that section, before that commencement, unless the charge was finally disposed of before that commencement; and
(b) a reference to an officer having failed to fulfil the officer’s duty as an officer included a reference to a failure that occurred before that commencement.

Inquiries into misconduct

51. (1) Section 62 of the Principal Act is amended—

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

“(1) Subject to sub-section (2), where an officer is charged with misconduct under section 61, an inquiry shall, without undue delay, be held into the charge by the relevant Secretary or an officer appointed for the purpose by the relevant Secretary.”; and

- (b) by omitting from paragraph (6) (a) “\$40” (wherever occurring) and substituting “\$500”.

(2) An inquiry that, before the commencement of this section, had begun under section 62 of the Principal Act may, after that commencement, be continued and completed by the person required under that section to hold the inquiry as if the amendment made by paragraph (1) (a) of this section had not been made.

Convictions by courts

52. Section 63 of the Principal Act is amended by omitting from sub-sections (1) and (4) “Chief Officer” (wherever occurring) and substituting “relevant Secretary”.

Suspension

53. Section 63B of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Chief Officer” (wherever occurring) and substituting “relevant Secretary”; and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) The relevant Secretary shall not suspend an officer under paragraph (1) (d) without first giving the officer an opportunity to be heard unless, in the opinion of the relevant Secretary, it would not be appropriate in the particular circumstances to give the officer such an opportunity.”.

Removal and variation of suspension

54. Section 63C of the Principal Act is amended—

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

“(a) the relevant Secretary may—

- (i) at any time, upon application by the officer or otherwise, remove the suspension; or
- (ii) if the relevant Secretary is satisfied that the officer is suffering or has suffered hardship—subject to any determination under section 82D, direct that the officer be paid the whole or part of the officer’s salary for the whole or part of the period of the officer’s suspension; and”;

- (b) by omitting from paragraph (2) (b) and sub-sections (3), (4), (6), (7) and (8) “Chief Officer” (wherever occurring) and substituting “relevant Secretary”; and

- (c) by omitting from paragraph (6) (b) “the” (first occurring) and substituting “an”.

Appeals

55. (1) Section 63D of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) A reference in this section to a decision in respect of an officer shall be read as a reference to a direction given in respect of the officer under sub-section 62 (6) or 63 (1), not being—

- (a) a direction under sub-section 62 (6) that there be taken, in respect of the officer, action by way of—
- (i) admonishing the officer;
 - (ii) causing a sum not exceeding \$50 to be deducted from the officer’s salary; or
 - (iii) transferring the officer to an office at the same locality, being an office for which the officer is qualified and which has the same classification as the officer; or
- (b) a direction under sub-section 63 (1) that there be taken, in respect of the officer, action by way of transferring the officer to an office at the same locality, being an office for which the officer is qualified and which has the same classification as the officer.”.

(2) Section 63D of the Principal Act continues to apply in relation to a direction given under sub-section 62 (6) or 63 (1) of that Act before the commencement of this section as if the amendment made by sub-section (1) of this section had not been made.

Repeal of section 63H

56. Section 63H of the Principal Act is repealed.

Imprisonment

57. Section 63R of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) Where an officer is imprisoned by reason of having been convicted of an offence or is in custody awaiting trial for an offence, the relevant Secretary or, in the case of an officer referred to in Subdivision B, the Board may, subject to any determination under section 82D, if the relevant Secretary or the Board, as the case may be, is satisfied that the officer is suffering or has suffered hardship, direct, notwithstanding sub-section (1), that the officer be paid the whole or part of the officer’s salary for the whole or part of that period of imprisonment or custody.”.

Application to unattached officers performing duty in Department

58. Section 63S of the Principal Act is amended by omitting from sub-paragraph (4) (b) (ii) “\$40” and substituting “\$500”.

Repeal of section 63U

59. Section 63U of the Principal Act is repealed.

Attachment of salaries of officers

60. Section 64 of the Principal Act is amended by omitting “Chief Officer” from the definition of “Paying Officer” in sub-section (18) and substituting “Secretary”.

Forfeiture of office

61. Section 66A of the Principal Act is amended—

- (a) by omitting from sub-section (1) “prepaid registered post” and substituting “security post”; and
- (b) by omitting from sub-sections (3) and (5) “pre-paid registered post” and substituting “security post”.

62. (1) Section 66B of the Principal Act is repealed and the following section is substituted:

Re-appointment of officers deemed to have retired under section 66A

“66B. (1) A person who is deemed to have retired from the Service in accordance with sub-section 66A (2) or (4) may apply to the relevant Secretary, in writing, for re-appointment to the Service.

“(2) A Secretary to whom an application is made under sub-section (1) shall—

- (a) if the Secretary is satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent, re-appoint the applicant to the Service to fill—
 - (i) the office occupied by the applicant immediately before the applicant was deemed to have retired from the Service, or an equivalent office;
 - (ii) if such an office is not available—an available office as nearly as possible equivalent to the office occupied by the applicant as mentioned in sub-paragraph (i); or
 - (iii) with the consent in writing of the person—another office; or
- (b) if the Secretary is not so satisfied—refuse the application.

“(3) Where a Secretary refuses an application—

- (a) the Secretary shall notify the applicant in writing accordingly, and furnish to the applicant and the Board the reasons for the refusal; and
- (b) an application may be made to the Agency for review of the decision of the Secretary to refuse the application.

“(4) A decision under sub-section (2) to refuse an application may be reviewed under section 43 of the Merit Protection Act.

“(5) Where a person who is deemed to have retired from the Service in accordance with sub-section 66A (2) or (4) is re-appointed to the Service under this section, the person shall be deemed, during the period commencing on the day immediately following the day on which the person is so deemed to have retired from the Service and ending on the day immediately preceding the day on which the person was so re-appointed, to have continued in the Service and to have been absent from duty on leave of absence without pay, and the relevant Secretary shall determine whether that period, or any part of that period, is to form part of the officer’s period of service for any purposes under this Act or any other Act (other than the *Superannuation Act 1976*) and, if so, the purposes for which it is to form part of the period of the officer’s service.

