



# **Prime Minister and Cabinet Legislation Amendment Act 1991**

**No. 199 of 1991**

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**An Act to amend various Acts relating to matters dealt  
with within the portfolio of the Prime Minister, and for  
related purposes**

*[Assented to 18 December 1991]*

The Parliament of Australia enacts:

**Short title**

1. This Act may be cited as the *Prime Minister and Cabinet Legislation Amendment Act 1991*.

**Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

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**Amendments of various Acts**

**3.(1)** The Acts specified in Schedule 1 are amended as set out in that Schedule.

**(2)** The amendment of section 4 of the *Governor-General Act 1974* made by subsection (1) does not apply in relation to the widow of a Governor-General if that widow remarried before the commencement of this section.

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

**4.(1)** An Act set out in column 1 of Schedule 2 is amended by omitting from the provision set out in column 2 of the Schedule the words set out in column 3 of the Schedule.

**(2)** The Acts specified in Schedule 3 are amended as set out in that Schedule.

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**SCHEDULE 1**

Section 3

**AMENDMENTS OF ACTS**

***Complaints (Australian Federal Police) Act 1981***

**Subsection 21(1) (paragraph (b) of the definition of “authorised person”):**

Insert “or her” after “his”.

**Subsection 21(5):**

Insert “or her” after “his”.

**Paragraph 22(4)(a):**

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

**Subparagraph 22(4)(a)(ii):**

Insert “or her” after “him”.

**Paragraph 22(4)(b):**

(a) Insert “or her” after “him” (wherever occurring).

(b) Insert “or she” after “he”.

**Subsection 22(4A):**

Insert “or her” after “his”.

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**SCHEDULE 1—continued**

**Subsections 22(6) and (7):**

Insert “or her” after “him” (wherever occurring).

**Paragraphs 23(4)(e) and (f):**

Insert “or her” after “his” (wherever occurring).

**Subsection 23(5):**

Insert “or her” after “him”.

**Paragraphs 23(5)(a) and (b):**

Insert “or she” after “he” (wherever occurring).

**Subsection 24(1):**

Insert “or her” after “his”.

**Paragraph 24(1)(a):**

Insert “or she” after “he”.

**Paragraphs 24(1)(b) and (d):**

Insert “or her” after “his” (wherever occurring).

**Subsections 24(2) and (2A):**

Insert “or she” after “he” (wherever occurring).

**Subsection 24(4):**

Insert “or her” after “him”.

**Paragraph 24A(1)(b):**

Insert “or her” after “his”.

**Subsection 25(1A):**

Insert “or she” after “he”.

**Subsection 25(3):**

Insert “or her” after “his”.

**Paragraph 25(3)(a):**

Insert “or her” after “him”.

**Subsections 25(4) and (5):**

Insert “or she” after “he” (wherever occurring).

**Subsection 25(7):**

(a) Insert “or she” after “he” (wherever occurring).

(b) Insert “or her” after “him”.

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**SCHEDULE 1—continued**

**Subsections 25(8), (9) and (9A):**

Insert “or her” after “him” (wherever occurring).

**Paragraph 25(9A)(b):**

Insert “or she” after “he”.

**Subsection 25(11):**

Insert “or she” after “he”.

**Subsections 25(12) and (13):**

Insert “or her” after “his” (wherever occurring).

**Subsection 25A(1):**

Insert “or she” after “he”.

**Subsection 26(2):**

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “him”.

**Subsection 26(3):**

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “his”.

**Subsection 26(4):**

Insert “or she” after “he” (wherever occurring).

**Subsection 27(3A):**

Insert “or her” after “him”.

**Subparagraph 27(5)(a)(iii):**

Insert “or her” after “him”.

**Paragraph 27(5)(b):**

Insert “or her” after “him”.

**Subsection 27(5):**

Insert “or her” after “him”.

**Subsection 27(6):**

Insert “or her” after “his”.

**Section 28:**

Omit the section, substitute:

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**SCHEDULE 1—continued**

**Ombudsman may refer questions to the AAT**

“27A.(1) Where the Ombudsman or Investigation Division is investigating the taking of action under a power, whether conferred by an enactment or otherwise, the Ombudsman may refer a specified question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal if he or she thinks it appropriate.

“(2) If the Ombudsman refers the question to the Tribunal, the Ombudsman must, as soon as practicable, give written notice of the referral to the Commissioner.

“(3) The Tribunal may give an advisory opinion on the question.

**Ombudsman may recommend that the Commissioner refer questions to the AAT**

“28.(1) Where the Ombudsman or Investigation Division is investigating the taking of action under a power, whether conferred by an enactment or otherwise, the Ombudsman may recommend, in writing, to the Commissioner that the Commissioner refer a specified question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal for an advisory opinion.

“(2) If the Ombudsman makes a recommendation, the Commissioner must refer the question to the Tribunal within 30 days, or such longer period as is agreed to by the Ombudsman and the Commissioner, after the day on which the Commissioner receives the recommendation.

“(3) The Tribunal may give an advisory opinion on the question.

“(4) This section does not limit the Ombudsman’s power under section 27A.”.

**Subsection 28A(3):**

Insert “or she” after “he”.

**Section 29:**

Insert “or her” after “him”.

**Subsection 30(2):**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or she” after “he”.

**Subsection 30(3):**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or she” after “he”.

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**Subsection 30(4):**

Insert “or her” after “him”.

**Paragraph 31(3)(a):**

Insert “or her” after “his”.

**Paragraph 31(3)(b):**

Insert “or she” after “he”.

**Subsection 31(4):**

(a) Insert “or her” after “him”.

(b) Omit “he”, substitute “the Commissioner”.

**Subsection 31(5):**

Insert “or she” after “he”.

**Subsection 31(6):**

Insert “or her” after “him”.

**Subsection 32(3):**

Insert “or her” after “him”.

**Section 33:**

Insert “or her” after “him” (wherever occurring).

**Subsection 34(1):**

(a) Insert “or her” after “his” (wherever occurring).

(b) Insert “or she” after “he” (wherever occurring).

**Subsection 34(2):**

Insert “or her” after “his” (wherever occurring).

**Subsection 34(3):**

(a) Insert “or she” after “he”.

(b) Insert “or her” after “him”.

**Paragraphs 34(5)(a) and (b):**

Insert “or she” after “he” (wherever occurring).

**Subsection 35(2):**

Insert “or her” after “him” (wherever occurring).

**Paragraph 36(1)(a):**

Omit “he”, substitute “the Ombudsman”.

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**SCHEDULE 1—continued**

**Subparagraph 36(1)(a)(ii):**

Insert “, or she proposes herself,” after “himself”.

**Paragraph 36(1)(b):**

(a) Omit “his opinion”, substitute “the Ombudsman’s opinion”.

(b) Omit “he should”, substitute “the member should”.

(c) Omit “he did”, substitute “he or she did”.

(d) Omit “his reasons”, substitute “his or her reasons”.

**Paragraph 36(2)(a):**

Omit “he”, substitute “the Ombudsman”.

