



# **Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994**

**No. 33 of 1994**

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# **Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994**

**No. 33 of 1994**

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**An Act to amend various Acts relating to matters dealt with within the portfolio of the Prime Minister, to amend certain Acts in relation to dealings with Cabinet notebooks and similar documents, to make consequential amendments of the *Superannuation Act 1976*, and for related purposes**

*[Assented to 15 March 1994]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994*.

### **Commencement**

2.(1) Except for subsection 15(1), this Act commences on the day on which it receives the Royal Assent.

(2) Subsection 15(1) is to be taken to have commenced on 25 June 1984, immediately after the commencement of section 3 of the *Merit Protection (Australian Government Employees) Act 1984*.

## **PART 2—AMENDMENTS OF THE ARCHIVES ACT 1983**

### **Principal Act**

3. In this Part, “**Principal Act**” means the *Archives Act 1983*<sup>1</sup>.

### **Interpretation**

4. Section 3 of the Principal Act is amended by omitting from the definition of “Commonwealth record” in subsection (1) “but does not include a record that is a Cabinet notebook, is exempt material, or is a register or guide maintained in accordance with Part VIII” and substituting “but does not include a record that is exempt material or is a register or guide maintained in accordance with Part VIII”.

5. After section 22 of the Principal Act the following section is inserted:

### **Cabinet notebooks**

“22A.(1) For the purposes of the application of this Act in relation to Cabinet notebooks, a Cabinet notebook is in the open access period if a period of 50 years has elapsed since the end of the year ending on 31 December in which the Cabinet notebook came into existence.

“(2) Subsection 3(7) does not apply in relation to Cabinet notebooks.”.

### **Application**

6. The Principal Act, as amended by this Act, applies in relation to:
- (a) meetings of the Cabinet or of a committee of the Cabinet held before or after the commencement of this Part; and
  - (b) documents created before or after the commencement of this Part.

## **PART 3—AMENDMENTS OF THE AUSTRALIAN SCIENCE AND TECHNOLOGY COUNCIL ACT 1978**

### **Principal Act**

7. In this Part, “**Principal Act**” means the *Australian Science and Technology Council Act 1978*<sup>2</sup>.

### **Definitions**

8. Section 3 of the Principal Act is amended:

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- (a) by omitting the definition of “member” and substituting the following definition:  
“ ‘**member**’ means a member of the Council, including the Chairperson and the Deputy Chairperson;”;
- (b) by omitting the definitions of “Chairman” and “Deputy Chairman”;
- (c) by inserting the following definitions:  
“ ‘**Chairperson**’ means the Chairperson of the Council;  
‘**Deputy Chairperson**’ means the Deputy Chairperson of the Council;”.

### **Membership**

**9.(1)** Section 10 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) The Council consists of the following members:

- (a) the Chairperson of the Council;
- (b) the Deputy Chairperson of the Council;
- (c) not less than 3, and not more than 13, other members.”.

**(2)** An appointment of a person as Chairman that was in force under the Principal Act immediately before the commencement of this section has effect after that commencement as if:

- (a) this section had been in force when the appointment was made; and
- (b) the appointment had been made under the Principal Act, as amended by this section.

**(3)** An appointment of a person as Deputy Chairman that was in force under the Principal Act immediately before the commencement of this section has effect as if:

- (a) this section had been in force when the appointment was made; and
- (b) the appointment had been made under the Principal Act, as amended by this section.

**10.** Sections 19 and 20 of the Principal Act are repealed and the following section is substituted:

### **Staff**

“19.(1) The staff required to assist the Council in the performance of its functions are to be persons appointed or employed under the *Public Service Act 1922* and made available for the purpose by the Secretary to the Department.

“(2) Members of the staff referred to in subsection (1) are to perform their duties in accordance with the directions of the Council, the Chairperson or a person (if any) appointed by the Council, by resolution, to be its representative for the purposes of this subsection.

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“(3) The Council may, by resolution, revoke an appointment under subsection (2).”.

**PART 4—AMENDMENTS OF THE FREEDOM OF  
INFORMATION ACT 1982**

**Principal Act**

**11.** In this Part, “**Principal Act**” means the *Freedom of Information Act 1982*<sup>3</sup>.

**Interpretation**

**12.** Section 4 of the Principal Act is amended:

(a) by inserting the following definition in subsection (1):

“ ‘**Cabinet notebook**’ means a notebook or other like record that contains notes of discussions or deliberations taking place in a meeting of the Cabinet or of a committee of the Cabinet, being notes made in the course of those discussions or deliberations by, or under the authority of, the Secretary to the Cabinet;”;

(b) by omitting “but does not include library material maintained for reference purposes;” from the definition of “document” in subsection 4(1) and substituting the following:

“but does not include:

- (d) library material maintained for reference purposes; or
- (e) Cabinet notebooks;”.

**Application**

**13.** The Principal Act, as amended by this Act, applies in relation to:

- (a) meetings of the Cabinet or of a committee of the Cabinet held before or after the commencement of this Part; and
- (b) documents created before or after the commencement of this Part.

**PART 5—AMENDMENTS OF THE MERIT PROTECTION  
(AUSTRALIAN GOVERNMENT EMPLOYEES) ACT 1984**

**Principal Act**

**14.** In this Part, “**Principal Act**” means the *Merit Protection (Australian Government Employees) Act 1984*<sup>4</sup>.

**Definitions**

**15.(1)** Section 3 of the Principal Act is amended by omitting paragraph (c) of the definition of “enactment” in subsection (1) and substituting the following paragraph:

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“(c) an instrument (including an industrial award, a determination, rules, regulations or by-laws) made under an Act or under such an Ordinance;”.

(2) Section 3 of the Principal Act is amended by omitting from subsection (1) the definition of “enactment” and substituting the following definition:

“ ‘**enactment**’ means:

- (a) an Act; or
- (b) a law that is an enactment within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*; or
- (c) an Ordinance made under section 12 of the *Seat of Government (Administration) Act 1910*; or
- (d) an instrument (including an industrial award, a determination, rules, regulations or by-laws) made under a law that is an enactment by virtue of paragraph (a), (b) or (c);”.

**Discretion not to investigate**

16. Section 49 of the Principal Act is amended by inserting after subsection (1C) the following subsections:

“(1D) The Agency may decide to transfer an application to the Ombudsman if the Agency is of the opinion:

- (a) that the application could have been made to the Ombudsman as a complaint under section 7 of the *Ombudsman Act 1976*; and
- (b) that the subject-matter of the application could be more conveniently or effectively investigated by the Ombudsman.

“(1E) If the Agency makes a decision under subsection (1D), the Agency must:

- (a) transfer the application to the Ombudsman as soon as is reasonably practicable; and
- (b) give the Ombudsman any information or documents relating to the application that are in the possession, or under the control, of the Agency; and
- (c) as soon as is reasonably practicable, give the applicant written notice that the application has been transferred to the Ombudsman.

“(1F) An application transferred under subsection (1E) is to be taken to be a complaint made to the Ombudsman under section 7 of the *Ombudsman Act 1976*.”.

**PART 6—AMENDMENTS OF THE OMBUDSMAN ACT 1976**

**Principal Act**

17. In this Part, “**Principal Act**” means the *Ombudsman Act 1976*.



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**Definitions**

**18.(1)** Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

“ **‘chief executive officer of a court or tribunal’** means the person holding, or performing the duties of, one of the following offices:

- (a) Clerk of the High Court;
- (b) Registrar of the Federal Court of Australia;
- (c) Chief Executive Officer of the Family Court of Australia;
- (d) Registrar of the Administrative Appeals Tribunal;
- (e) an office declared by the regulations to be an office of chief executive officer of a court or tribunal for the purposes of this Act;
- (f) an office prescribed by the regulations in lieu of an office referred to in paragraph (a), (b), (c) or (d);

**‘Commonwealth-controlled company’** means an incorporated company in which the Commonwealth has an interest that enables the Commonwealth:

- (a) to control the composition of the board of directors of the company; or
- (b) to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company; or
- (c) to control more than one-half of the issued share capital of the company (excluding any part of that share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

**‘ombudsman scheme’** means a scheme providing for the investigation of complaints by consumers about matters relating to decisions or actions of the holders of licences or authorities granted under an enactment;