“(6) In this section, ‘relevant Secretary’, in relation to a person who is deemed to have retired from the Service in accordance with sub-section 66A (2) or (4), means the Secretary of the Department in which the person held an office, or was included, immediately before being deemed to have so retired or, if that Department has ceased to exist, the Secretary of such Department as the Board directs.”.

(2) Notwithstanding the repeal made by sub-section (1), section 66B of the Principal Act continues to apply in relation to any application made to the Board under that section before that repeal took effect.

Leave of absence for recreation

63. Section 68 of the Principal Act is amended by omitting from sub-section (1) and paragraph (7) (b) “Chief Officer” and substituting “relevant Secretary”.

Payment in lieu of recreation leave for certain officers

64. Section 68B of the Principal Act is amended by omitting from sub-sections (2) and (3) “Chief Officer” and substituting “relevant Secretary”.

Payment to dependants on death

65. Section 68C of the Principal Act is amended by omitting from sub-sections (2), (3) and (4) “Chief Officer” (wherever occurring) and substituting “relevant Secretary”.

Leave of absence on account of illness

66. Section 70 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Chief Officer” and substituting “relevant Secretary”; and
- (b) by omitting from sub-section (4) “a Chief Officer” and substituting “the relevant Secretary”.

Other leave of absence

67. Section 71 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Chief Officer” and substituting “relevant Secretary”; and

- (b) by omitting from sub-paragraph (4) (c) (ii) “Chief Officers” and substituting “Secretaries”.

Repeal of section 75A

68. (1) Section 75A of the Principal Act is repealed.

(2) Notwithstanding the repeal effected by sub-section (1), section 75A of the Principal Act continues to apply in relation to a person who was a former officer of the Northern Territory Service within the meaning of that section.

Termination of appointment

69. Section 76E of the Principal Act is amended by omitting from sub-section (3) “Chairman” and substituting “Head of the Public Service Board”.

70. After section 76F of the Principal Act the following section is inserted:

Special benefits available to retiring unattached Secretaries

“76FA. (1) The Board may give notice in writing to an unattached Secretary that if the unattached Secretary retires from the Service within the period specified in the notice he or she will be entitled to a specified benefit in accordance with a determination under section 82D.

“(2) Where notice is given to an unattached Secretary under sub-section (1)—

- (a) the unattached Secretary may retire from the Service within the period specified in the notice notwithstanding that he or she is not entitled to retire from the Service under section 76B; and
- (b) if the unattached Secretary retires from the Service within the period specified in the notice—
 - (i) he or she becomes entitled to the benefit specified in the notice; and
 - (ii) he or she shall be deemed for all purposes to have been compulsorily retired from the Service.

“(3) In this section, ‘unattached Secretary’ does not include an unattached Secretary who, immediately before becoming an unattached Secretary, held an office of Secretary in relation to which section 9 applied.”.

71. Section 76H of the Principal Act is repealed and the following section is substituted:

Interpretation

“76H. In this Division, ‘Appeal Committee’ means a Redeployment and Retirement Appeal Committee constituted under Subdivision D of Division 2 of Part II of the Merit Protection Act.”.

Repeal of section 76K

72. Section 76K of the Principal Act is repealed.

Redeployment and retirement of Senior Executive Service officers

73. Section 76L of the Principal Act is amended—

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

“(1) Where, in relation to a Senior Executive Service officer of a particular classification, the Board, after having taken reasonable steps to identify Senior Executive Service offices—

- (a) that are of the same or equal classification;
- (b) to which the officer could be transferred or the duties of which the officer could be directed to perform; and
- (c) the duties of which the officer could, in the opinion of the Board, perform efficiently,

is satisfied that the services of the officer cannot reasonably be used in the Service in the performance of the duties of, or duties appropriate to, a Senior Executive Service office of the same or equal classification, the Board may give notice to the officer under sub-section (3).”;

(b) by omitting from sub-section (2) “can or could, within a reasonable time,” and substituting “could”;

(c) by omitting paragraphs (3) (a) and (b) and substituting the following paragraphs:

- “(a) the officer is assigned to a specified office of a lower classification;
- (b) the officer is to become an unattached officer of a lower classification or, being an unattached officer, is to have a lower classification; or
- (c) the officer is to be retired from the Service.”;

(d) by omitting sub-sections (7) and (8) and substituting the following sub-section:

“(7) A notice given to an officer under sub-section (3) takes effect as provided by the regulations.”;

(e) by omitting from sub-section (10) “, sub-section (6) and paragraphs (7) (c) and (8) (b)” and substituting “and sub-section (6)”;

(f) by omitting from sub-section (10) “paragraph (1) (a)” and substituting “sub-section (1)”.

Appeal to Appeal Committee

74. Section 76M of the Principal Act is amended by omitting sub-sections (1) and (2).

Retirement with consent of officer on grounds of invalidity

75. Section 76N of the Principal Act is amended by omitting from sub-section (1) “a declared officer should, in consequence” and substituting “an officer should, because”.

76. Section 76P of the Principal Act is repealed and the following section is substituted:

Unattachment of Senior Executive Service officers

“76P. (1) Where an authorised medical practitioner has recommended that an officer should, because of physical or mental incapacity, be redeployed to perform other duties or retired from the Service, the Board may, by instrument in writing, declare that the officer shall, on a specified day, become an unattached officer and, if the Board does so, the office held by the officer becomes vacant on that day.

“(2) As soon as practicable after a declaration is made under sub-section (1) in respect of an officer, a copy of the instrument of declaration shall be given to the officer.”.