**Subparagraph 36(2)(a)(i):**

Insert “, or she proposes herself,” after “himself”.

**Paragraph 36(2)(b):**

(a) Omit “his opinion”, substitute “the Ombudsman’s opinion”.

(b) Omit “he should”, substitute “the member should”.

(c) Omit “he did”, substitute “he or she did”.

(d) Omit “his reasons”, substitute “his or her reasons”.

**Subsection 36(4):**

Insert “or her” after “him”.

**Subsection 36(6):**

Insert “or she” after “he”.

**Subsection 37(1):**

Insert “or she” after “he” (wherever occurring).

**Paragraphs 37(2)(a) and (b):**

Insert “or she” after “he” (wherever occurring).

**Subsection 38(2):**

Insert “or her” after “him” (wherever occurring).

**Subsection 39(1):**

Insert “or her” after “his”.

**Subsection 40(1):**

Insert “or her” after “his”.

**Subsection 40(3):**

Insert “or her” after “him”.

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**Paragraph 41(1)(d):**

Insert “or her” after “his”.

**Subsection 41(2):**

- (a) Insert “or she” after “he” (wherever occurring).
- (b) Insert “or her” after “him” (wherever occurring).
- (c) Insert “or her” after “his”.

**Paragraph 41(3)(a):**

- (a) Insert “or her” after “him”.
- (b) Insert “or her” after “his”.

**Paragraph 41(3)(b):**

Insert “or her” after “his”.

**Subsection 41(4):**

Insert “or her” after “his”.

**Subsection 41(5):**

Insert “or she” after “he” (wherever occurring).

**Paragraph 41(5)(c):**

Insert “or her” after “him”.

**Subsection 41(6):**

Insert “or her” after “his”.

**Paragraph 41(6)(c):**

Insert “or her” after “him”.

**Subsection 41(7):**

Insert “or her” after “his” (wherever occurring).

**Paragraph 41(7)(b):**

Insert “or she” after “he”.

**Paragraphs 43(a) and (b):**

Insert “or her” after “him” (wherever occurring).

**Paragraph 44(2)(a):**

Insert “or her” after “his”.



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**SCHEDULE 1—continued**  
***Governor-General Act 1974***

**Subsection 4(2):**

Omit “, or until the widow or widower re-marries,”.

***Inspector-General of Intelligence and Security Act 1986***

**After section 6:**

Insert:

**Acting Inspector-General**

“6A.(1) The Prime Minister may appoint a person to act as the Inspector-General:

- (a) during a vacancy in the office of Inspector-General; or
- (b) during any period, or during all periods, when the Inspector-General is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy must not continue so to act for more than 12 months.

“(2) Before appointing a person to act as the Inspector-General, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives about the appointment.

“(3) Anything done by or in relation to a person purporting to act under such an appointment is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.”.

**Subsection 7(1):**

Omit the subsection, substitute:

“(1) A person’s tenure as the holder of a judicial office and the person’s rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of the judicial office are not affected by:

- (a) the appointment of the person as the Inspector-General or to act as the Inspector-General; or
- (b) service by the person as the Inspector-General or while acting as Inspector-General;

and, for all purposes, the person’s service as Inspector-General must be taken to be service as the holder of that judicial office.”.

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**SCHEDULE 1—continued**

**Before section 33 in Part IV:**

Insert:

**Inspector-General may obtain reports**

“32A.(1) This section applies to the following documents which are issued on or after the day on which the *Prime Minister and Cabinet Legislation Amendment Act 1991* commences:

- (a) in the case of ASIO—a report referred to in subsection 94(1) of the *Australian Security Intelligence Organization Act 1979* without deletions;
- (b) in the case of ASIS—a report prepared on a periodic basis and given to the responsible Minister;
- (c) in the case of ONA—a report referred to in section 19 of the *Office of National Assessments Act 1977*;
- (d) in the case of DIO and DSD—a report prepared on a periodic basis and given to the Secretary to the Department of Defence.

“(2) The Inspector-General may, in writing, request the head of an agency to give him or her a single copy of a document to which this section applies.

“(3) The Inspector-General must sign the request.

“(4) As soon as practicable after the head of the agency receives the request, he or she must, subject to subsection (5), give to the Inspector-General a single copy of the document specified in the request.

“(5) Where:

- (a) in the case of ASIO, ASIS and ONA, the head of the agency has not provided the Minister with a copy of a report; or
- (b) in the case of DIO and DSD, the head of the agency has not provided the Secretary to the Department of Defence with a copy of a report;

the head need not give a copy of the report to the Inspector-General until the head has given the report to the Minister or Secretary, as the case may be.

**Minister to give directions and guidelines to Inspector-General**

“32B.(1) This section applies to any guidelines or directions given by the responsible Minister to the head of ASIS or DSD.

“(2) As soon as practicable after giving to the head of the agency a direction or guideline issued on or after the commencing day, the Minister must give to the Inspector-General a single copy of the direction or guideline.

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**SCHEDULE 1—continued**

“(3) As soon as practicable after the commencing day, the Minister must give to the Inspector-General a single copy of each direction or guideline that was issued before that day and is still in operation.

“(4) In this section:

‘commencing day’ means the day on which the *Prime Minister and Cabinet Legislation Amendment Act 1991* commences.”.

***Maternity Leave (Commonwealth Employees) Act 1973***

**After subsection 8(1):**

Insert:

“(1A) An office occupied by a woman must not be declared vacant under subsection (1) unless the woman has given her written consent to the declaration.”.

***Merit Protection (Australian Government Employees) Act 1984***

**Subsection 3(2):**

Insert “or her” after “his”.

**Subsection 4(1):**

Insert “or her” after “his”.

**Subsection 28(2):**

(a) Insert “or her” after “his”.

(b) Insert “or she” after “he”.

**Section 38:**

Insert “or her” after “his”.

**Paragraph 39(3)(b):**

Insert “or her” after “his”.

**Subsection 46(1) (definition of “action”):**

Insert “or her” after “his”.

**Subsection 46(1) (subparagraph (b)(iii) of the definition of “officer”):**

Insert “or she” after “he”.

**Subsection 46(1) (subparagraph (b)(ii) of the definition of “principal officer”):**

Insert “or she” after “he”.

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**Paragraphs 46(2)(a) and (b):**

Insert “or her” after “his” (wherever occurring).

**Subsection 46(3):**

Insert “or her” after “his”.

**Paragraph 46(4)(a):**

Insert “or her” after “his”.

**Paragraph 46(4)(b):**

Insert “or her” after “him”.

**Paragraph 46(5)(a):**

Insert “or her” after “his”.

**Paragraph 46(5)(b):**

Insert “or her” after “him”.

**Subsection 49(2):**

Insert “or her” after “his”.

**Section 55:**

Insert “or her” after “his”.

**Paragraph 56(1)(a):**

Insert “or her” after “his”.

**Subsection 59(3):**

Insert “or her” after “him”.

**Subsection 59(5):**

Insert “or her” after “his”.