**‘Parliamentary Department’** means:

- (a) the Department of the Senate; or
- (b) the Department of the House of Representatives; or
- (c) the Department of the Parliamentary Library; or
- (d) the Department of the Parliamentary Reporting Staff; or
- (e) the Joint House Department;

**‘Secretary’**, in relation to a Department, means the person who is the Secretary of the Department for the purposes of the *Public Service Act 1922*.”;

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(b) by omitting paragraphs (b) and (c) of the definition of “prescribed authority” in subsection (1) and substituting the following paragraphs:

“(b) a Commonwealth-controlled company (other than Qantas Airways Limited or a company that is a subsidiary of that company) that is a prescribed authority by virtue of section 3AB;

(ba) a body corporate, or an unincorporated body, established by the Governor-General or by a Minister and declared by the regulations to be a prescribed authority;

(bb) a chief executive officer of a court or tribunal;

(c) the person holding, or performing the duties of, an office established by an enactment, other than:

(i) the chief executive officer of a court or tribunal or a person who, for the purposes of this Act, is to be taken to be a member of the staff of the chief executive officer of a court or tribunal; or

(ii) a person who, under subsection (3) or the regulations, is not to be taken to be a prescribed authority for the purposes of this Act;”;

(c) by omitting from subsection (1) the definition of “Department” and substituting the following definition:

“**‘Department’** means a Department of the Australian Public Service referred to in paragraph (a) of the definition of ‘Department’ in subsection 7(1) of the *Public Service Act 1922*, but does not include the branch of the Australian Public Service comprising the transitional staff as defined by section 3 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*;”;

(d) by adding at the end the following subsections:

“(14) For the purposes of this Act:

(a) the officers (other than the chief executive officer) of a court or tribunal; and

(b) the members of the staff of the registry or registries of a court or tribunal; and

(c) officers or employees of a Department, or of an authority of the Commonwealth, whose services are made available to a court or tribunal; and

(d) persons declared by the regulations to be members of the staff of a court or tribunal for the purposes of this Act;

are to be taken to be members of the staff of the chief executive officer of the court or tribunal.

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“(15) A reference in this section to an officer of a court or tribunal does not include a judge of a court or a member of a tribunal.

“(16) In relation to anything that concerns:

- (a) a chief executive officer of a court or tribunal; or
- (b) a Parliamentary Department;

a reference to which this subsection applies has effect in accordance with subsection (18).

“(17) Subsection (16) applies to the following references:

- (a) a reference in any of the following provisions to the responsible Minister:
  - (i) paragraph 8(7A)(b);
  - (ii) subsections 8(8) and (9);
  - (iii) paragraph 8(10)(c);
  - (iv) subsection 11A(5);
  - (v) subparagraph 35(3)(b)(i);
- (b) the reference in paragraph 8(10)(a) to the Minister administering a Department;
- (c) the reference in subsection 15(6) to the Minister concerned.

“(18) A reference to which subsection (16) applies is to be read as follows:

- (a) in the case of the chief executive officer of a court, the reference is to be read as a reference to the chief justice or chief judge (however described) of the court;
- (b) in the case of the Registrar of the Administrative Appeals Tribunal, the reference is to be read as a reference to the President of the Administrative Appeals Tribunal;
- (c) in the case of the chief executive officer of a tribunal other than the Administrative Appeals Tribunal, the reference is to be read as a reference to the president or principal member (however described) of the tribunal or, if the tribunal consists of a single member, as a reference to that member;
- (d) in the case of the Department of the Senate, the reference is to be read as a reference to the President of the Senate;
- (e) in the case of the Department of the House of Representatives, the reference is to be read as a reference to the Speaker;
- (f) in the case of any other Parliamentary Department, the reference is to be read as a reference to the President of the Senate and the Speaker.”.

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(2) On the day on which the *Public Service (Parliamentary Departments) Amendment Act 1994* comes into operation, section 3 of the Principal Act, as amended by this Act, is further amended by omitting from subsection (1) the definition of “Parliamentary Department” and substituting the following definition:

“ **‘Parliamentary Department’** means:

- (a) the Department of the Senate; or
- (b) the Department of the House of Representatives; or
- (c) the Department of Parliamentary Library and Reporting Services; or
- (d) the Joint House Department;”.

19. After section 3 of the Principal Act the following section is inserted:

**Prescribed authorities: Commonwealth-controlled companies**

“3AB.(1) A Commonwealth-controlled company is a prescribed authority unless:

- (a) it is excluded by subsection (2); or
- (b) under the regulations it is to be taken not to be a prescribed authority.

“(2) Subject to subsection (3), a Commonwealth-controlled company is excluded for the purposes of paragraph (1)(a) if:

- (a) the company was a Commonwealth-controlled company immediately before the commencement of Part 6 of the *Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994*; and
- (b) immediately before that commencement the company was not a prescribed authority for the purposes of this Act as then in force.

“(3) A Commonwealth-controlled company that, but for this subsection, would be excluded by subsection (2) is not so excluded if the regulations declare that the company is to be taken to be a prescribed authority.”.

**Establishment of offices of Ombudsman and Deputy Ombudsman**

20. Section 4 of the Principal Act is amended by omitting paragraph (1)(b) and substituting the following paragraph:

“(b) at least one, and not more than 3, Deputy Commonwealth Ombudsmen.”.

**Functions of Ombudsman**

21. Section 5 of the Principal Act is amended:

- (a) by adding at the end of subsection (1) the following word and paragraph:

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- “and (c) with the consent of the Minister, may enter into an arrangement under which the Ombudsman will perform functions of an ombudsman under an ombudsman scheme established in accordance with the conditions of licences or authorities granted under an enactment.”;
- (b) by inserting in subsection (2) after paragraph (a) the following paragraph:
- “(aa) action that constitutes proceedings in Parliament for the purposes of section 16 of the *Parliamentary Privileges Act 1987*.”;
- (c) by inserting in subsection (2) after paragraph (b) the following paragraph:
- “(ba) action by the chief executive officer of a court or by a person who, for the purposes of this Act, is to be taken to be a member of the staff of the chief executive officer of a court:
- (i) when exercising a power of the court; or
  - (ii) when performing a function, or exercising a power, of a judicial nature.”;
- (d) by adding at the end the following subsections:
- “(5) The Ombudsman is not authorised to investigate action taken under:
- (a) a law of Western Australia in its application in the Territory of Christmas Island by virtue of the *Christmas Island Act 1958*; or
  - (b) a law of Western Australia in its application in the Territory of Cocos (Keeling) Islands by virtue of the *Cocos (Keeling) Islands Act 1955*;
- by a person employed by Western Australia.
- “(6) The reference in subsection (5) to a person employed by Western Australia includes a reference to:
- (a) a person occupying, or acting in, an office or position under a law of Western Australia; and
  - (b) a person employed by a body established by or under a law of Western Australia.
- “(7) An arrangement referred to in paragraph (1)(c) may include provision for payment by the other party to the arrangement for the performance of functions by the Ombudsman in accordance with the arrangement.”.

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**Discretion not to investigate certain complaints**

**22.** Section 6 of the Principal Act is amended by adding at the end the following subsections:

“(6) If the Ombudsman forms the opinion:

- (a) that a complaint relates to action of a prescribed authority that is a national broadcasting service for the purposes of the *Broadcasting Services Act 1992*; and
- (b) that the complaint could have been made to the Australian Broadcasting Authority under Part 11 of the *Broadcasting Services Act 1992* and could be more conveniently or effectively dealt with by that Authority;

the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and to transfer the complaint to the Australian Broadcasting Authority.

“(7) If the Ombudsman makes a decision under subsection (6), the Ombudsman must:

- (a) transfer the complaint to the Authority as soon as is reasonably practicable; and
- (b) give the Authority any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
- (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Authority.

“(8) A complaint transferred under subsection (7) is to be taken to be a complaint made under Part 11 of the *Broadcasting Services Act 1992*.

“(9) If the Ombudsman forms the opinion:

- (a) that a complaint could have been made as an application under Division 4 of Part II of the *Merit Protection (Australian Government Employees) Act 1984*; and
- (b) that the complaint could be more conveniently or effectively dealt with by the Merit Protection and Review Agency;

the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the Agency.