Repeal of section 76Q

77. Section 76Q of the Principal Act is repealed.

78. After Division 8B of Part III of the Principal Act the following Division is inserted:

“Division 8C—Redeployment and retirement of officers other than Secretaries of Departments and Senior Executive Service officers

Interpretation

“76S. (1) In this Division, unless the contrary intention appears—

‘Appeal Committee’ means a Redeployment and Retirement Appeal Committee constituted under Subdivision D of Division 2 of Part II of the Merit Protection Act;

‘continuing employee’ has the same meaning as in Division 10;

‘excess officer’ includes a person who would be an excess officer as defined in sub-section 7 (3) if references in that sub-section to officers included references to persons who are officers within the meaning of this Division;

‘fixed-term employee’ has the same meaning as in Division 10;

‘officer’ means an officer, other than a Secretary, an unattached Secretary or a Senior Executive Service officer, and includes a continuing employee who has been an employee for more than one year, but does not include an officer whose appointment to the Service on probation has not been confirmed;

‘overseas employee’ has the same meaning as in Division 10;

‘short-term employee’ has the same meaning as in Division 10.

“(2) For the purposes of this Division, an officer is inefficient if and only if the officer 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 officer 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 or 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 or instructions relating to the manner of performance of similar duties.

“(4) A reference in sub-section (3) to similar duties, in relation to an officer holding an office or included in a Department, is a reference to similar duties that other officers of that Department are required to perform.

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

- (a) the officer 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 held by the officer.

“(6) A reference in sub-section (5) to an essential qualification, in relation to an officer, 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 officer to practise, exercise or perform in the course of his or her employment.

Power to reduce officer's classification

“76T. (1) The power conferred by this Division on a Secretary to reduce an officer's classification is a power—

- (a) in the case of a person who holds an office, or is included, in the Secretary's Department—to assign the person to an office of a lower classification in the Department; or
- (b) in the case of a continuing employee employed in a particular capacity in the Secretary's Department—to employ the employee in a lower capacity in the Department.

“(2) The power conferred by this Division on the Board to reduce an officer's classification is a power—

- (a) in the case of a person who holds an office, or is included, in a Department—
 - (i) to assign the person to an office of a lower classification in that or another Department; or
 - (ii) to declare the person to be an unattached officer of a lower classification or, being an unattached officer, to have a lower classification and, in either case, to direct that the person is included in that or another Department; or
- (b) in the case of a continuing employee employed in a particular capacity in a Department—to direct that the employee be employed in a lower capacity in that or another Department.

Retirement upon or after attaining minimum retiring age

“76U. (1) An officer who has attained the minimum retiring age is entitled to retire from the Service at any time at which the officer desires to do so.

“(2) In sub-section (1)—

‘minimum retiring age’, in relation to an officer, means—

- (a) if the officer is included in a class of officers in respect of whom the minimum retiring age is fixed by the regulations—the age so fixed; or
- (b) in the case of any other officer—the age of 55 years;

‘officer’ includes—

- (a) an officer whose appointment to the Service on probation has not been confirmed; and
- (b) a short-term employee, a fixed-term employee or an overseas employee.

Retirement on ground of age

“76V. (1) Subject to sub-section (2), an officer shall, by force of this sub-section, be retired from the Service upon attaining the maximum retiring age.

“(2) Where the relevant Secretary is of the opinion that it is desirable, in the interests of the Commonwealth, that an officer who has not attained the maximum retiring age should continue, after attaining that age, in employment, and the officer is able and willing so to continue, the relevant Secretary may determine, in writing, that sub-section (1) does not apply to the officer.

“(3) The relevant Secretary may, at the time of making, or at any time after making, a determination under sub-section (2) in respect of an officer, determine that the officer shall retire from the Service upon attaining a specified age or upon the expiration of a specified period and, where such a determination is made, the relevant Secretary may, at any time before the officer attains that age or before the expiration of the period so determined, vary the determination.

“(4) In this section—

‘maximum retiring age’, in relation to an officer, means—

- (a) if the officer is included in a class of officers in respect of whom a maximum retiring age, being an age less than 65 years, is fixed by the regulations—the age so fixed; or
- (b) in the case of any other officer—the age of 65 years;

‘officer’ includes—

- (a) an officer whose appointment to the Service on probation has not been confirmed; and
- (b) a short-term employee, a fixed-term employee or an overseas employee.

Powers of Secretary and Board

“76W. (1) Where the relevant Secretary is satisfied of a relevant matter in relation to an officer, the relevant Secretary may, having considered whether it would be in the interests of the efficient administration of the Secretary’s Department to transfer the officer under section 50, subject to sub-section (2), by notice in writing given to the officer, reduce the officer’s classification or retire the officer from the Service.

“(2) Where—

(a) a Secretary—

- (i) has been unable to find alternative suitable employment for an excess officer in the Secretary’s Department; and
- (ii) proposes to exercise the power under sub-section (1) in relation to the officer; and

(b) the officer has not consented to the exercise of that power, the Board shall take such action as is reasonable to find alternative suitable employment for the officer in the Service, and the Secretary shall not exercise the power under sub-section (1) in relation to the officer unless the Board is satisfied that it would not be in the interests of the efficient administration of the Service to transfer the officer under section 51 to another Department.

“(3) Where the Board is—

- (a) satisfied of a relevant matter in relation to an officer; and
- (b) satisfied that it would be in the interests of the efficient administration of the Service to do so,

the Board may, having considered whether it would be in the interests of the efficient administration of the Service to transfer the officer under section 51, by notice in writing given to the officer, reduce the officer’s classification.

“(4) The powers conferred on a Secretary or the Board by this section are subject to any applicable industrial award.

“(5) A notice given to an officer under this section takes effect as provided by the regulations.

“(6) In this section, ‘relevant matter’, in relation to an officer, means any of the following matters:

- (a) that an officer is unable to perform his or her duties, or other duties appropriate to the officer’s classification, because of physical or mental incapacity;
- (b) that an officer is inefficient;
- (c) that an officer is not qualified to perform his or her duties;
- (d) that an officer is an excess officer.