**Section 60:**

Insert “or her” after “him”.

**Subsection 61(2):**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or she” after “he”.

**Subsection 61(3):**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or she” after “he”.

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**SCHEDULE 1—continued**

**Subsection 61(4):**

Insert “or her” after “him”.

**Subsections 63(6) and (9):**

Insert “or her” after “his” (wherever occurring).

**Paragraphs 64(1)(a) and (b):**

Insert “or her” after “his” (wherever occurring).

**Subsection 64(2):**

Insert “or she” after “he”.

**Section 67:**

Insert “or her” after “his”.

**Section 68:**

- (a) Insert “or her” after “his”.
- (b) Omit “him”, substitute “the member”.

**Paragraph 69(1)(b):**

Insert “or her” after “his”.

**Subsection 69(5):**

Insert “or she” after “he”.

**Subsection 69(7):**

- (a) Insert “or her” after “his”.
- (b) Omit “him”, substitute “the person”.

**Subsection 69(8):**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Omit “him”, substitute “the person”.

**Paragraphs 70(1)(b) and (c):**

Insert “or her” after “his” (wherever occurring).

**Subsection 70(5):**

Insert “or she” after “he”.

**Subsection 70(7):**

- (a) Insert “or her” after “his”.
- (b) Omit “him”, substitute “the person”.

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**Subsection 70(8):**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Omit “him”, substitute “the person”.

**After subsection 71(2):**

Insert:

“(2A) Meetings of the Agency may be held in one, or in a combination of more than one, of the following ways:

- (a) in person;
- (b) by telephone;
- (c) by closed-circuit television;
- (d) by any other electronic means of communication.”.

**Subsection 71(3):**

Insert “or she” after “he”.

**Paragraph 72(1)(b):**

Insert “or her” after “his”.

**Paragraphs 72(2)(c) and (d):**

Insert “or she” after “he” (wherever occurring).

**Subsection 73(1):**

Insert “or her” after “his” (wherever occurring).

**Subsection 75(1):**

Insert “or her” after “his”.

**Subsection 75(7):**

Insert “or her” after “his” (wherever occurring).

**Section 76:**

Insert “or her” after “his”.

**Subsection 79(1):**

- (a) Insert “or her” after “him”.
- (b) Omit “his”, substitute “the Director’s”.

**Paragraph 82(2)(c):**

Insert “or her” after “his”.

**Subsection 83(2):**

- (a) Insert “or her” after “him”.
- (b) Omit “he”, substitute “the Minister”.

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**Paragraph 84(1)(c):**

Insert “or her” after “his”.

**Subsection 84(2):**

- (a) Insert “or she” after “he”.
- (b) Omit “him”, substitute “the officer”.
- (c) Insert “or her” after “his”.

**Paragraph 84(3)(a):**

- (a) Omit “him”, substitute “the officer”.
- (b) Insert “or her” after “his”.

**Subparagraph 84(3)(b)(i):**

Insert “or her” after “his”.

**Subsection 84(5):**

- (a) Omit “him”, substitute “the person”.
- (b) Insert “or her” after “his”.

**After paragraph 85(2)(g):**

Insert:

“(ga) penalties, not exceeding a fine of \$1000, for a failure of a person to comply with an order of a Disciplinary Appeal Committee:

- (i) in relation to the persons who may be present at a review or hearing of an appeal by the Committee; or
- (ii) giving directions prohibiting or restricting the publication of evidence given before the Committee or of matters contained in documents lodged with, or received in evidence by, the Committee;”.

**After paragraph 85(2)(j):**

Insert:

“(ja) penalties, not exceeding a fine of \$1000, for a failure of a person to comply with an order of a Redeployment and Retirement Appeal Committee:

- (i) in relation to the persons who may be present at a proceeding before the Committee; or
- (ii) giving directions prohibiting or restricting the publication of evidence given before the Committee or of matters contained in documents lodged with, or received in evidence by, the Committee;”.

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**SCHEDULE 1—continued**

***Ombudsman Act 1976***

**Subsection 3(1) (subparagraph (b)(iii) of the definition of “officer”):**

Insert “or she” after “he”.

**Subsection 3(1) (subparagraph (c)(ii) of the definition of “principal officer”):**

Insert “or she” after “he”.

**Subsection 3(4):**

Insert “or her” after “his” (wherever occurring).

**Paragraph 3(6)(a):**

Insert “or her” after “his”.

**Paragraph 3(6)(b):**

Insert “or her” after “him”.

**Subsection 3(6A):**

Insert “or her” after “his” (wherever occurring).

**Paragraph 3(6C)(b):**

Insert “or her” after “his”.

**Subsection 4(2):**

Insert “or her” after “him” (wherever occurring).

**Paragraph 5(1)(b):**

Insert “or her” after “his”.

**Subparagraph 5(2)(c)(ii):**

Insert “or her” after “him”.

**Subsection 6(1):**

(a) Insert “or her” after “his”.

(b) Insert “or she” after “he”.

**Subsections 6(1A), (1B) and (2):**

Insert “or her” after “his” (wherever occurring).

**Subsection 6(3):**

Insert “or she” after “he”.



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**Paragraph 7(3)(a):**

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “his”.

**Subparagraph 7(3)(a)(ii):**

Insert “or her” after “him”.

**Paragraph 7(3)(b):**

- (a) Insert “or her” after “him” (wherever occurring).
- (b) Insert “or she” after “he”.
- (c) Insert “or her” after “his”.

**Subsection 7(4):**

Insert “or her” after “his”.

**Paragraph 7A(1)(b):**

Insert “or her” after “his”.

**Subsections 8(1A), (3) and (5):**

Insert “or she” after “he” (wherever occurring).

**Paragraph 8(5)(a):**

Insert “or her” after “him”.

**Paragraph 8(5)(b):**

- (a) Insert “or her” after “him”.
- (b) Insert “or she” after “he”.

**Subsections 8(6), (7) and (7A):**

Insert “or her” after “him” (wherever occurring).

**Paragraph 8(7A)(b):**

Insert “or she” after “he”.

**Subsection 8(10):**

Insert “or her” after “his”.

**Subsection 8A(1):**

Insert “or she” after “he”.

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

Omit the paragraphs, substitute:

“(a) would contravene the provisions of any other enactment  
(whether enacted before or after the commencement of the

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*Prime Minister and Cabinet Legislation Amendment Act 1991*);  
or

- (aa) might tend to incriminate the person or make the person liable to a penalty; or
- (ab) would disclose one of the following:
  - (i) a legal advice given to a Minister, a Department or a prescribed authority;
  - (ii) a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege; or
- (b) would be otherwise contrary to the public interest;”.

**Subsection 9(4):**

Omit “against him”, substitute “against the person”.

**Subsection 9(5):**

Insert “or her” after “his”.

**After subsection 9(5):**

Insert:

“(5A) The fact that a person is not excused under subsection (4) from furnishing information, producing a document or other record or answering a question does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or other record or answer.”.