“(10) If the Ombudsman makes a decision under subsection (9), the Ombudsman must:

- (a) transfer the complaint to the Merit Protection and Review Agency as soon as is reasonably practicable; and

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- (b) give the Agency any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
- (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Agency.

“(11) A complaint transferred under subsection (10) is to be taken to be an application made under Division 4 of Part II of the *Merit Protection (Australian Government Employees) Act 1984*.

“(12) If the Ombudsman forms the opinion that action in respect of which a complaint has been made relates to a commercial activity of a Department or prescribed authority, the Ombudsman may decide not to investigate the complaint, or to cease investigating the complaint, as the case may be.

“(13) If the Ombudsman forms the opinion:

- (a) that a complaint relates to action taken by a Department or a prescribed authority; and
- (b) that the complaint could be more conveniently or effectively dealt with by the industry ombudsman for a particular industry;

the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and to transfer the complaint to that industry ombudsman.

“(14) If the Ombudsman makes a decision under subsection (13), the Ombudsman must:

- (a) transfer the complaint to the industry ombudsman as soon as is reasonably practicable; and
- (b) give the industry ombudsman such information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman as the Ombudsman believes are reasonably necessary to enable the industry ombudsman to deal effectively with the complaint; and
- (c) as soon as is reasonably practicable, give the complainant written notice of the transfer of the complaint.

“(15) For the purposes of subsection (13), the industry ombudsman for a particular industry is the person holding, or acting in, the office or appointment declared by the regulations to be the office or appointment the holder of which is the ombudsman for that industry.”.

### **Investigations**

**23.** Section 8 of the Principal Act is amended by omitting subsection (8) and substituting the following subsection:

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“(8) The Ombudsman may, either before or after the completion of an investigation under this Act, discuss any matter relevant to the investigation with:

- (a) the responsible Minister; or
- (b) any other Minister concerned with the matter.”.

**Power to examine witnesses**

**24.** Section 13 of the Principal Act is amended by adding at the end the following subsection:

“(2) A person before whom another person (in this subsection called the ‘respondent’) attends in accordance with a notice under subsection 9(2) may:

- (a) administer an oath or affirmation to the respondent; and
- (b) examine the respondent on oath or affirmation.”.

**Reports where appropriate action not taken on Ombudsman’s report**

**25.** Section 16 of the Principal Act is amended by adding at the end the following subsections:

“(4) In the case of a report relating to a Parliamentary Department, subsections (1) to (3) have effect as follows:

- (a) if the report relates to the Department of the Senate—a reference to the Prime Minister is to be read as a reference to the President of the Senate;
- (b) if the report relates to the Department of the House of Representatives—a reference to the Prime Minister is to be read as a reference to the Speaker of the House of Representatives;
- (c) in any other case—a reference to the Prime Minister is to be read as a reference to the President of the Senate and the Speaker of the House of Representatives.

“(5) In the case of a report relating to a prescribed authority constituted by the chief executive officer of a court or tribunal, subsections (1) to (3) have effect as follows:

- (a) if the report relates to the chief executive officer of a court—a reference to the Prime Minister is to be read as a reference to the chief justice or chief judge (however described) of the court, as the case requires;
- (b) if the report relates to the Registrar of the Administrative Appeals Tribunal—a reference to the Prime Minister is to be read as a reference to the President of the Tribunal;



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- (c) if the report relates to the chief executive officer of a tribunal other than the Administrative Appeals Tribunal—a reference to the Prime Minister is to be read as a reference to the president or principal member (however described) of the tribunal or, if the tribunal consists of a single member, as a reference to that member.”.

### **Special reports to Parliament**

26. Section 17 of the Principal Act is amended by omitting “has, in accordance with subsection 16(1), furnished information to the Prime Minister” and substituting “has acted under subsection 16(1)”.

### **Acting appointments**

27.(1) Section 29 of the Principal Act is amended:

- (a) by omitting from subsection (1) “Governor-General” and substituting “Minister”;
- (b) by omitting from subsection (4) “the Governor-General or the Minister, as the case may be,” and substituting “the Minister”;
- (c) by omitting subsection (5) and substituting the following subsection:

“(5) The Minister may terminate an appointment under subsection (1) or (1A) at any time.”.

(2) An appointment in force under subsection 29(1) of the Principal Act immediately before the commencement of this section has effect after that commencement as if:

- (a) this section had been in force when the appointment was made; and
- (b) the appointment had been made under section 29 of the Principal Act as amended by this section.

## **PART 7—AMENDMENTS OF THE PUBLIC SERVICE ACT 1922**

### **Principal Act**

28. In this Part, “Principal Act” means the *Public Service Act 1922*<sup>6</sup>.

### **Public Service Commissioner**

29. Section 11 of the Principal Act is amended by adding at the end of subsection (6) “and to remain an unattached Secretary while the person continues to be an officer”.

### **Powers of Commissioner**

30. Section 19 of the Principal Act is amended by omitting from subsection (3) “\$1,000 or imprisonment for 6 months, or both” and substituting “Imprisonment for 6 months”.

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**Classification of offices and officers**

**31.** Section 28 of the Principal Act is amended by omitting from subsection (4) “subsection 76F(1A)” and substituting “subsections 63K(3A), 63L(3A), 76F(1A), 76L(3) and 76W(3)”.

**Fixed-term appointments**

**32.** Section 37 of the Principal Act is amended:

- (a) by omitting from subsection (1) “who is not an officer” and “to the Service”;
- (b) by adding “and” at the end of each of paragraphs (2)(a) and (b);
- (c) by omitting paragraph (2)(c);
- (d) by omitting subsection (3);
- (e) by omitting subsections (4), (5) and (6), and substituting the following subsections:

“(4) A person appointed to an office of Secretary under a fixed-term appointment holds the office on such terms and conditions (if any) relating to matters not provided for by or under this or another Act as are determined in writing by the Governor-General.

“(4A) A determination under subsection (4) must be in accordance with advice that is consistent with a recommendation by the Commissioner.

“(5) If:

- (a) a person holds an office of Secretary under a fixed-term appointment; and
- (b) one of the following events occurs:
  - (i) the office is abolished;
  - (ii) the period for which the appointment was made expires;
  - (iii) the Governor-General directs that the appointment be terminated on a specified day, being a day not earlier than the day on which the direction is given; and
- (c) immediately after the event referred to in paragraph (b) occurs, the person does not hold another office of Secretary;

the person is retired from the Service by force of this subsection.

“(6) If a person is retired by force of subsection (5), the Prime Minister may direct, in writing, that the person is to be taken:

- (a) not to have been so retired; and
- (b) after ceasing to hold an office of Secretary, to have continued, or to continue, as an officer until a specified date not later than the day on which the person will reach the age of 65 years;

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and, if such a direction is given, the person continues as an officer accordingly.

“(6A) The Prime Minister may, at any time, in writing, vary a direction under subsection (6) by substituting for the date specified in the direction another date not later than the day on which the person will reach the age of 65 years, and the direction has effect as so varied.

“(6B) If a direction is given under subsection (6):

- (a) subsection (5) has effect, in relation to the person to whom the direction relates, as if subsection (5) were expressed to retire the person from the Service on the date specified in the direction; and
- (b) the terms and conditions on which the person continues as an officer under the direction are those specified in, or ascertained in accordance with, the direction under subsection (6).”;
- (f) by omitting from subsection (7) “subsection (6)” and substituting “subsection (5)”;
- (g) by omitting from paragraph (8)(b) “, subject to subsection (5),”;
- (h) by omitting subsections (13) and (14);
- (i) by omitting subsection (15) and substituting the following subsection:
  - “(15) Division 8A does not apply to:
    - (a) a person who is a Secretary by virtue of a fixed-term appointment; or
    - (b) a person who continues as an officer under subsection (6).”.

**Transfer or promotion on advice of Joint Selection Committee**

**33.** Section 50DA of the Principal Act is amended by adding at the end the following subsections:

“(11) If:

- (a) a Joint Selection Committee has given advice to the Secretary in accordance with this section with respect to the filling of a vacant office (in this section referred to as the ‘**original office**’); and
- (b) either:
  - (i) the person recommended by the Committee for promotion or transfer to the original office is not able to be promoted or transferred to the office; or
  - (ii) within 6 months after the original office was filled in accordance with the advice of the Committee, the original office again becomes vacant or an identical office in the same Department becomes vacant; and

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(c) the advice of the Joint Selection Committee was that 2 or more applicants were suitable for promotion or transfer to the original office; and

(d) the advice indicated an order of merit of those applicants;  
the Secretary may promote or transfer to the original office or the identical office, as the case may be, the applicant next in order of merit according to the advice.