Board may issue administrative instructions and directions

“76X. (1) The Board may cause to be published in the *Gazette* written administrative instructions, not inconsistent with this Act, in relation to the exercise of powers conferred on Secretaries by this Division.

“(2) The Board may, by notice in writing, give to a Secretary directions in relation to the exercise of powers conferred on Secretaries by this Division.

“(3) A Secretary exercising, or proposing to exercise, a power conferred by this Division—

- (a) shall comply with any administrative instructions expressed to be binding on Secretaries and with any directions given to the Secretary under sub-section (2) that are expressed to be binding; and
- (b) shall have regard to any other administrative instructions, and to any other directions given to the Secretary under sub-section (2).

Unattachment of officers

“76Y. (1) Where an authorised medical practitioner has recommended that an officer should, because of physical or mental incapacity, be redeployed to perform other duties or retired from the Service, the relevant Secretary may, by instrument in writing, declare that the officer shall, on a specified day, become an unattached officer and, if the relevant Secretary does so, the office held by the officer becomes vacant on that day.

“(2) As soon as practicable after a declaration is made under sub-section (1) in respect of an officer, a copy of the instrument of declaration shall be given to the officer.

Appeals

“76Z. (1) An officer to whom a notice under section 76W has been given (not being an officer who, before receiving the notice, consented in writing to the giving of the notice) may, within the prescribed period after receiving the notice, appeal to an Appeal Committee against the giving of the notice, on the ground that the reduction in the officer’s classification, or the retirement of the officer, as the case requires, would be unreasonable.

“(2) Where an officer appeals to an Appeal Committee against the giving of a notice, an Appeal Committee shall hear and determine the appeal and may—

- (a) confirm the notice; or
- (b) revoke the notice.”.

79. Section 77 of the Principal Act is repealed and the following sections are substituted:

Interpretation

“77. In this Division, ‘State’ includes a Territory.

State officer not disqualified from employment in the Service

“77A. The fact that a person is an officer of the Public Service of a State shall not disqualify the person from also executing the duties of an office in the Australian Public Service.”.

Arrangements with State for services of State officer

80. Section 78 of the Principal Act is amended—

- (a) by omitting “Governor-General” (wherever occurring) and substituting “Prime Minister”; and
- (b) by omitting “the Governor in Council” (wherever occurring) and substituting “an appropriate authority”.

Repeal of section 79

81. Section 79 of the Principal Act is repealed.

Agreement with State for performance of State duties by officer of the Service

82. Section 80 of the Principal Act is amended—

- (a) by omitting “Governor-General” (wherever occurring) and substituting “Prime Minister”;
- (b) by omitting “the Governor in Council” (wherever occurring) and substituting “an appropriate authority”; and

- (c) by omitting “a State” (second occurring) and substituting “the State”.

Arrangements with State as to pension, &c., where officer employed in dual capacities

83. Section 81 of the Principal Act is amended—

- (a) by omitting “Governor-General” and substituting “Prime Minister”;
and
(b) by omitting “the Governor in Council” and substituting “an appropriate authority”.

84. After Division 9 of Part III of the Principal Act the following Division is inserted:

“Division 9A—Transfer of persons into or out of the Service

Interpretation

“81A. In this Division, unless the contrary intention appears—

‘officer’ includes an employee;

‘terms and conditions’ includes terms or conditions relating to salary, pay or allowances, appointment on probation, long service leave or other leave, or tenure, but does not include terms or conditions relating to superannuation.

Appointment or employment of persons where functions to be performed by Commonwealth, &c.

“81B. (1) Where the Prime Minister certifies in writing that a function that has been performed otherwise than by persons appointed or employed under this Act is to be performed by persons appointed or employed under this Act, the Board may, notwithstanding any other provision of this Act, appoint to the Service, or direct the employment in the Service of, persons who have been involved in the performance of the function.

“(2) Where the Prime Minister certifies in writing that a function that has been performed on behalf of the Commonwealth or a Commonwealth authority otherwise than by persons appointed or employed under this Act is to be performed on behalf of the Commonwealth or a Commonwealth authority by persons appointed or employed under this Act, the Board may, by declaration in writing published in the *Gazette*, declare that specified persons or classes of persons who have been involved in the performance of that function are appointed as officers of the Service or employed as employees in the Service.

“(3) Where, after having received a report from the Board, the Prime Minister certifies in writing that it is in the interests of the Commonwealth for specified persons, or a specified class of persons (being persons employed by or on behalf of the Commonwealth otherwise than under this Act, or employed by a Commonwealth authority), to be available for appointment

to or employment in the Service under this section, the Board may, by declaration in writing published in the *Gazette*, declare that persons specified in the declaration, or included in a class of persons so specified (being some or all of the persons specified, or included in a class of persons specified, in the Prime Minister's certificate), are appointed as officers of the Service or employed as employees in the Service.

“(4) A declaration under sub-section (2) or (3) has effect according to its terms on and from the day specified in the declaration for the purposes of this sub-section.

“(5) For the purpose of facilitating a transfer of persons into the Service under this section, the Board may, notwithstanding anything in any other provision of this Act or in any other law (other than an industrial award), determine any special terms or conditions of employment that are to apply to the persons.

Transfer of persons where functions to be performed by Commonwealth authority

“81C. (1) Where the Prime Minister certifies in writing that a function that has been performed by persons appointed or employed under this Act is to be performed by a Commonwealth authority, the Board may, by declaration in writing published in the *Gazette*, declare that specified officers or classes of officers are in the employment of the Commonwealth authority.

“(2) An officer specified, or included in a class of officers specified, in a declaration under sub-section (1)—

- (a) on the day specified in the declaration for the purpose of this sub-section, ceases to be an officer; and
- (b) from and including that day, is employed by the Commonwealth authority specified in the declaration.