**Subsections 10(1) and (1A):**

Insert “or she” after “he”.

**Section 11:**

Omit the section, substitute:

**Ombudsman may refer questions to the AAT**

“10A.(1) Where the Ombudsman is investigating the taking of action by a Department or by a prescribed authority under a power, whether conferred by an enactment or otherwise, the Ombudsman may refer a specified question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal if he or she thinks it appropriate.

“(2) If the Ombudsman refers a question to the Tribunal, the Ombudsman must, as soon as practicable, give written notice of the referral to the principal officer.

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**SCHEDULE 1—continued**

“(3) The Tribunal may give an advisory opinion on the question.

**Ombudsman may recommend that the principal officer refer questions to the AAT**

“11.(1) Where the Ombudsman is investigating the taking of action by a Department or by a prescribed authority under a power, whether conferred by an enactment or otherwise, the Ombudsman may recommend, in writing, to the principal officer of the Department or authority that the principal officer refer a specified question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal for an advisory opinion.

“(2) The Ombudsman may:

- (a) give the recommendation to the principal officer at any time before the Ombudsman completes the investigation; or
- (b) include the recommendation in his or her report to the Department or prescribed authority under section 15.

“(3) If the Ombudsman makes a recommendation, the principal officer must refer the question to the Tribunal within 30 days, or such longer period as is agreed to by the Ombudsman and the principal officer, after the day on which the principal officer received the recommendation.

“(4) The Tribunal may give an advisory opinion on the question.

“(5) This section does not limit the Ombudsman’s power under section 10A.”.

**Subsections 11A(4) and (5):**

Insert “or she” after “he” (wherever occurring).

**Subsection 12(1):**

- (a) Insert “or her” after “him”.
- (b) Insert “or her” after “his” (wherever occurring).

**Paragraphs 12(2)(a) and (b):**

Insert “or her” after “his” (wherever occurring).

**Subsection 12(3):**

- (a) Insert “or her” after “him”.
- (b) Insert “or she” after “he”.

**Subsection 12(4):**

- (a) Insert “or she” after “he” (wherever occurring).
- (b) Insert “or her” after “him”.

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**SCHEDULE 1—continued**

**Paragraphs 12(5)(a) and (b):**

Insert “or she” after “he” (wherever occurring).

**Section 13:**

Insert “or her” after “him”.

**Subsections 14(2) and (3):**

- (a) Omit “his entering the place”, substitute “the person entering the place”.
- (b) Insert “or she” after “he”.
- (c) Insert “or her” after “his” (wherever occurring).

**Subsection 14(4):**

Insert “or her” after “him”.

**Paragraph 15(3)(a):**

Insert “or her” after “his”.

**Paragraph 15(3)(b):**

Insert “or she” after “he”.

**Subsections 15(4) and (6):**

Insert “or her” after “him” (wherever occurring).

**Subsection 16(3):**

Insert “or her” after “him”.

**Section 17:**

Insert “or her” after “him” (wherever occurring).

**After section 17:**

Insert:

**Ombudsman may have further discussion with principal officer**

“18. After presentation to the Parliament of a report under section 17 in relation to action taken by a Department or prescribed authority, the Ombudsman may discuss any matter to which the report relates with the principal officer of the Department or authority for the purpose of resolving the matter.”

**Subsections 19(6) and (7):**

Insert “or she” after “he” (wherever occurring).

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**SCHEDULE 1—continued**

**Paragraph 19(7A)(a):**

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “his”.

**Subsection 19(8):**

Insert “or her” after “him”.

**Subsection 19C(1):**

Insert “or her” after “him” (wherever occurring).

**Paragraph 19C(2)(a):**

- (a) Insert “or she” after “he”.
- (b) Insert “or her” after “him”.

**Paragraph 19C(2)(b):**

- (a) Insert “or her” after “his”.
- (b) Insert “or she” after “he”.

**Subparagraph 19C(5)(c)(ii):**

Insert “or her” after “him”.

**Section 19D:**

- (a) Insert “or her” after “his”.
- (b) Insert “or she” after “he”.

**Paragraph 19E(1)(b):**

Insert “or she” after “he”.

**Subsection 19E(2):**

Insert “or she” after “he”.

**Subsection 22(1):**

Insert “or her” after “his”.

**Section 26:**

Insert “or her” after “his” (wherever occurring).

**Subsection 28(1):**

Insert “or her” after “his”.

**Subsection 28(7):**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or her” after “him”.

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**SCHEDULE 1—continued**

**Subsection 28(7A):**

Insert “or her” after “him”.

**Paragraph 29(1)(b):**

Insert “or her” after “his”.

**Subsection 29(3):**

Insert “or her” after “his” (wherever occurring).

**Subsection 29(8):**

Insert “or she” after “he” (wherever occurring).

**Section 30:**

Insert “or her” after “his”.

**Subsection 33(1):**

Insert “or her” after “his”.

**Paragraph 34(1)(a):**

Insert “or her” after “his” (wherever occurring).

**Paragraph 34(1)(b):**

Insert “or her” after “him”.

**Subsection 34(2):**

Insert “or her” after “his” (wherever occurring).

**Subsections 34(5) and (6):**

Insert “or her” after “him” (wherever occurring).

**Paragraph 34(7)(a):**

Insert “or her” after “his”.

**Paragraph 35(1)(d):**

Insert “or her” after “his”.

**Subsection 35(2):**

- (a) Insert “or she” after “he” (wherever occurring).
- (b) Insert “or her” after “him” (wherever occurring).
- (c) Insert “or her” after “his”.

**Paragraph 35(3)(a):**

- (a) Insert “or her” after “him”.
- (b) Insert “or her” after “his”.

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**SCHEDULE 1—continued**

**Subparagraph 35(3)(b)(i):**

Insert “or her” after “his”.

**Subsection 35(4):**

Insert “or her” after “his”.

**Subsection 35(5):**

Insert “or she” after “he” (wherever occurring).

**Paragraph 35(5)(c):**

Insert “or her” after “him”.

**Subsection 35(6):**

Insert “or her” after “his”.

**Paragraph 35(6)(c):**

Insert “or her” after “him”.

**Subsection 35(7):**

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or herself” after “himself”.

**Subsection 35(8):**

- (a) Insert “or her” after “him”.
- (b) Insert “or her” after “his”.

**Paragraph 36(2)(a):**

Insert “or her” after “his”.

***Public Service Act 1922***

**Subsection 7(1) (definition of “authorised medical practitioner”):**

Omit the definition, substitute:

“‘authorised medical practitioner’ means a medical practitioner authorised by the Secretary to the Department of the Commonwealth primarily responsible for public health matters, or the Commissioner, to:

- (a) perform medical examinations under this Act; and
- (b) make recommendations under this Act in relation to redeployment or retirement; and
- (c) make recommendations under this Act in relation to the health and physical fitness of officers whose appointment to the Service on probation has not been confirmed;”.