“(12) Offices are identical for the purposes of subsection (11) if the classification, duties and location of the offices are the same.

“(13) For the purposes of subsection (7), the promotion of an officer under subsection (11) is to be taken to be in accordance with the advice of the Joint Selection Committee.”.

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

**34.** Section 50DB of the Principal Act is amended by adding at the end the following subsections:

“(12) If:

(a) a Joint Selection Committee has given advice to a Secretary in accordance with this section with respect to the filling of a vacant office (in this section referred to as the ‘**original office**’); and

(b) either:

(i) the person recommended by the Committee for promotion or transfer to the original office is not able to be promoted or transferred to the office; or

(ii) within 6 months after the original office was filled in accordance with the advice of the Committee, the original office again becomes vacant or an identical office in the same Department becomes vacant; and

(c) the advice of the Joint Selection Committee was that 2 or more applicants were suitable for promotion or transfer to the original office; and

(d) the advice indicated an order of merit of those applicants;  
the Secretary may promote or transfer to the original office or the identical office, as the case may be, the applicant next in order of merit according to the advice.

“(13) Offices are identical for the purposes of subsection (12) if the classification, duties and location of the offices are the same.

“(14) For the purposes of this section, the promotion of an officer under subsection (12) is to be taken to be in accordance with the advice of the Joint Selection Committee.”.

### **Promotion appeal rights of certain officers**

**35.** Section 50H of the Principal Act is amended by inserting after subsection (2A) the following subsection:

“(2B) An officer is not entitled to appeal against the promotion of a person to a vacant office unless:

- (a) the vacancy in the office was notified in the *Gazette* and the officer had applied for a transfer that would have had the effect of filling the notified vacancy; or
- (b) the promotion was made without the vacancy in the office having been notified in the *Gazette*.”.

### **Suspension**

**36.** Section 63B of the Principal Act is amended by omitting subsection (1A) and substituting the following subsections:

“(1A) Where:

- (a) either:
  - (i) an officer has been convicted of a criminal offence; or
  - (ii) without recording a conviction, a court has made a finding that an officer has committed a criminal offence; and
- (b) the officer is not subject to a direction or suspension under subsection (1);

the relevant Secretary may, by written notice given to the officer:

- (c) direct the officer to perform temporarily other duties that he or she is qualified to perform (whether at the same or a different locality); or
- (d) suspend the officer from duty.

“(1B) A Secretary is not authorised to suspend an officer under paragraph (1A)(d) unless the Secretary is of the opinion that it would be prejudicial to:

- (a) the effective operation of the Service; or
- (b) the interests of the public, the officer or other officers;

if the officer were to continue to perform the duties of his or her existing office pending the making of a decision under section 63 in relation to the officer.

“(1C) A Secretary is not authorised to suspend an officer under paragraph (1)(d) or (1A)(d) unless:

- (a) the Secretary has first given the officer an opportunity to be heard;
- or

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- (b) the Secretary is of the opinion that it would not be appropriate, in the particular circumstances, to give the officer such an opportunity.”.

**Removal and variation of suspension**

**37.** Section 63C of the Principal Act is amended:

- (a) by omitting from paragraph (4)(a) “section 63B” and substituting “subsection 63B(1)”;
- (b) by omitting from paragraph (6)(a) “section 63B” and substituting “subsection 63B(1)”;
- (c) by inserting in subsection (14) “or (1A)” after “subsection 63B(1)”.

**38.** After section 63J of the Principal Act the following section is inserted:

**Suspension**

“63JA.(1) The regulations may make provision for and in relation to the application, subject to such modifications and adaptations (if any) as are specified, of sections 63B and 63C to unattached officers.

“(2) In subsection (1), ‘**modification**’ includes the addition or omission of a provision or the substitution of a provision for another provision.

“(3) For the purposes of subsections 63K(8), 63L(8) and 63M(5) and (6), sections 63B and 63C, in their application by virtue of subsection (1), are to be regarded as included in this Subdivision.”.

**Misconduct committed before becoming an unattached officer**

**39.** Section 63K of the Principal Act is amended:

- (a) by omitting subsection (3) and substituting the following subsections:

“(3) If the person holding an inquiry into a charge under subsection (1) is satisfied that the unattached officer committed misconduct before he or she became an unattached officer, the person may cause the officer to be counselled by another officer.

“(3A) If the person is of the opinion that counselling is not sufficient, he or she may give one of the following directions:

- (a) a direction that the officer be admonished;
- (b) a direction that an amount not exceeding \$500 be deducted from money due by the Commonwealth to the officer;
- (c) a direction that the officer’s classification be reduced to a specified lower classification and, if a range of salary is applicable to the lower classification, specifying the rate at which salary payable to the officer is to be paid;

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(d) a direction that the officer be dismissed from the Service.

“(3B) The reference in paragraph (3A)(b) to money due by the Commonwealth to an officer is to be read as follows:

(a) if, when the direction is given, the officer is performing duties in a Department, the reference is to salary due to the officer;

(b) in any other case, the reference is to any money due, or that becomes due, by the Commonwealth to the officer:

(i) under this Act or under regulations or a determination under this Act; or

(ii) under the *Long Service Leave (Commonwealth Employees) Act 1976.*”;

(b) by omitting from subsection (4) “subsection (3)” and substituting “subsection (3A)”;

(c) by omitting from subsection (5) “, or is not dismissed,” and substituting “, or that other action is, or is not, taken against the officer,”;

(d) by adding at the end the following subsection:

“(8) If:

(a) a person is charged under this section; and

(b) before the charge is determined, the person ceases to be an unattached officer but remains an officer;

this Subdivision continues to apply to the person in relation to the charge, and any action may be taken by or against the person under this Subdivision in relation to the charge, as if the person were still an unattached officer.”.

**Misconduct while unattached officer**

40. Section 63L of the Principal Act is amended:

(a) by omitting subsection (3) and substituting the following subsections:

“(3) If the person holding an inquiry into a charge under subsection (1) is satisfied that the unattached officer committed misconduct while an unattached officer, the person may cause the officer to be counselled by another officer.

“(3A) If the person is of the opinion that counselling is not sufficient, he or she may give one of the following directions:

(a) a direction that the officer be admonished;

(b) a direction that an amount not exceeding \$500 be deducted from money due by the Commonwealth to the officer;

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- (c) a direction that the officer's classification be reduced to a specified lower classification and, if a range of salary is applicable to the lower classification, specifying the rate at which salary payable to the officer is to be paid;
- (d) a direction that the officer be dismissed from the Service.

“(3B) The reference in paragraph (3A)(b) to money due by the Commonwealth to an officer is to be read as follows:

- (a) if, when the direction is given, an officer is performing duties in a Department, the reference is to salary due to the officer;
- (b) in any other case, the reference is to any money due, or that becomes due, by the Commonwealth to the officer:
  - (i) under this Act or under regulations or a determination under this Act; or
  - (ii) under the *Long Service Leave (Commonwealth Employees) Act 1976*.”;
- (b) by omitting from subsection (4) “subsection (3)” and substituting “subsection (3A)”;
- (c) by omitting from subsection (5) “, or is not dismissed,” and substituting “, or that other action is, or is not, taken against the officer,”;
- (d) by adding at the end the following subsection:
  - “(8) If:
    - (a) a person is charged under this section; and
    - (b) before the charge is determined, the person ceases to be an unattached officer but remains an officer;

this Subdivision continues to apply to the person in relation to the charge, and any action may be taken by or against the person under this Subdivision in relation to the charge, as if the person were still an unattached officer.”.