“(3) For the purpose of facilitating a transfer of persons into the employment of a Commonwealth authority, the Commonwealth authority may, notwithstanding anything in any other law (other than an industrial award), determine any special terms or conditions of employment that are to apply to the persons.”

Repeal of Division 9F of Part III

85. (1) Division 9F of Part III of the Principal Act is repealed.

(2) Notwithstanding the repeal made by sub-section (1), Division 9F of Part III of the Principal Act continues to apply in relation to a class of persons in relation to which that Division applied immediately before the commencement of this section as if that repeal had not been made.

Employment of fixed-term employees

86. Section 82AE of the Principal Act is amended—

- (a) by adding at the end of sub-paragraph (2) (a) (ii) “or”;
- (b) by omitting from the end of paragraph (2) (b) “or”; and

- (c) by omitting paragraph (2) (c).

Termination of employment

87. Section 82AH of the Principal Act is amended—

- (a) by omitting from sub-section (3) “to whom the *Commonwealth Employees (Redeployment and Retirement) Act 1979* applies” and substituting “who is an officer within the meaning of Division 8C”;
- (b) by omitting paragraph (3) (h) and substituting the following paragraph:
- “(h) is an employee to whom sub-section (4) applies.”; and
- (c) by adding at the end the following sub-section:

“(4) An employee is an employee to whom this sub-section applies if—

- (a) a court has, after 15 September 1980, convicted the employee of a criminal offence or found, without recording a conviction, that the employee has committed such an offence; and
- (b) 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.”.

88. (1) Section 82B of the Principal Act is repealed and the following section is substituted:

Employment of unsuccessful election candidates

“82B. (1) Where the Board is satisfied that—

- (a) a person who was an employee—
- (i) resigned in order to become a candidate for election as a member of a House of the Parliament of the Commonwealth or of a State, of the Legislative Assembly for the Northern Territory or of a prescribed legislative or advisory body for another Territory;
- (ii) was a candidate at the election; and
- (iii) failed to be elected; and
- (b) the resignation took effect not earlier than 6 months before the date on which nominations for the election closed,

the Board shall, upon application by the person within 2 months after the declaration of the result of the election, employ the person in the same or a similar capacity with the same rate of pay as that payable to the person immediately before resigning.

“(2) The reference in sub-section (1) to the declaration of the result of the election shall, in relation to an election the result of which is challenged, be read as a reference to the determination of the challenge by a court of disputed returns or the lapsing of the challenge, whichever happens first.”.

(2) Section 82B of the *Public Service Act 1922* as enacted by sub-section (1) of this section applies in relation to any resignation of a person, before or after the commencement of this section, in order to become a candidate at an election, unless the result of the election was declared more than 2 months before that commencement.

Determinations

89. Section 82D of the Principal Act is amended—

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

“(2) Subject to paragraph (3) (b), where a determination under this section is inconsistent with—

- (a) a provision of this Act or the regulations;
- (b) a provision of, or a determination under, the *Remuneration Tribunals Act 1973*; or
- (c) a provision of another Act,

(whether enacted or made before or after the commencement of this Division), the provision or determination referred to in paragraph (a), (b) or (c) prevails and the determination under this section is, to the extent of the inconsistency, of no effect.”;

(b) by inserting after sub-paragraph (4)(a)(iv) the following sub-paragraph:

“(iva) the reckoning as service in the Service, for specified purposes of this Act or any other Act other than the *Superannuation Act 1976*, of the period between the resignation of an officer or employee as mentioned in sub-paragraph 47C (1) (a) (i) or 82B (1) (a) (i) and the re-appointment or employment of the officer or employee under sub-section 47C (1) or 82B (1), as the case may be.”;

(c) by inserting after sub-paragraph (4)(a)(vi) the following sub-paragraph:

“(via) the payment of the whole or part of an officer’s salary during a period while the officer is suspended, imprisoned or in custody.”;

(d) by omitting sub-paragraphs (4) (a) (xii) and (xiii) and substituting the following sub-paragraph:

“(xii) the provision of benefits to officers whose salary would, but for the determination, be reduced by reason of action taken under Division 8A, 8B or 8C of Part III or to persons who cease to be officers or cease to perform duties in the Service by reason of action taken, or retirement in accordance with, a provision of one of those Divisions; and”;

- (e) by omitting sub-sections (10) and (11) and substituting the following sub-sections:

“(10) The determinations made in each calendar year (including determinations amending or revoking other determinations) shall, subject to sub-section (10A), be numbered in regular arithmetical series, beginning with the number 1, as nearly as possible in the order in which they are made.

“(10A) The Board may, if it thinks fit, number determinations relating to different subject matters in separate regular arithmetical series, each beginning with the number 1.

“(11) A determination may, without prejudice to any other manner of citation, be cited by reference to its number and the calendar year in which it was made.”.

Repeal of Division 11 of Part III

90. Division 11 of Part III of the Principal Act is repealed.

Cessation of leave without pay

91. Section 87D of the Principal Act is amended by omitting sub-section (2).

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

92. Section 87J of the Principal Act is amended by omitting from sub-section (9) “Governor-General” and substituting “Prime Minister”.

Persons to whom Division applies

93. Section 87K of the Principal Act is amended—

- (a) by inserting after sub-section (2) the following sub-section:

“(2A) An officer specified, or included in a class of officers specified, in a declaration under sub-section 81C (1) becomes a person to whom this Division applies on the day specified in the declaration for the purposes of sub-section 81C (2).”; and

- (b) by omitting paragraph (5) (a).

Right to re-enter Service by way of transfer or promotion

94. Section 87M of the Principal Act is amended by omitting from sub-section (1) “Sections 49, 49B, 50 to 50H (inclusive), 51AA and 53 apply,” and substituting “Division 4 of Part III applies.”.