*Prime Minister and Cabinet Legislation Amendment  
No. 199, 1991*

**SCHEDULE 1—continued**

**Subsection 7(1) (paragraph (a) of the definition of “classification”):**

Omit the paragraph, substitute:

- “(a) in relation to an office (other than an SES office)—a description that identifies the class of offices to which the office belongs, being a class of offices that are of a similar kind, that have responsibilities of a similar level, the performance of the duties of which requires work of similar value and the salary, or range of salaries, applicable to which are the same; and
- (aa) in relation to an SES office—a description that identifies the class of offices to which the office belongs, being a class of offices with the same range of salaries; and”.

**Subsection 7(1) (paragraph (c) of the definition of “classification”):**

Omit “subsections 28(4) and 42(2)”, substitute “subsections 28(4), 42(2) and 81B(3A)”.

**Subsection 7(1) (definitions of “Senior Executive Service office” and “Senior Executive Service officer”):**

Omit the definitions, substitute:

“**‘Senior Executive Service office’** or **‘SES office’** means an office that has a classification declared by the Commissioner under subsection 28(1A) to be a Senior Executive Service classification;

**‘Senior Executive Service officer’** or **‘SES officer’** means:

- (a) an officer who holds an SES office; and
- (b) an unattached officer who has a Senior Executive Service classification;

**‘Senior Executive (Specialist) office’** or **‘SES (Specialist) office’** means an SES office that has the classification of Senior Executive (Specialist) Band 1, Senior Executive (Specialist) Band 2 or Senior Executive (Specialist) Band 3;

**‘Senior Executive (Specialist) officer’** or **‘SES (Specialist) officer’** means:

- (a) an officer who holds an SES (Specialist) office; or
- (b) an unattached officer whose classification is Senior Executive (Specialist) Band 1, Senior Executive (Specialist) Band 2 or Senior Executive (Specialist) Band 3;”.

**Paragraph 7(3)(c):**

Omit “Board”, substitute “Commissioner”.

**Subsection 9(2AA):**

Omit “Board” (wherever occurring), substitute “Commissioner”.



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No. 199, 1991*

**SCHEDULE 1—continued**

**Paragraph 9(2A)(a):**

Omit “Board” (wherever occurring), substitute “Commissioner”.

**Subsection 9(6):**

Omit all words after “Parliament,”, substitute “regulations about the same matters for which regulations may be made under subsection 97(1).”.

**Subsection 9(7):**

Omit “made under this Act by the Board shall apply”, substitute “made by the Governor-General under subsection 97(1) applies”.

**Paragraph 9(7B)(c):**

Omit “made by the Board”, substitute “, made by the Governor-General under subsection 97(1),”.

**Subsection 9(7C):**

Omit “Board”, substitute “Commissioner”.

**Subsection 25(7):**

Omit “guidelines”, substitute “requirements”.

**Subsection 25(8):**

Insert “or her” after “him”.

**Paragraph 26AA(2)(b):**

Omit “by Secretaries within Departments, and by the Board between Departments,”.

**Subsection 33AAA(1) (paragraph (a) of the definition of “non-appellable promotion”):**

Omit “Clerical Administrative Class 9”, substitute “Senior Officer Grade C”.

**Subsection 33AAA(1) (definition of “promotion”):**

Insert “other than an SES officer” after “in relation to an officer”.

**Subsection 33AAA(1):**

Insert:

“ ‘**promotion**’, in relation to an SES officer, means a movement of the officer within the Service for the purpose of holding an office of a higher classification than that of the office held by the officer immediately before the movement took place;”.

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**SCHEDULE 1—continued**

**Paragraphs 33AAA(4)(c) and (d):**

Insert “or her” after “his” (wherever occurring).

**Paragraph 33(4)(b):**

Insert “, transfer or promotion” after “appointment” (first occurring).

**Subsection 33AA(1):**

Omit “Board”, substitute “Commissioner”.

**Subsection 33AA(2):**

Omit “section 49”, substitute “subsection 49(1A) or paragraph 49(1B)(a) or (b)”.

**Subsections 33AA(3) and (4):**

Omit “Board” (wherever occurring), substitute “Commissioner”.

**Subsection 44(1):**

Omit “Board”, substitute “Commissioner”.

**After subsection 44(1):**

Insert:

“(1A) If:

- (a) the period of a person’s fixed-term appointment under subsection (1) is less than 5 years; and
  - (b) the relevant Secretary recommends to the Commissioner that the period of the fixed-term appointment should be extended;
- the Commissioner may extend, by written determination, the period of the fixed-term appointment for a further period.

“(1B) An extension under subsection (1A) of the period of a fixed-term appointment must be made before the end of the fixed-term appointment.

“(1C) If the period of a fixed-term appointment is extended, the appointment has effect as if it was for the original period of the fixed-term appointment as so extended.

“(1D) The Commissioner must not extend the period of a fixed-term appointment of a person so that the period as so extended:

- (a) ends later than 5 years after the appointment started; or
- (b) ends after the day on which the person turns 65.”.

**Subsection 44(2):**

Omit the subsection, substitute:

“(2) The Commissioner may, at the time when a person is given a fixed-term appointment under subsection (1), or the fixed-term appointment is extended under subsection (1A), determine, in writing,

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**SCHEDULE 1—continued**

that, subject to the conditions (if any) specified in the determination, if the person is retired from the Service under subsection (3) before the end of the period of the appointment or the extension, the person is entitled to such compensation as is specified in, or ascertained in accordance with, the determination.”.

**Paragraph 44(3)(b):**

Omit “Board”, substitute “Commissioner”.

**Subsection 44(4):**

Omit “Board”, substitute “Commissioner”.

**Subsections 47(2) and (3):**

Omit “Board” (wherever occurring), substitute “Commissioner”.

**Subsection 47(4):**

Insert “(other than an SES officer)” after “officer”.

**After subsection 47(4):**

Insert:

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

**Subsection 47 (6):**

Omit all words after “confirmed”, substitute:

“nor terminated:

- (a) in the case of an officer other than an SES officer—the relevant Secretary must, as soon as practicable, confirm or terminate the appointment; and
- (b) in the case of an SES officer whose appointment the relevant Secretary intends to confirm—the relevant Secretary must, as soon as practicable, confirm the appointment; and
- (c) in any other case—the relevant Secretary must, as soon as practicable, give written notice to the Commissioner that he or she does not intend to confirm the appointment.”.

**After subsection 47(6):**

Insert:

“(6A) As soon as practicable after the Commissioner receives a notice mentioned in paragraph (6)(c), the Commissioner must confirm or terminate the appointment.”.

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**SCHEDULE 1—continued**

**Subsection 47(9):**

- (a) Omit “Board” (wherever occurring), substitute “Commissioner”.
- (b) Omit “subsection (3)”, substitute “subsection (3) or (6A)”.

**Subsection 47(10):**

- (a) Omit “Board” (wherever occurring), substitute “Commissioner”.
- (b) Omit “subsection (3)”, substitute “subsection (3) or (6A)”.