### **Criminal offences**

**41.** Section 63M of the Principal Act is amended:

- (a) by omitting from subsection (1) all the words after “in paragraph (b)” and substituting the following words and paragraphs:
  - “may counsel the officer or may give one of the following directions:
    - (c) a direction that the officer's classification be reduced to a specified lower classification and, if a range of salary is applicable to the lower classification, specifying the rate at which salary payable to the officer is to be paid; or
    - (d) a direction that the officer be dismissed from the Service.”;



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(b) by omitting from subsection (3) “or is not dismissed” and substituting “or that other action is, or is not, taken against the officer,”;

(c) by adding at the end the following subsection:

“(5) If:

(a) a court:

(i) convicts a person who is an unattached officer of a criminal offence; or

(ii) without recording a conviction, finds that a person who is an unattached officer has committed a criminal offence; and

(b) before a decision is made in relation to the person under subsection (1), the person ceases to be an unattached officer but remains an officer;

this Subdivision continues to apply to the person in relation to the conviction or finding, and any action may be taken by or against the person under this Subdivision in relation to the conviction or finding, as if the person were still an unattached officer.”.

42. Section 63N of the Principal Act is repealed and the following section is substituted:

**Date of effect of directions**

“63N.(1) This section applies to the following directions:

(a) a direction referred to in paragraph 63K(3A)(b), (c) or (d);

(b) a direction referred to in paragraph 63L(3A)(b), (c) or (d);

(c) a direction referred to in paragraph 63M(1)(c) or (d).

“(2) Unless it is set aside on appeal, a direction that is subject to appeal under section 63P takes effect as follows:

(a) if an appeal under that section against the direction lapses, the direction takes effect on the lapsing of the appeal;

(b) if the direction is confirmed by a Disciplinary Appeal Committee under that section, it takes effect on the confirmation of the direction;

(c) if there is no appeal against the direction under that section, it takes effect at the end of the period within which an appeal may be instituted.

“(3) A direction that is not subject to appeal under section 63P takes effect when it is given.

“(4) If, when a direction referred to in paragraph 63K(3A)(b) or 63L(3A)(b) takes effect, there is no money, or insufficient money, in relation to which the direction may be fully put into effect, the direction continues in force and may be put into effect:

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- (a) at any time at which it is able fully to be put into effect; or
- (b) by the deduction of instalments from money to which the direction relates until the whole of the money directed to be deducted has been deducted.”.

**Appeals**

**43.** Section 63P of the Principal Act is amended:

- (a) by omitting from subsection (1) “An unattached officer” and substituting “Subject to subsection (1A), an unattached officer”;
- (b) by omitting paragraph (1)(b) and substituting the following paragraph:

“(b) against a direction referred to in:

- (i) paragraph 63K(3A)(b), (c) or (d); or
- (ii) paragraph 63L(3A)(b), (c) or (d); or
- (iii) paragraph 63M(1)(c) or (d);

on the ground that the giving of the direction is, in relation to the finding or conviction concerned, unduly severe.”;

- (c) by inserting after subsection (1) the following subsection:

“(1A) An unattached officer is not entitled to appeal under subsection (1), and is not to be deemed to have appealed under subsection (2), against a direction under paragraph 63K(3A)(b) or 63L(3A)(b) if the amount directed to be deducted does not exceed \$50.”.

**Reasons to be given for finding or direction**

**44.** Section 63Q of the Principal Act is amended by omitting “subsection 63K(3), 63L(3)” and substituting “subsection 63K(3A), 63L(3A)”.

**Attachment of salaries of officers**

**45.** Section 64 of the Principal Act is amended by omitting from subsection (10) “\$100 or imprisonment for 3 months” and substituting “10 penalty units”.

**Determination of matters by reference to other instruments**

**46.** Section 82E of the Principal Act is amended:

- (a) by inserting at the end of paragraph (a) “or”;
- (b) by inserting after paragraph (b) the following word and paragraph:  
“or (c) in the case of a determination relating to the terms and conditions of employment of persons engaged under section 82AF, the law, or any part of the law, of another country as in force at a particular time or as in force from time to time;”.

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**Interpretation**

47. Section 87 of the Principal Act is amended by adding at the end the following subsections:

“(12) This Part does not apply to a person in relation to his or her employment in an office or position specified in the regulations for the purpose of this subsection.

“(13) An office or position may only be specified in the regulations for the purpose of subsection (12) if the relevant salary rate in respect of the office or position is equal to or greater than the minimum rate at which salary is payable to the occupant of an office having a classification of Senior Executive Band 2.

“(14) The reference in subsection (13) to the relevant salary rate in respect of an office or position is to be read as follows:

- (a) in the case of an office or position to which a range of salary is applicable, the reference is a reference to the minimum rate at which salary is payable to a holder of the office or position;
- (b) in any other case, the reference is a reference to the rate at which salary is payable to a holder of the office or position.

“(15) Subsection (12) has effect in spite of any other provision of this Part.”.

**Persons to whom Division applies**

48. Section 87K of the Principal Act is amended by adding at the end the following subsection:

“(13) If:

- (a) an officer to whom Division 2 applies and who is engaged in eligible public employment resigns from the Service; and
- (b) before resigning from the Service, the officer has given to the Commissioner written notice that the officer elects not to be a person to whom this Division applies;

the officer does not become, on his or her resignation from the Service, a person to whom this Division applies.”.

**Application for re-appointment to the Service**

49. Section 87N of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) If this Division applies to a person because of subsection 87K(2A), this section has effect, in relation to the person, as if the expression ‘Commonwealth authority’ had the same meaning in this section as in section 7.”.

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**50.** The following section is inserted in Division 5 of Part IV of the Principal Act after section 87ZC:

**Postponement of effect of resignation in certain circumstances**

“87ZCA.(1) If:

- (a) a person who is an officer to whom Division 2 applies makes an election under subsection 87K(13) and resigns from the Service; and
- (b) when he or she resigns, the person holds a Commonwealth office; and
- (c) one of the following events occurs:
  - (i) the Commonwealth office is abolished;
  - (ii) the period for which the appointment was made expires;
  - (iii) the appointment is terminated before the end of the period for which it was made;

the Prime Minister may direct, in writing, that the person is to be taken not to have resigned from the Service but to have continued as an officer until a specified date.

“(2) If a direction is given under subsection (1), the person is to be taken to have continued, or to continue, as an officer according to the direction.

“(3) The Prime Minister may, at any time, in writing, vary a direction under subsection (1) by substituting for the date specified in the direction another date, and the direction has effect as so varied.

“(4) The terms and conditions on which a person is to be taken to have continued, or to continue, as an officer are those specified in, or ascertained in accordance with, the direction under subsection (1).

“(5) If a direction is given under subsection (1):

- (a) the resignation from the Service of the person to whom the direction relates is to be taken to have had effect on the date specified in the direction; and
- (b) subsection 87K(13) has effect as if the resignation had taken effect on the date specified in the direction.”

**Personation etc. at examinations**

**51.** Section 96 of the Principal Act is amended by omitting from subsection (1) “\$2,000 or imprisonment for 12 months, or both” and substituting “Imprisonment for 12 months”.

**Schedules 2 and 3**

**52.** Schedules 2 and 3 to the Principal Act are repealed and the following Schedules are substituted:

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**“SCHEDULE 2**

Sections 7 and 10

**DEPARTMENTS**

The Department of the Senate

The Department of the House of Representatives

The Department of the Parliamentary Library

The Department of the Parliamentary Reporting Staff

The Joint House Department

The Department of Administrative Services

The Attorney-General's Department

The Department of Communications and the Arts

The Department of Defence

The Department of Employment, Education and Training

The Department of the Environment, Sport and Territories

The Department of Finance

The Department of Foreign Affairs and Trade

The Department of Human Services and Health

The Department of Immigration and Ethnic Affairs

The Department of Industrial Relations

The Department of Industry, Technology and Regional Development

The Department of Primary Industries and Energy

The Department of the Prime Minister and Cabinet

The Department of Social Security

The Department of Tourism

The Department of Transport

The Department of the Treasury

The Department of Veterans' Affairs

**“SCHEDULE 3**

Section 25

**SECRETARIES OF DEPARTMENTS**

The Clerk of the Senate  
The Clerk of the House of Representatives  
The Parliamentary Librarian  
The Principal Parliamentary Reporter  
The Secretary to the Joint House Department  
The Secretary to the Department of Administrative Services  
The Secretary to the Attorney-General’s Department  
The Secretary to the Department of Communications and the Arts  
The Secretary to the Department of Defence  
The Secretary to the Department of Employment, Education and Training  
The Secretary to the Department of the Environment, Sport and Territories  
The Secretary to the Department of Finance  
The Secretary to the Department of Foreign Affairs and Trade  
The Secretary to the Department of Human Services and Health  
The Secretary to the Department of Immigration and Ethnic Affairs  
The Secretary to the Department of Industrial Relations  
The Secretary to the Department of Industry, Technology and Regional  
Development  
The Secretary to the Department of Primary Industries and Energy  
The Secretary to the Department of the Prime Minister and Cabinet  
The Secretary to the Department of Social Security  
The Secretary to the Department of Tourism  
The Secretary to the Department of Transport  
The Secretary to the Department of the Treasury  
The Secretary to the Department of Veterans’ Affairs

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## **PART 8—AMENDMENTS OF THE ROYAL COMMISSIONS ACT 1902**

### **Principal Act**

**53.** In this Part, “**Principal Act**” means the *Royal Commissions Act 1902*<sup>7</sup>.

### **Definitions**

**54.** Section 1B of the Principal Act is amended by inserting the following definition:

“ ‘**Australian Bureau of Criminal Intelligence**’ means the organisation established under that name by an agreement made on 6 February 1981 between the Commonwealth, the 6 States and the Northern Territory;”.