Application for re-appointment to Service

95. Section 87N of the Principal Act is amended—

- (a) by inserting in paragraph (2) (f) “or (2A)” after “87K (2)”;
(b) by inserting in paragraph (2) (f) “or became employed by a Commonwealth authority by force of sub-section 81C (2)” after “87ZC”; and

- (c) by omitting sub-paragraph (2) (f) (i) and substituting the following sub-paragraph:

“(i) the person is, and has at all times since becoming engaged in that employment or becoming so employed, as the case may be, continued to be, engaged in that employment or so employed; and”.

96. After section 88 of the Principal Act the following section is inserted:

Powers of Prime Minister

“88A. A power conferred on the Prime Minister by this Act may be exercised on the Prime Minister’s behalf by another Minister authorised by the Prime Minister to do so.”.

Protection of persons in respect of reports on officers or employees

97. Section 89A of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) An action or proceeding does not lie against a person for or in respect of any oral or written report made in good faith by the person on or in connection with—

- (a) work performed, or proposed to be performed, by an officer or employee; or
- (b) conduct of an officer or employee.”.

Staff Suggestions Schemes

98. Section 90A of the Principal Act is amended—

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

“(1) The Secretary of a Department may formulate and operate a Staff Suggestions Scheme to encourage officers and employees to make suggestions for achieving any of the following objects:

- (a) the promotion or improvement of efficiency, or the effecting of economies, in the management and working of the Department;
 - (b) the improvement of the standard of safety in the operations of the Department.”;
- (b) by omitting from sub-section (2) “Board” (wherever occurring) and substituting “Secretary”; and
- (c) by omitting sub-section (3) and substituting the following sub-section:

“(3) A Secretary may vary or discontinue a Staff Suggestions Scheme.”.

Performance of work outside the Service

99. Section 91 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Board” and substituting “Secretary of the Department”;
- (b) by omitting from sub-section (1) “no officer shall” and substituting “an officer of a Department shall not”;
- (c) by omitting from paragraphs (a), (b), (c) and (d) “or” (last occurring);
- (d) by inserting after paragraph (d) the following paragraph:
 - “(da) act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of the officer’s office or otherwise on behalf of the Commonwealth; or”; and
- (e) by omitting sub-sections (3), (4), (5) and (6).

Effect of appointments, &c., by Board, &c.

100. Section 92 of the Principal Act is amended by omitting “, a Secretary or a Chief Officer, as the case may be, under this Act,” and substituting “or a Secretary under this Act”.

Regulations

101. Section 97 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (g) “Board” and substituting “Committee”;
- (b) by omitting from paragraph (1) (k) “regulating” and substituting “making provision about”; and
- (c) by inserting in sub-section (3) “, or of an industrial award,” after “section 82D”.

Certain promotions deemed to be made under section 53

102. An officer who, after 22 December 1984, was promoted to an office in relation to which successful completion of the Clerical Selection Test was a condition notified under paragraph 33A (1) (d) of the *Public Service Act 1922* shall be deemed for all purposes to have been promoted to that office under section 53 of that Act.

**PART III—AMENDMENTS OF MERIT PROTECTION
(AUSTRALIAN GOVERNMENT EMPLOYEES) ACT 1984**

Principal Act

103. The *Merit Protection (Australian Government Employees) Act 1984*² is in this Part referred to as the Principal Act.

Interpretation

104. Section 3 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “Chief Officer”; and
- (b) by inserting after the definition of “Public Service Board” in sub-section (1) the following definition:

“‘relevant Secretary’ has the same meaning as in the *Public Service Act 1922*”.

Functions of Agency

105. Section 6 of the Principal Act is amended—

- (a) by omitting from paragraph (d) “and”; and
- (b) by adding at the end the following word and paragraph:

“; and (f) to review promotions in accordance with section 50DAA of the *Public Service Act 1922*”.

Promotion Appeal Committees

106. Section 9 of the Principal Act is amended—

- (a) by inserting in paragraph (a) “or 50H” after “section 50B”; and
- (b) by omitting from paragraph (b) “the classification of the office held by the officer” and substituting “the officer’s classification”.

Constitution of Promotion Appeal Committees

107. (1) Section 10 of the Principal Act is amended by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) a Convenor nominated by the Agency”.

(2) A Promotion Appeal Committee constituted, before the commencement of this section, for the purpose of an appeal that had not been disposed of before that commencement shall continue to deal with, and shall determine, that appeal as if the amendments made by sub-section (1) and section 108 had not been made.

Split decision

108. Section 13 of the Principal Act is amended by omitting “Chairman” and substituting “Convenor”.

109. After section 15 of the Principal Act the following section is inserted in Subdivision B of Division 2 of Part II:

Frivolous or vexatious appeals, &c.

“15A. (1) A Promotion Appeal Committee shall refuse to consider or further consider an appeal if each member of the Committee is satisfied that the appeal is frivolous or vexatious or was not made in good faith.

“(2) Where a Promotion Appeal Committee refuses to consider or further consider an appeal, the appeal shall thereupon be deemed to have been withdrawn.”.

Constitution of Disciplinary Appeal Committees

110. (1) Section 17 of the Principal Act is amended—

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

“(1) A Disciplinary Appeal Committee established for the purpose of an appeal under section 63D, 63F or 63P of the *Public Service Act 1922*, or of a request under section 63G of that Act, shall be constituted by—

- (a) a Convenor nominated by the Agency;
 - (b) a person nominated by the relevant Secretary in relation to the person who appealed or made the request; and
 - (c) a person nominated by the organisation that is, as provided by the regulations, the appropriate organisation or, in the absence of such a nomination, nominated in such other manner as the regulations provide.”;
- (b) by omitting from sub-section (2) “Chairman of a Disciplinary Appeal Committee unless he” and substituting “Convenor of a Disciplinary Appeal Committee unless the person”;
- (c) by inserting in sub-section (3) “first” after “person” (first occurring); and
- (d) by omitting sub-section (4) and substituting the following sub-sections:

“(4) If a Disciplinary Appeal Committee is of the opinion that a person who appealed to it under section 63D, 63F or 63P of the *Public Service Act 1922* had no reasonable grounds for that appeal, and that the appeal was frivolous or vexatious or was not made in good faith, it may order that the person pay such sum, not exceeding the cost of the hearing, as it specifies in the order and the sum so ordered to be paid may, where the person is still an officer, be recovered by deductions from the salary of the person under section 65 of that Act.