**Subsection 47(11):**

Omit the subsection, substitute:

“(11) The Commissioner may, under subsection (4A) or (6A), and the relevant Secretary may, under subsection (4) or paragraph (6)(a), terminate an officer’s appointment to the Service on any of the following grounds:

- (a) that he or she is not satisfied, after receiving a report from an authorised medical practitioner, as to the officer’s health and physical fitness;
- (b) that he or she 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 he or she considers that the officer is not a fit and proper person to remain an officer of the Service;
- (d) that he or she is satisfied that the officer is an excess officer;
- (e) in the case of an officer who is not an Australian citizen, that he or she is satisfied:
  - (i) that the person has been refused Australian citizenship;  
or
  - (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.”.

**Subsection 47(12):**

Omit “Board”, substitute “Commissioner”.

**Subsection 47(13) (definition of “training office”):**

Omit “Board”, substitute “Commissioner”.

**Subsection 49(1):**

Omit all words after “Department” (first occurring), substitute “may be transferred to a vacant SES office in accordance with this section.”.

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No. 199, 1991*

**SCHEDULE 1—continued**

**After subsection 49(1):**

Insert:

“(1A) The Secretary to a Department may transfer:

- (a) an SES (Specialist) officer in the Department to an SES (Specialist) office within the Department; and
- (b) an SES officer (other than an SES (Specialist) officer) in the Department to an SES office (other than an SES (Specialist) office) within the Department.

“(1B) The Commissioner may transfer:

- (a) an SES (Specialist) officer in a Department to an SES (Specialist) office in another Department; and
- (b) an SES officer (other than an SES (Specialist) officer) in a Department to an SES (Specialist) office in the Department or to an SES office in another Department; and
- (c) an SES (Specialist) officer in a Department to an SES office (other than an SES (Specialist) office) in the Department or another Department.”.

**Subsection 49(2):**

Omit “subsection (1), the relevant Secretary or the Board”, substitute “subsection (1A) or paragraph (1B)(a) or (b), the relevant Secretary or the Commissioner”.

**Subsection 49(3):**

Omit the subsection, substitute:

“(3) The Commissioner must not transfer an officer in a Department to an office in another Department unless the Commissioner has consulted with each of the relevant Secretaries in relation to the proposed transfer.”.

**Subsection 49(4):**

Omit “subsection (1) shall”, substitute “subsection (1A) or (1B) must”.

**Subsection 49(5):**

Omit “Board”, substitute “Commissioner”.

**After section 49:**

Insert:

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**SCHEDULE 1—continued**

**Certain transfers only after merit selection**

“49AA.(1) The Commissioner must not exercise a power under paragraph 49(1B)(c) in relation to an office in a Department except in accordance with a recommendation in writing made by the relevant Secretary.

“(2) Where the relevant Secretary recommends in writing that the Commissioner transfer an SES (Specialist) officer to an SES office (other than an SES (Specialist) office), the Commissioner must transfer the officer unless he or she is satisfied that:

- (a) the procedures followed by the Secretary in relation to notification of the vacancy in the office, or in relation to the examination of applications for promotion, transfer or appointment to the office, were not adequate; or
- (b) it is desirable, in the interests of the Service, that the vacancy be further notified or advertised; or
- (c) the officer is not suitable for the performance of the duties of that office; or
- (d) the officer is not suitable for the performance of the duties of SES offices of the same or equal classification; or
- (e) the transfer of another officer to the office is required for the purposes of section 76F or 76L or would otherwise better promote the efficiency of the Service.

“(3) If:

- (a) a vacancy in an office has been filled by the appointment, promotion or transfer of a person to the office; and
- (b) the office becomes vacant again before the person has started to perform the duties of the office;

then, in applying paragraph (2)(a) in relation to the later vacancy, the Commissioner may have regard to the procedures followed in relation to the earlier vacancy instead of those followed in relation to the later vacancy.

“(4) A transfer of an officer under paragraph 49(1B)(c) must be notified in the *Gazette*.”.

**Paragraph 49A(1)(b):**

Omit “Board”, substitute “Commissioner”.

**Subsection 49A(2):**

Omit “Board”, substitute “Commissioner”.

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**SCHEDULE 1—continued**

**Section 49A:**

After subsection (2), insert:

“(2A) Where a Secretary or the Commissioner proposes to give a direction under subsection (1) which involves directing:

- (a) an SES officer (other than an SES (Specialist) officer) to perform the duties of an SES (Specialist) office or to perform specified duties, being duties that would be appropriate for an SES (Specialist) office of equal classification; or
- (b) an SES (Specialist) officer to perform the duties of an SES office (other than an SES (Specialist) office) or to perform specified duties, being duties that would be appropriate for an SES office (other than an SES (Specialist) office) of equal classification;

the Secretary or the Commissioner, as the case requires may give the direction only if, in addition to having regard to the matters in subsection (2), he or she is satisfied that the officer to be given the direction is capable of performing the duties of the office in which the officer is directed to act or the specified duties the officer is directed to perform, as the case may be.”.

**Subsections 49A(3) and (4):**

Omit “Board” (wherever occurring), substitute “Commissioner”.

**Subsection 49B(1):**

Omit “Board”, substitute “Commissioner”.

**Subsections 49B(2) and (3):**

Omit “Board shall”, substitute “Commissioner must”.

**Paragraph 49B(3)(c):**

Omit the paragraph, substitute:

- “(c) the officer is not suitable for the performance of the duties of that office; or
- (ca) where the Secretary has recommended the promotion of an officer to an SES office (other than an SES (Specialist) office), the officer is not suitable for the performance of the duties of SES offices of the same or equal classification; or”.

**Subsection 49B(3A):**

- (a) Omit “itself”, substitute “himself or herself”.
- (b) Omit “Board may, if it”, substitute “Commissioner may, if he or she”.
- (c) Omit “where it does so, the Board”, substitute “where he or she does so, the Commissioner”.

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No. 199, 1991*

**SCHEDULE 1—continued**

**Subsection 49C(1):**

- (a) Insert “, or transfer under paragraph 49(1B)(c)”, after “promotion” (first occurring).
- (b) Omit “for promotion” (second occurring).

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

Omit the paragraphs, substitute:

- “(a) the duties of the vacant office; and
- (b) in the case of an SES office (other than an SES (Specialist) office)—the duties of SES offices having classifications the same as or equal to the classification of the vacant office;”.

**Paragraph 49C(2)(d):**

Omit the paragraph, substitute:

- “(d) in the case of the promotion of an officer, or the transfer of an SES officer under paragraph 49(1B)(c), to a vacant SES office (other than an SES (Specialist) office)—the capability of the officer to discharge the duties referred to in paragraph (b);
- (da) the capability of the officer to discharge the duties of the vacant office;”.

**Subsection 49D(1):**

Omit “subsection 49(1)”, substitute “section 49”.

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

Omit “Board” (wherever occurring), substitute “Commissioner”.