### **Power of Commission in relation to documents and other things**

**55.** Section 6F of the Principal Act is amended by inserting in subsection (2) “, (da)” after “(c), (d)”.

### **Commission may communicate information**

**56.** Section 6P of the Principal Act is amended:

- (a) by adding at the end of each of paragraphs (1)(a), (aa) and (c) “or”;
- (b) by inserting after paragraph (1)(d) the following paragraph:

“(da) the Director of the Australian Bureau of Criminal Intelligence; or”.

## **PART 9—AMENDMENTS OF THE SUPERANNUATION ACT 1976**

### **Principal Act**

**57.** In this Part, “**Principal Act**” means the *Superannuation Act 1976*<sup>8</sup>.

**58.** Before section 58 of the Principal Act the following section is inserted in Division 2 of Part V:

### **Definition**

“57B.(1) In this Division, ‘**fixed-term employee**’ means:

- (a) a person who holds an office of Secretary under an appointment that is a fixed-term appointment for the purposes of section 37 of the Public Service Act; or
- (b) a person who holds a Senior Executive Service office under an appointment that is a fixed-term appointment for the purpose of section 44 of the Public Service Act; or
- (c) a person who is employed for a fixed term under section 82AD or 82AE of the Public Service Act; or

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- (d) a person who holds an appointment, or is employed, otherwise than under the Public Service Act, by the Commonwealth for a fixed term; or
- (e) a person who holds an appointment, or is employed, by an approved authority for a fixed term.

“(2) For the purposes only of this Division, if, after ceasing to hold an office of Secretary under the Public Service Act, a person continues as an officer by virtue of a direction under subsection 37(6) of that Act, the following provisions have effect:

- (a) if the person ceased to hold the office of Secretary because the office was abolished, the office is to be taken to have been abolished at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the abolition of the office;
- (b) if the person ceased to hold the office of Secretary because the term of his or her appointment to the office expired, that term is to be taken to have expired at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the expiration of the term of the appointment;
- (c) if the person ceased to hold the office of Secretary because his or her appointment to the office was terminated before the expiration of the term of the appointment, the appointment is to be taken to have been terminated at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the termination of the appointment.

“(3) For the purposes only of this Division, if, after ceasing to hold a Commonwealth office within the meaning of Part IV of the Public Service Act, a person continues as an officer by virtue of a direction under subsection 87ZCA(1) of that Act, the following provisions have effect:

- (a) if the person ceased to hold the Commonwealth office because the office was abolished, the office is to be taken to have been abolished at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the abolition of the office;
- (b) if the person ceased to hold the Commonwealth office because the term of his or her appointment to the office expired, that term is to be taken to have expired at the same time as the person ceases to be



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an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the expiration of the term of the appointment;

- (c) if the person ceased to hold the Commonwealth office because his or her appointment was terminated before the expiration of the term of the appointment, the appointment is to be taken to have been terminated at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the termination of the appointment.”.

**Early retirement—voluntary or involuntary retirement**

**59.** Section 58 of the Principal Act is amended:

- (a) by omitting from subsection (1) all words after “early retirement” and substituting the following word and paragraphs:

“if:

- (a) the person is deemed by subsection (2) to have retired voluntarily; or  
(b) the person is deemed by subsection (3) to have retired involuntarily; or  
(c) the person is deemed by section 58A or 58B to have retired involuntarily.”;

- (b) by omitting paragraph (3)(c);

- (c) by inserting after “(2) and (3)” in subsection (4) “and sections 58A and 58B”.

**60.** After section 58 of the Principal Act the following sections are inserted:

**Special provision regarding certain holders of statutory offices**

“58A.(1) Subsection (2) applies to a person who:

- (a) ceases to be an eligible employee; and  
(b) immediately before ceasing to be an eligible employee, is the holder of a statutory office (in this section called the ‘**relevant statutory office**’); and  
(c) immediately before becoming the holder of the relevant statutory office:  
(i) was a Secretary, officer or employee under the Public Service Act, otherwise than as a fixed-term employee; or

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- (ii) was a fixed-term employee (other than a person referred to in paragraph 57B(d) or (e)) who would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed to the relevant statutory office; or
- (iii) was an employee (other than as a fixed-term employee) of the authority or body that is liable to pay the remuneration of the holder of the relevant statutory office; or
- (iv) as a fixed-term employee, held office under an appointment, or was employed, by the authority or body that is liable to pay the remuneration of the holder of the relevant statutory office and would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed to the relevant statutory office; or
- (v) held a statutory office and would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the term of his or her appointment to that office had he or she not been appointed to the relevant statutory office.

“(2) A person to whom this subsection applies is to be deemed, for the purposes of this Act, to have retired involuntarily on the expiration of the term of his or her appointment to the relevant statutory office if:

- (a) the person was eligible to be re-appointed to the office; and
- (b) he or she desired to be so re-appointed; and
- (c) he or she was not so re-appointed.

“(3) If:

- (a) a person who is the holder of a statutory office ceases to be an eligible employee on the expiration of the term of his or her appointment to the office; and
- (b) the person is not a person to whom subsection (2) applies; and
- (c) the person is eligible to be re-appointed to the office; and
- (d) although the person desires to be so re-appointed, he or she is not re-appointed;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily.

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“(4) If:

- (a) it is provided in the document by means of which a person is appointed to a statutory office, or it is a term or condition of the appointment, that subsection (2) is not to apply to the person in relation to the office; and
- (b) the term of the appointment expires; and
- (c) the person is eligible to be re-appointed to the office; and
- (d) although the person desires to be so re-appointed, he or she is not re-appointed; and
- (e) but for this subsection, the person would have been deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily.

“(5) If:

- (a) it is provided in the document by means of which a person is appointed to a statutory office, or it is a term or condition of the appointment, that subsection (3) is not to apply to the person in relation to the office; and
- (b) the term of the appointment expires; and
- (c) the person is eligible to be re-appointed to the office; and
- (d) although the person desires to be so re-appointed, he or she is not re-appointed; and
- (e) but for this subsection, the person would not have been deemed, for the purposes of this Act, to have retired involuntarily;

the person is to be deemed, for the purposes of this Act, to have retired involuntarily.

“(6) If a person who is the holder of a statutory office ceases to be an eligible employee because the person’s appointment to the statutory office is terminated before the expiration of the term of the appointment, the following provisions have effect:

(a) if:

- (i) the document by means of which the person was appointed to the office provided that, in the events that have happened, the person was not to be deemed to have retired involuntarily; or
- (ii) it was a term or condition of the appointment that, in the events that have happened, the person was not to be deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily;

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(b) in any other case, the person is to be deemed, for the purposes of this Act, to have retired involuntarily.

“(7) The document by means of which a person is appointed to a statutory office must not include provision of the kind mentioned in paragraph (5)(a) except with the approval of the Minister.

“(8) An appointment of a person must not be made on the basis that it is a term or condition of the appointment that subsection (3) is not to apply to the person in relation to the office unless the Minister has approved the making of the appointment on that basis.

“(9) The inclusion of a provision in a document in contravention of subsection (7) is ineffective for the purposes of paragraph (5)(a), but the document is as effective in all other respects as it would be apart from this subsection.