“(5) A reference in this section to the relevant Secretary, in relation to a person who has been dismissed from the Service under Division 6 of Part III of the *Public Service Act 1922*, is a reference to the Secretary of the Department in which the person held an office, or was included, immediately before being dismissed or, if that Department has ceased to exist, the Secretary of such Department as the Board directs.”.

(2) A Disciplinary Appeal Committee constituted, before the commencement of this section, for the purpose of an appeal or request that had not been disposed of before that commencement shall continue to deal

with, and shall determine, that appeal or request as if the amendments made by sub-section (1) and section 112 had not been made.

Member ceasing to act

111. Section 19 of the Principal Act is amended by omitting from sub-section (1) “parties” and substituting “Agency”.

Split decision

112. Section 20 of the Principal Act is amended by omitting “Chairman” and substituting “Convenor”.

113. (1) Sections 22 and 23 of the Principal Act are repealed and the following sections are substituted:

Redeployment and Retirement Appeal Committees

“22. The Agency shall, from time to time, arrange for the establishment, in accordance with section 23, of such Redeployment and Retirement Appeal Committees as appear to it to be required for the purposes of appeals under Divisions 8B and 8C of Part III of the *Public Service Act 1922*.”

Constitution of Redeployment and Retirement Appeal Committees

“23. (1) A Redeployment and Retirement Appeal Committee shall be constituted by—

- (a) a Convenor nominated by the Agency;
- (b) a person nominated by—
 - (i) where the Committee is constituted for the purpose of an appeal under Division 8B of Part III of the *Public Service Act 1922* or an appeal under Division 8C of Part III of that Act against the giving of a notice by the Public Service Board—the Public Service Board; or
 - (ii) where the Committee is constituted for the purpose of any other appeal by an officer under Division 8C of Part III of the *Public Service Act 1922*—the relevant Secretary; and
- (c) a person nominated by the organisation that is, under the regulations, the appropriate organisation or, in the absence of such a nomination, a person nominated as provided by the regulations.

“(2) In this section, ‘officer’ has the same meaning as in Division 8C of Part III of the *Public Service Act 1922*.”

(2) A Redeployment and Retirement Appeal Committee constituted, before the commencement of this section, for the purpose of an appeal that had not been disposed of before that commencement shall continue to deal with, and shall determine, that appeal as if the amendments made by sub-section (1) and section 115 had not been made.

Member ceasing to act

114. Section 25 of the Principal Act is amended by omitting from sub-section (1) "parties" and substituting "Agency".

Split decision

115. Section 26 of the Principal Act is amended by omitting "Chairman" and substituting "Convenor".

116. After section 26 of the Principal Act the following section is inserted in Subdivision D of Division 2 of Part II:

Enactment may provide for other appeals to be heard by Redeployment and Retirement Appeal Committees

"26A. An enactment may provide that appeals of a specified kind in relation to redeployment or retirement of Commonwealth employees, not being appeals to which section 22 applies, may be made to a Redeployment and Retirement Appeal Committee established in accordance with this Subdivision and, where an enactment so provides—

- (a) the Agency shall, from time to time, arrange for the establishment of such Redeployment and Retirement Appeal Committees as appear to it to be required for the purposes of hearing appeals of that kind;
- (b) in hearing an appeal of that kind a Redeployment and Retirement Appeal Committee has and may exercise the same powers in relation to procedure that it would have or could exercise if it were hearing an appeal to which section 22 applies; and
- (c) the enactment may make such modification to sections 23, 24, 25 and 26 and to paragraph (b) of this sub-section, in their application to appeals of that kind, as are necessary to enable a Redeployment and Retirement Appeal Committee to be constituted to hear appeals of that kind."

Constitution of Re-appointment Review Committees

117. (1) Section 28 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:
“(a) a Convenor nominated by the Agency;” and
- (b) by omitting from sub-section (2) "Chairman" and substituting "Convenor".

(2) A Re-appointment Review Committee constituted, before the commencement of this section, for the purpose of an application that had not been disposed of before that commencement shall continue to deal with, and shall determine, that application as if the amendments made by sub-section (1) and section 118 had not been made.

Split decision

118. Section 30 of the Principal Act is amended by omitting "Chairman" and substituting "Convenor".

Constitution of Re-integration Assessment Committees

119. (1) Section 33 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

“(a) a Convenor nominated by the Agency;”.

(2) A Re-integration Assessment Committee constituted, before the commencement of this section, for the purpose of an application that had not been disposed of before that commencement shall continue to deal with, and shall determine, that application as if the amendments made by sub-section (1) and section 120 had not been made.

Split decision

120. Section 35 of the Principal Act is amended by omitting “Chairman” and substituting “Convenor”.

Members not subject to direction

121. Section 36 of the Principal Act is amended by adding at the end “other than a court”.

Procedure of Review Committees

122. (1) Section 37 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “full inquiries” and substituting “such inquiries as it considers necessary”; and
- (b) by omitting from paragraph (1) (c) “with as much expedition” and substituting “as quickly”.

(2) Section 37 of the Principal Act is further amended by omitting paragraphs (2) (a) and (b) and substituting the following paragraph:

“(a) in relation to a Promotion Appeal Committee, Disciplinary Appeal Committee, Redeployment and Retirement Appeal Committee or Re-appointment Review Committee—the *Public Service Act 1922*; and”.

Enactments to be laid before Parliament

123. Section 37A of the Principal Act is amended by inserting “or 26A” after “section 21”.

Delegation by Agency

124. Section 78 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or any other enactment” after “Act”;
- (b) by omitting from sub-section (2) “, for the purposes of this Act,”; and
- (c) by inserting in sub-section (4) “under this Act” after “Agency” (first occurring).