**Subsection 62(10):**

Omit the subsection, substitute:

“(10) A direction under this section in respect of an officer takes effect:

- (a) if the officer has no right of appeal against the direction—on the day on which the officer is furnished with particulars of the reasons for the giving of the direction; or
- (b) if the officer has a right of appeal against the direction and appeals—on the lapsing or withdrawal of the appeal or on a Disciplinary Appeal Committee confirming the direction, whichever happens first; or
- (c) in any other case—at the end of the period within which the officer may appeal against the direction to a Disciplinary Appeal Committee.”.



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**SCHEDULE 1—continued**

**Subsection 63(5):**

Omit the subsection, substitute:

“(5) A direction under this section in respect of an officer takes effect:

- (a) if the officer has no right of appeal against the direction—on the day on which the officer is furnished with particulars of the reasons for the giving of the direction; or
- (b) if the officer has a right of appeal against the direction and appeals—on the lapsing or withdrawal of the appeal or on a Disciplinary Appeal Committee confirming the direction, whichever happens first; or
- (c) in any other case—at the end of the period within which the officer may appeal against the direction to a Disciplinary Appeal Committee.”.

**Subsection 63(6):**

Omit “Board or another body, or”, substitute “Commissioner, a body,”.

**After subsection 64(17):**

Insert:

“(17A) Where the judgment creditor is the Commonwealth, this section has effect as if:

- (a) subsections (4), (6), (7), (10) and (12) and subparagraph (13)(b)(i) were omitted; and
- (b) ‘, subject to subsection (6),’ were omitted from subsection (5); and
- (c) ‘or (6)’ were omitted from subsection (8); and
- (d) ‘(7)(c) or’ were omitted from subsection (11); and
- (e) ‘, (6), (7)’ were omitted from subparagraph (14)(a)(ii) and paragraph (14)(b).”.

**Heading to Division 9A of Part III:**

Insert “*or reintegration*” after “*Transfer*”.

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

Omit “Board” (wherever occurring), substitute “Commissioner”.

**After subsection 81B(3):**

Insert:

“(3A) Where, after receiving a report from the Commissioner, the Prime Minister certifies in writing that it is in the interests of the Commonwealth that a person:

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**SCHEDULE 1—continued**

- (a) to whom Division 2 of Part IV applies; or
- (b) to whom the repealed *Officers' Rights Declaration Act 1928* applies;

resumes duties in the Service, the Commissioner may, by determination, reintegrate the person into the Service.

“(3B) A determination under subsection (3A) may, notwithstanding anything in any other provision of this Act or in any other law, provide:

- (a) in the case where the person is not to resume duties in a particular office—the classification that the person is to have as an unattached officer in the Service; or
- (b) in any other case—that the person is to resume duties in a particular office in the Service.”.

**Subsection 81B(5):**

- (a) Omit “facilitating a transfer of persons into the Service under this section, the Board”, substitute:  
“facilitating:
  - (a) a transfer of a person into the Service under subsection (1), (2) or (3); or
  - (b) a reintegration of a person into the Service under subsection (3A);the Commissioner”.
- (b) Omit “to the persons”, substitute “to the person”.

**After section 82AH:**

Insert:

**Unauthorised absence from employment to be taken as retirement**

“82AJ.(1) This section applies to the following employees:

- (a) a continuing employee;
- (b) an employee whose employment is deemed to be employment as a continuing employee under subsection 82AD(9).

“(2) Where an employee is absent from his or her employment in a Department without permission, and has been so absent for a continuous period of not less than 4 weeks, the relevant Secretary may send to the employee a notice informing the employee that unless within a period of 2 weeks from and including the day on which the notice was sent:

- (a) he or she returns to his or her employment in the Department;  
or
- (b) he or she explains his or her absence and seeks the permission

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**SCHEDULE 1—continued**

of the Secretary for any further period of absence that may be necessary having regard to that explanation;  
the employee will be taken to have retired from the Service at the end of that period of 2 weeks.

“(3) Where the employee does not, within the period of 2 weeks from and including the day on which the notice was sent to him or her:

- (a) return to his or her employment in the Department; or
- (b) explain his or her absence and seek the permission of the Secretary for a further period of absence;

and the notice has not been revoked under subsection (6), the employee is taken to have retired from the Service on the day following the end of that period of 2 weeks.

“(4) Where the notice has been sent to the employee and, within the period of 2 weeks after that notice was so sent, the employee explains his or her absence and seeks the permission of the Secretary for a further period of absence, the Secretary must, as soon as practicable, consider the matter and may, by notice, inform the employee:

- (a) that he or she has been granted leave of absence for such period and on such conditions as are specified in the notice; or
- (b) that he or she is required to return to his or her employment in the Department and that, unless he or she returns to his or her employment within a specified period (being a period of at least 2 weeks from and including the day on which the notice is sent) the employee is to be taken to have retired from the Service at the end of the period so specified.

“(5) Where the employee who is required by the notice sent to him or her to return to his or her employment does not return to the employment within the period referred to in the notice and the notice is not revoked under subsection (6), the employee is taken to have retired from the Service on the day after the end of that period.

“(6) The Commissioner may, at any time before the employee is taken to have retired from the Service, by notice, revoke a notice previously sent to the employee under this section, and the notice is then of no effect.

“(7) Where:

- (a) the Secretary under subsection (2) may send a notice to the employee; or
- (b) the Secretary under subsection (4), and the Commissioner under

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**SCHEDULE 1—continued**

subsection (6), may exercise a power in relation to the employee by notice;

the notice must be in writing and sent to the employee by security post addressed to the employee at the address last known to the Secretary or Commissioner, as the case may be.

**Employment of employee taken to have retired under section 82AJ**

“82AK.(1) An employee who is taken to have retired from the Service under section 82AJ may apply to the relevant Secretary, in writing, for employment in the Department.

“(2) The Secretary must:

- (a) if the Secretary is satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent, employ the applicant in the Department in the same or a similar capacity with the same rate of pay as that payable to the applicant immediately before he or she was taken to have retired; or
- (b) if the Secretary is not so satisfied—refuse the application.

“(3) Where the Secretary refuses the application:

- (a) the Secretary must notify the applicant in writing accordingly, and give to the applicant and the Commissioner 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 subsection (2) to refuse an application may be reviewed under section 43 of the Merit Protection Act.

“(5) Where a person who is taken to have retired from the Service under section 82AJ is employed under this section:

- (a) the person is taken, during the period commencing immediately after the day of the retirement and ending immediately before the day on which the person was so employed, to have continued his or her employment and to have been on leave of absence without pay; and
- (b) the relevant Secretary must determine whether that period, or any part of that period, is to form part of the employee’s period of service for any specified purposes under this Act or any other Act (other than the *Superannuation Act 1976*).

“(6) In this section, ‘**relevant Secretary**’ in relation to a person who is taken to have retired from the Service under section 82AJ, means the Secretary to the Department in which the person was employed immediately before being taken to have so retired or, if that Department has ceased to exist, the Secretary to such Department as the Commissioner directs.”.