“(10) If an appointment is made in contravention of subsection (8), the term or condition referred to in that subsection is ineffective, but all other terms and conditions of the appointment are as effective in all other respects as they would be apart from this subsection.

“(11) In the case of a person who has ceased to be an eligible employee on more than one occasion, this section cannot have effect except in relation to the last such occasion.

**Special provision regarding certain fixed-term employees**

“58B.(1) Subsection (2) applies to a person who:

- (a) ceases to be an eligible employee; and
- (b) immediately before ceasing to be an eligible employee, is a fixed-term employee under employment referred to in this section as the ‘**latest employment**’; and
- (c) immediately before becoming a fixed-term employee under the latest employment:
  - (i) was a Secretary, officer or employee under the Public Service Act, otherwise than as a fixed-term employee; or
  - (ii) was an employee (other than a fixed-term employee) of the authority or body that appointed him or her as a fixed-term employee under the latest employment; or
  - (iii) was employed by the Commonwealth (otherwise than as a fixed-term employee) under the same law (not being the *Public Service Act 1922*) as that under which he or she was employed in the latest employment; or

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(iv) was a fixed-term employee (other than a person referred to in paragraph 57B(d) or (e)) who would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed or employed as a fixed-term employee under the latest employment; or

(v) was:

(A) a fixed-term employee of the authority or body that appointed or employed him or her under the latest employment; or

(B) a fixed-term employee of the Commonwealth under the same law (not being the *Public Service Act 1922*) as that under which he or she was employed in the latest employment;

who would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed or employed as a fixed-term employee under the latest employment; or

(vi) held a statutory office and would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the term of his or her appointment to that office had he or she not become a fixed-term employee.

“(2) A person to whom this subsection applies is to be deemed, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of his or her appointment or employment as a fixed-term employee if:

- (a) the person was eligible to be re-appointed or re-employed as a fixed-term employee; and
- (b) he or she desired to be so re-appointed or re-employed; and
- (c) he or she was not so re-appointed or re-employed.

“(3) If:

- (a) a person who is a fixed-term employee ceases to be an eligible employee on the expiration of the fixed term of his or her appointment or employment as a fixed-term employee; and
- (b) the person is not a person to whom subsection (2) applies; and

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- (c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and
- (d) although the person desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily.

“(4) If:

- (a) it is provided in a document by means of which a person is appointed or employed as a fixed-term employee, or it is a term or condition of the appointment or employment, that subsection (2) is not to apply to the person in relation to the appointment or employment; and
- (b) the fixed term of the appointment or employment expires; and
- (c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and
- (d) although the person desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed; and
- (e) but for this subsection, the person would have been deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily.

“(5) If:

- (a) it is provided in a document by means of which a person is appointed or employed as a fixed-term employee, or it is a term or condition of the appointment or employment, that subsection (3) is not to apply to the person in relation to the appointment or employment; and
- (b) the fixed term of the appointment or employment expires; and
- (c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and
- (d) although the person desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed; and
- (e) but for this subsection, the person would not have been deemed to have retired involuntarily;

the person is to be deemed, for the purposes of this Act, to have retired involuntarily.

“(6) If a person who is a fixed-term employee ceases to be an eligible employee because his or her appointment or employment is terminated before the expiration of the fixed term, the following provisions have effect:

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- (a) if:
- (i) the document by means of which the person was appointed or employed in the position or office provided that, in the events that have happened, the person was not to be deemed to have retired involuntarily; or
  - (ii) it was a term or condition of the appointment or employment that, in the events that have happened, the person was not to be deemed to have retired involuntarily;
- the person is not to be deemed, for the purposes of this Act, to have retired involuntarily;
- (b) in any other case, the person is to be deemed, for the purposes of this Act, to have retired involuntarily.

“(7) A document by means of which a person is appointed or employed as a fixed-term employee must not include provision of the kind mentioned in paragraph (5)(a) except with the approval of the Minister.

“(8) A person must not be appointed or employed as a fixed-term employee on the basis that it is a term or condition of the appointment or employment that subsection (3) is not to apply to the person in relation to the appointment or employment unless the Minister has approved the appointment or employment of the person on that basis.

“(9) The inclusion of a provision in a document in contravention of subsection (7) is ineffective for the purposes of paragraph (5)(a), but the document is as effective in all other respects as it would be apart from this subsection.

“(10) If a person is appointed or employed in contravention of subsection (8), the term or condition referred to in that subsection is ineffective, but all other terms and conditions of the appointment or employment are as effective in all other respects as they would be apart from this subsection.

“(11) In the case of a person who has ceased to be an eligible employee on more than one occasion, this section cannot have effect except in relation to the last such occasion.”.

### **Election for lump sum benefit in case of involuntary retirement**

**61.** Section 62 of the Principal Act is amended by inserting in subsection (1) “or by section 58A or 58B,” after “subsection 58(3),”.

### **Payment of productivity benefit**

**62.** Section 110R of the Principal Act is amended by inserting in subparagraph (1)(a)(iii) “or under section 58A or 58B,” after “subsection 58(3),”.

**Election that Division apply**

**63.** Section 137 of the Principal Act is amended by inserting in paragraph (1)(b) “or under section 58A or 58B,” after “subsection 58(3),”.

**Savings**

**64.(1)** In spite of the amendments made by this Part, if:

- (a) immediately before the commencement of this Part, a person was the holder of a statutory office; and
- (b) after that commencement, the person ceases to be an eligible employee because the term of his or her appointment to the statutory office expires; and
- (c) though the person is eligible for re-appointment to the office and desires to be so re-appointed, he or she is not so re-appointed;

the person is to be deemed, for the purposes of the Principal Act, as amended by this Part, to have retired involuntarily on ceasing to hold the statutory office.

(2) Subsection (1) does not apply to a person who ceases to be an eligible employee because of retirement on the ground of invalidity.

(3) In spite of the amendments made by this Part, if:

- (a) immediately before the commencement of this Part, a person was an eligible employee because of the appointment or employment of the person in a position or office for a fixed term; and
- (b) after that commencement, the person ceases to be an eligible employee because the fixed term of his or her appointment expires; and
- (c) though the person is eligible for re-appointment to, or re-employment in, the position or office and desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed;

the following provisions have effect:

- (d) if the person would have been deemed, under the Principal Act as in force immediately before the commencement of this Part, to have retired involuntarily, the person is to be deemed, for the purposes of the Principal Act, as amended by this Part, to have retired involuntarily;
- (e) if the person would not have been deemed, under the Principal Act as in force immediately before the commencement of this Part, to have retired involuntarily, the person is not to be deemed, for the purposes of the Principal Act, as amended by this Part, to have retired involuntarily.



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(4) In spite of the amendments made by this Part, if:

- (a) immediately before the commencement of this Part, a person was an eligible employee because the person was a temporary employee within the meaning of the Principal Act in such circumstances that, if this Part had been in force, the person would have been a fixed-term employee within the meaning of the Principal Act, as amended by this Part; and
- (b) after that commencement, the person ceases to be an eligible employee because the position or office ceases to exist, whether by reason of its being abolished or otherwise;

the person is not to be deemed, for the purposes of the Principal Act, as amended by this Part, to have retired involuntarily.

**PART 10—FURTHER AMENDMENTS**

**Schedule of amendments**

65. The Acts referred to in the Schedule are amended as set out in the Schedule.

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**SCHEDULE**

Section 65

**FURTHER AMENDMENTS**

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

**Subsection 10(3):**

Omit “Chairman”, substitute “Chairperson”.

**Subsection 10(4):**

Omit “Deputy Chairman”, substitute “Deputy Chairperson”.

**Subsection 10(5):**

Omit “Chairman or of Deputy Chairman”, substitute “Chairperson or of Deputy Chairperson”.

**Paragraph 11(1)(a):**

Omit “Chairman or the Deputy Chairman”, substitute “Chairperson or Deputy Chairperson”.

**Subsection 11(2):**

Omit “Chairman or the Deputy Chairman”, substitute “Chairperson or the Deputy Chairperson”.

**Subsection 11(3):**

Omit “Chairman or the Deputy Chairman” (wherever occurring), substitute “Chairperson or the Deputy Chairperson”.

**Subsection 11(7):**

Omit “Chairman or Deputy Chairman” (wherever occurring), substitute “Chairperson or Deputy Chairperson”.