Regulations

125. Section 85 of the Principal Act is amended—

- (a) by omitting sub-paragraph (2) (h) (ii);
- (b) by omitting from paragraph (2) (k) “and adaptations”; and
- (c) by omitting sub-section (3) and substituting the following sub-section:

“(3) In sub-section (2), ‘modifications’ includes additions, omissions and substitutions.”.

PART IV—AMENDMENTS OF MEMBERS OF PARLIAMENT (STAFF) ACT 1984

Principal Act

126. The *Members of Parliament (Staff) Act 1984*³ is in this Part referred to as the Principal Act.

Interpretation

127. Section 3 of the Principal Act is amended—

- (a) by omitting “or” from paragraph (a) of the definition of “office-holder”; and
- (b) by inserting after paragraph (a) of the definition of “office-holder” the following paragraph:

“(aa) a person, not being a Senator or Member of the House of Representatives, who held the office of Prime Minister; or”.

128. After section 31 of the Principal Act the following section is inserted:

Powers may be exercised by authorised person

“32. An office-holder, Senator or Member of the House of Representatives may, in writing, authorise another person to exercise, on his or her behalf, a power conferred on the office-holder, Senator or Member by Part III or IV of this Act, and a person so authorised may exercise the power accordingly.”.

PART V—REPEAL OF COMMONWEALTH EMPLOYEES (REDEPLOYMENT AND RETIREMENT) ACT 1979

Repeal

129. (1) The following Acts are repealed:

- Commonwealth Employees (Redeployment and Retirement) Act 1979*
- Commonwealth Employees (Redeployment and Retirement) Amendment Act 1981*
- Commonwealth Employees (Redeployment and Retirement) Amendment Act 1983.*

(2) After the commencement of this section and until a prescribed Commonwealth authority makes other provision, Division 8C of Part III of the *Public Service Act 1922* applies, subject to such modifications as are prescribed, in relation to the staff of the prescribed Commonwealth authority

(3) In sub-section (2)—

“modifications” includes additions, omissions and substitutions;

“prescribed Commonwealth authority” means an authority or body that, immediately before the commencement of this section, was a prescribed Commonwealth authority within the meaning of the *Commonwealth Employees (Redeployment and Retirement) Act 1979*.

PART VI—AMENDMENTS OF SUPERANNUATION ACT 1976

Principal Act

130. The *Superannuation Act 1976*⁴ is in this Part referred to as the Principal Act.

Early retirement—voluntary or involuntary retirement before attaining 60 years of age

131. Section 58 of the Principal Act is amended—

(a) by omitting paragraph (3) (b) and substituting the following paragraph:

“(b) the person is retired under section 76W of the Public Service Act or the person’s employment or appointment is terminated, otherwise than under that Act, on a ground similar to a ground specified in that section;”;

(b) by inserting in paragraph (3) (f) “or section 76FA” after “76F (1B)”

(c) by omitting from paragraph (3) (f) “or”; and

(d) by inserting after paragraph (3) (g) the following word and paragraph:

“; or (h) the person retires, or the person’s employment or appointment is terminated, otherwise than under the Public Service Act, in prescribed circumstances,”.

PART VII—AMENDMENTS OF ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977

Principal Act

132. The *Administrative Decisions (Judicial Review) Act 1977*⁵ is in this Part referred to as the Principal Act.

Schedule 2

133. Schedule 2 to the Principal Act is amended—

(a) by omitting paragraph (r) and substituting the following paragraph:

“(r) decisions relating to promotions, transfers, or appeals against promotions, of individual officers of the Australian Public Service;”; and

(b) by adding at the end the following paragraphs:

“(w) decisions relating to the making or terminating of appointments of Secretaries under the *Public Service Act 1922*;

(y) decisions relating to—

(i) engaging, or terminating engagements of, consultants;
or

(ii) employing, or terminating the employment of, staff,
under the *Members of Parliament (Staff) Act 1984*.”.

PART VIII—AMENDMENTS OF COMMONWEALTH EMPLOYMENT SERVICE ACT 1978

Principal Act

134. The *Commonwealth Employment Service Act 1978*⁶ is in this Part referred to as the Principal Act.

Staff

135. (1) Section 11 of the Principal Act is amended by omitting sub-section (2).

(2) Upon the repeal of sub-section 11 (2) of the Principal Act, the Secretary to the Department shall be deemed to have delegated to the National Director under section 26 of the *Public Service Act 1922* all the powers and functions which the National Director was, immediately before that repeal, entitled to exercise or perform by virtue of that sub-section.

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; No. 63, 1984 (as amended by No. 165, 1984); No. 165, 1984; Nos. 65, 166 and 187, 1985; and Nos. 28, 29 and 76, 1986.

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NOTES—continued

2. No. 65, 1984, as amended. For previous amendments, see No. 165, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 187 and 193, 1985; and No. 76, 1986.
3. No. 64, 1984, as amended. For previous amendments, see Nos. 63 and 165, 1984; and No. 193, 1985.
4. No. 31, 1976, as amended. For previous amendments, see No. 51, 1976; No. 80, 1977; Nos. 17, 134, 169 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 92, 1981; No. 92, 1983; No. 165, 1984; and No. 80, 1986.
5. No. 59, 1977, as amended. For previous amendments, see No. 66, 1978; No. 111, 1980; Nos. 111, 115, 122, 137, 140 and 153, 1982; Nos. 62 and 144, 1983; Nos. 76, 159 and 164, 1984; Nos. 4, 47 and 65, 1985; and Nos. 41 and 76, 1986.
6. No. 102, 1978, as amended. For previous amendments, see No. 80, 1982; Nos. 63 and 72, 1984; and No. 65, 1985.

*[Minister's second reading speech made in—
House of Representatives on 23 October 1986
Senate on 19 November 1986]*