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**SCHEDULE 1—continued**

**Section 82C:**

Insert:

“**‘award of a State industrial authority’** means an award, order, decision or determination of a State industrial authority;  
**‘State industrial authority’** means a State industrial authority within the meaning of the *Industrial Relations Act 1988*.”.

**Paragraph 82E(1)(a):**

Omit “or of an industrial award”, substitute “of an industrial award, or of an award of a State industrial authority”.

**Sections 82F and 82G:**

Repeal the sections, substitute:

**Determination is a disallowable instrument**

“82F.(1) Subject to subsection (2), a determination under this Division is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(2) Paragraphs 48(1)(a) and (b) and subsection 48(2) of the *Acts Interpretation Act 1901*, and subsections 5(3) to (3C) (inclusive) of the *Statutory Rules Publication Act 1903*, do not apply to a determination under this Division.”.

**Subsection 87J(1) (definition of “prescribed authority”):**

Omit “or of the Northern Territory, other than a body the staff of which consists of members of the Public Service of that Territory”.

**Subsection 87J(1) (definition of “prescribed office”):**

Omit the definition, substitute:

“**‘prescribed office’** means an office or appointment the holder of which is appointed by the Governor of a State or by a Minister of a State;”.

**Subsection 87J(1) (paragraph (a) of the definition of “statutory authority”):**

Omit “other than the Northern Territory”.

**Subsection 87J(1):**

Insert:

“**‘Territory’** does not include the Northern Territory;”.

**After subsection 87J(2):**

Insert:

“(2A) A reference in this section:

(a) to a State must be read as including the Northern Territory;  
and

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**SCHEDULE 1—continued**

- (b) to a Governor of a State must be read as including the Administrator of the Northern Territory; and
- (c) to a Minister of a State must be read as including an Executive Member of the Legislative Assembly of the Northern Territory; and
- (d) to a Premier of a State must be read as including the Chief Minister of the Northern Territory.”.

**Paragraph 87J(4)(b):**

Omit “other than the Northern Territory”.

**Subsection 87N(1):**

Omit “Board”, substitute “Commissioner”.

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

Insert “and at a specified rate of salary” after “classification”.

**Paragraph 87N(8)(b):**

Omit “Board”, substitute “Committee”.

***Public Service Reform Act 1984***

**Subsection 151(6):**

Omit the subsection.

***Resource Assessment Commission Act 1989***

**Section 3 (paragraph (a) of the definition of “Commonwealth authority”):**

After “law of the Commonwealth” insert “(other than the Administration of the Territory of Norfolk Island established under subsection 5(2) of the *Norfolk Island Act 1979*)”.

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**SCHEDULE 2**

Subsection 4(1)

**AMENDMENTS OF CERTAIN LEGISLATION RELATING TO  
APPROVAL OF THE PUBLIC SERVICE BOARD**

Column 1 Act	Column 2 Provision	Column 3 Words to be omitted
<i>Albury-Wodonga Development Act 1973</i>	subsection 21(2)	, subject to the approval of the Public Service Board,
<i>Australia Council Act 1975</i>	subsection 41(2)	with the approval of the Public Service Board
<i>Australian Bicentennial Authority Act 1980</i>	subsection 15(2)	after consultation with the Public Service Board
<i>Australian Film Commission Act 1975</i>	subsection 29(2)	with the approval of the Public Service Board
<i>Australian Institute of Health Act 1987</i>	subsection 19(4)	with the approval of the Public Service Board
<i>Australian Nuclear Science and Technology Organisation Act 1987</i>	subsection 24(3)	with the approval of the Public Service Board
<i>Australian Trade Commission Act 1985</i>	subsection 60(2)	, with the approval of the Public Service Board,
<i>Automotive Industry Authority Act 1984</i>	subsection 25(3)	, with the approval of the Public Service Board,
<i>Economic Planning Advisory Council Act 1983</i>	subsection 23(3)	, with the approval of the Public Service Board,
<i>Governor-General Act 1974</i>	subsection 14(3)	, with the approval of the Public Service Board,
<i>High Court of Australia Act 1979</i>	subsection 20(3)	with the concurrence of the Public Service Board
<i>High Court of Australia Act 1979</i>	subsection 26(4)	with the concurrence of the Public Service Board
<i>National Occupational Health and Safety Commission Act 1985</i>	subsection 55(3)	with the approval of the Public Service Board
<i>National Gallery Act 1975</i>	paragraph 33(b)	with the approval of the Public Service Board
<i>National Measurement Act 1960</i>	subsection 18A(6)	with the approval of the Public Service Board
<i>National Measurement Act 1960</i>	subsection 18A(7)	with the approval of the Public Service Board
<i>Pipeline Authority Act 1973</i>	subsection 19(2)	with the approval of the Public Service Board
<i>Pipeline Authority Act 1973</i>	section 22	, with the approval of the Public Service Board,
<i>Rural Industries Research Act 1985</i>	subsection 29(4)	, with the approval of the Public Service Board,
<i>Rural Industries Research Act 1985</i>	subsection 59(4)	, with the approval of the Public Service Board,
<i>Science and Industry Research Act 1949</i>	subsection 32(2)	, subject to the approval of the Public Service Board,

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**SCHEDULE 2—continued**

**AMENDMENTS OF CERTAIN LEGISLATION RELATING TO  
APPROVAL OF THE PUBLIC SERVICE BOARD—continued**

<i>Column 1 Act</i>	<i>Column 2 Provision</i>	<i>Column 3 Words to be omitted</i>
<i>Snowy Mountains Hydro- electric Power Act 1949</i>	subsection 22(2)	, subject to the approval of the Public Service Board,
<i>Trade Union Training Authority Act 1975</i>	subsection 41(2)	with the approval of the Public Service Board

**SCHEDULE 3**

Subsection 4(2)

**AMENDMENTS OF CERTAIN OTHER LEGISLATION  
RELATING TO APPROVAL OF THE PUBLIC SERVICE BOARD**

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

**Subsection 27(2):**

Omit the subsection, substitute:

“(2) Where a Land Council employs a person as a staff member, the terms and conditions of the person’s employment are such as are from time to time determined by the Land Council.

“(2A) Where a Land Council obtains the advice and assistance of a person under paragraph (1)(b), the terms and conditions of the engagement of that person are such as are approved by the Land Council.”.

***Australian Institute of Marine Science Act 1972***

**Section 34:**

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

**Subsection 35(2):**

Omit the subsection.

**Subsection 35(4):**

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

***Family Law Act 1975***

**Subsection 114M(2):**

Omit all words after “from time to time”, substitute “determined by the Director”.



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**SCHEDULE 3—continued**

***Naval Defence Act 1910***

**Subsection 42A (2):**

Omit the subsection.

***Special Prosecutors Act 1982***

**Subsection 17(3):**

Omit the subsection, substitute:

“(3) Where a Special Prosecutor employs or engages a person under this section, the terms and conditions of the person’s employment or engagement are such as are from time to time determined by the Special Prosecutor.”.

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[*Minister’s second reading speech made in—  
House of Representatives on 17 October 1991  
Senate on 7 November 1991*]