**Subsection 11(8):**

Omit “Chairman or the Deputy Chairman”, substitute “Chairperson or the Deputy Chairperson”.

**Subsection 13(1):**

(a) Omit “Chairman”, substitute “Chairperson”.

(b) Omit “Deputy Chairman”, substitute “Deputy Chairperson”.

**Subsection 13(2):**

(a) Omit “Chairman”, substitute “Chairperson”.

(b) Omit “Deputy Chairman”, substitute “Deputy Chairperson”.

**SCHEDULE—continued**

**Subsection 15(1):**

- (a) Omit “Chairman” (wherever occurring), substitute “Chairperson”.
- (b) Omit “Deputy Chairman” (wherever occurring), substitute “Deputy Chairperson”.

**Subsection 15(2):**

- (a) Omit “Chairman” (wherever occurring), substitute “Chairperson”.
- (b) Omit “Deputy Chairman”, substitute “Deputy Chairperson”.

**Subsection 15(6):**

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

**Subsection 16(2):**

- (a) Omit “Chairman” (wherever occurring), substitute “Chairperson”.
- (b) Omit “Deputy Chairman” (wherever occurring), substitute “Deputy Chairperson”.

**Subsection 18(2):**

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

**Subsection 18(4):**

Omit “Chairman”, substitute “Chairperson”.

**Subsection 18(5):**

- (a) Omit “Chairman”, substitute “Chairperson”.
- (b) Omit “Deputy Chairman” (wherever occurring), substitute “Deputy Chairperson”.

**Subsection 18(6):**

- (a) Omit “Chairman” (wherever occurring), substitute “Chairperson”.
- (b) Omit “Deputy Chairman”, substitute “Deputy Chairperson”.

**Subsection 22(5):**

Omit “Chairman”, substitute “Chairperson”.

***Council for Aboriginal Reconciliation Act 1991***

**Paragraph 24(2)(b):**

Omit “19(6)”, substitute “19(7)”.

***Public Service Act 1922***

**Subsection 7(1) (definition of “Returned Soldier”):**

Omit the definition, substitute:

“ ‘returned soldier’ means:

**SCHEDULE—continued**

- (a) a person who is a member of the Forces within the meaning of section 4 or 139 of the *Re-establishment and Employment Act 1945*; or
- (b) a person who, as a member of the Defence Force, rendered continuous full-time service outside Australia:
  - (i) as a member of a unit of the Defence Force that was allotted for duty, within the meaning of subsection 5B(2) of the *Veterans' Entitlements Act 1986*, in an operational area described in item 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 or 14 of Schedule 2 to that Act; or
  - (ii) as a person who was allotted for duty, within the meaning of subsection 5B(2) of the *Veterans' Entitlements Act 1986*, in an operational area referred to in subparagraph (i);”.

**Subsection 7(1) (definition of “The War”):**

Omit the definition.

**Subsection 8A(1):**

Omit “(other than section 30)”.

**Subsection 13(2):**

Omit “the Minister”, substitute “the Prime Minister”.

**Subsection 22A(5):**

Omit “section 22”, substitute “section 15”.

**Subsection 22B(11):**

Omit “section 22”, substitute “section 15”.

**Subsection 22C(10):**

Omit “section 22”, substitute “section 15”.

**Heading to Division 1 of Part III:**

Omit the heading, substitute:

*“Division 1—Secretaries of Departments and Constitution etc. of the Senior Executive Service”.*

**Subsection 25(9):**

Omit “subclause (6)”, substitute “subsection (6)”.

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**SCHEDULE**—continued

**Subsection 37(7):**

Omit “he”, substitute “the person”.

**Subsection 37(9):**

Omit “his holding”.

**Subsection 37(10):**

Omit “his holding”.

**Subsection 47A(3):**

Omit “in the war or any other service”.

**Subsection 47A(4):**

Omit the subsection.

**Subsection 49B(3):**

Omit “unless it is satisfied”, substitute “unless he or she is satisfied”.

**Subsection 55(2):**

Omit “a salary,”, substitute “a salary”.

**Paragraph 82AD(2)(b):**

Omit “the service”, substitute “the Service”.

**Paragraph 82D(2)(b):**

Omit “*Tribunals*”, substitute “*Tribunal*”.

***Public Service and Statutory Authorities Amendment Act 1980***

**Section 33:**

Repeal the section.

**Subsection 45(7):**

Omit the subsection.

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**NOTES**

1. No. 79, 1983, as amended. For previous amendments, see No. 165, 1984; Nos. 76 and 102, 1986; Nos. 38, 109 and 126, 1988; Nos. 75 and 80, 1990; and No. 196, 1992.
2. No. 81, 1978, as amended. For previous amendments, see No. 63, 1984; Nos. 65 (as amended by No. 193, 1985) and 166, 1985; No. 76, 1986; and No. 122, 1991.
3. No. 3, 1982, as amended. For previous amendments, see Nos. 7 and 81, 1983; No. 63, 1984; No. 187, 1985; Nos. 102 and 111, 1986; Nos. 6, 87, 109, 119, 121, 126, 127 and 129, 1988; Nos. 66 and 150, 1989; Nos. 26, 75, 77 and 118, 1990; Nos. 99, 137, 149 and 180, 1991; and Nos. 118, 143, 165, 196 and 219, 1992.
4. No. 65, 1984, as amended. For previous amendments, see No. 165, 1984 (as amended by No. 65, 1985); Nos. 65 (as amended by No. 193, 1985), 187 and 193, 1985; Nos. 76, 153 and 168, 1986; Nos. 87, 109 (as amended by No. 60, 1989) and 119, 1988; No. 153, 1989 (as amended by No. 28, 1991); Nos. 122 and 199, 1991; and Nos. 94 and 196, 1992.
5. No. 181, 1976, as amended. For previous amendments, see No. 63, 1978; Nos. 107 and 155, 1979; No. 61, 1981; No. 61, 1983; No. 63, 1984 (as amended by No. 193, 1985); No. 65, 1985; No. 168, 1986; Nos. 109 and 119, 1988; No. 63, 1989; Nos. 99, 122 and 199, 1991; and Nos. 94 and 196, 1992.
6. No. 21, 1922, as amended. For previous amendments, see No. 46, 1924 (as amended by No. 80, 1950); 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. 11, 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 (as amended by No. 170, 1978), 1976; Nos. 6 and 80, 1977; Nos. 36 and 170 (as amended by No. 111, 1982), 1978; Nos. 52 and 155, 1979; No. 177, 1980 (as amended by No. 63, 1984; and No. 166, 1985); No. 61, 1981; Nos. 26 and 80, 1982; No. 111, 1982 (as amended by No. 39, 1983; and No. 63, 1984); Nos. 39, 56, 92 and 115, 1983; No. 63, 1984 (as amended by No. 165, 1984; and No. 166, 1985); No. 165, 1984; Nos. 65, 166 and 187, 1985; Nos. 28, 29, 76 and 153 (as amended by No. 141, 1987), 1986; Nos. 92, 99 and 141, 1987; Nos. 75, 87, 99 and 109, 1988; Nos. 150 and 153, 1989; Nos. 2, 73, 122, 199, 205 and 208, 1991; Nos. 70, 94, 196 and 215, 1992; Nos. 27 and 98, 1993; and No. 1, 1994.
7. No. 12, 1902, as amended. For previous amendments, see No. 4, 1912; No. 1, 1933; No. 93, 1966; No. 216, 1973; No. 37, 1976; No. 36, 1978; No. 19, 1979; No. 26, 1982 and No. 139, 1982 (as amended by No. 91, 1983); Nos. 91 and 114, 1983; No. 42, 1984; and No. 120, 1987.
8. 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; Nos. 63 and 165, 1984; Nos. 80, 93, 151 (as amended by No. 141, 1987) and 153, 1986; Nos. 38 and 130, 1988; Nos. 71, 97 (as amended by No. 105, 1989), 125 and 153 (as amended by No. 28, 1991), 1989; No. 39 (as amended by No. 130, 1991) and 40, 1990; Nos. 13, 122 and 130, 1991; Nos. 95, 185, 187 and 196, 1992; and No. 82, 1993.

*[Minister's second reading speech made in—  
Senate on 16 December 1993  
House of Representatives on 3 March 1994]*