



Merit Protection (Australian Government Employees) Amendment Act 1994

No. 143 of 1994

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SCHEDULE



Merit Protection (Australian Government Employees) Amendment Act 1994

No. 143 of 1994

An Act to amend the *Merit Protection (Australian Government Employees) Act 1984*, and for related purposes

[Assented to 8 December 1994]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Merit Protection (Australian Government Employees) Amendment Act 1994*.

(2) In this Act, “**Principal Act**” means the *Merit Protection (Australian Government Employees) Act 1984*¹.

Commencement

2.(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

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- (2) Paragraphs 4(c) and (d) commence on:
- (a) the day on which the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* commences, immediately after the commencement of that Act; or
 - (b) the day on which this Act receives the Royal Assent;
- whichever is the later.

Interpretation

3. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘**Joint Selection Committee**’ means a Joint Selection Committee referred to in section 50DA or 50DB of the *Public Service Act 1922* or a similar committee referred to in any other enactment;”.

Functions of Agency

4. Section 6 of the Principal Act is amended:

- (a) by inserting after paragraph (a) the following paragraph:
 - “(aa) to arrange for the establishment of committees under section 35A to perform functions pursuant to requests referred to in that section;”;
- (b) by inserting after paragraph (e) the following paragraph:
 - “(ea) to perform functions under section 57A pursuant to requests referred to in that section;”;
- (c) by omitting paragraph (g) and substituting the following paragraph:
 - “(g) to provide to Secretaries of Departments, and chief executive officers of Commonwealth authorities, services in connection with the establishment, constitution and operation of Joint Selection Committees; and”;
- (d) by inserting after subsection (1) the following subsection:
 - “(1A) The Agency may require a Department or Commonwealth authority to make a payment for the provision of services referred to in paragraph (1)(g).”.

Interpretation

5. Section 7 of the Principal Act is amended:

- (a) by adding “or” at the end of paragraphs (a), (b) and (c);
- (b) by omitting from paragraph (e) “Subdivision F.” and substituting “Subdivision F; or”;
- (c) by adding at the end the following paragraph:
 - “(f) a committee established under Subdivision FA.”.

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Agency to ensure efficiency of Joint Selection Committees and Review Committees

6. Section 8 of the Principal Act is amended by inserting in subsection (1) and paragraph (2)(b) “Joint Selection Committees and” before “Review Committees”.

Insertion of new Subdivision

7. After Subdivision F of Division 2 of Part II of the Principal Act the following Subdivision is inserted:

“Subdivision FA—Other committees

Establishment of other committees

“35A. If:

- (a) the Secretary of a Department or the chief executive officer of a Commonwealth authority; and
- (b) the organisation that is, as provided by the regulations, the appropriate organisation;

both request the Agency in writing to arrange for the performance of functions stated in the request in relation to matters so stated that:

- (c) affect the employment of Commonwealth employees by the Department or authority; and
- (d) relate to the administration of the Department or authority;

the Agency may arrange for the establishment of a committee to perform those functions.

Constitution of committee

“35B. For the purpose of performing the requested functions, the committee is to be constituted by:

- (a) a Convenor nominated by the Agency; and
- (b) a person nominated by the Secretary of the Department or the chief executive officer of the authority; and
- (c) a person nominated by the organisation.

Member ceasing to act

“35C. If, before the committee completes the performance of the requested functions, a member or members of the committee cease to be such a member or members or, for any other reason, cease to take part in the activities of the committee, the committee is to be reconstituted by the remaining member or members (if any) and another member or other members nominated in accordance with section 35B.”.

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Members of certain Committees not subject to direction

8. Section 36 of the Principal Act is amended by inserting “Joint Selection Committee or” before “Review Committee”.

Procedure of Joint Selection Committees and Review Committees

9. Section 37 of the Principal Act is amended:

- (a) by inserting in subsection (1) “Joint Selection Committee or” before “Review Committee”;
- (b) by inserting before paragraph (2)(a) the following paragraph:
 - “(aa) in relation to a Joint Selection Committee—the enactment under which the Committee was established; and”.

Insertion of new Division

10. After Division 6 of Part II of the Principal Act the following Division is inserted:

“Division 6A—Performance of functions on request

Agency to perform functions on request

“57A. If:

- (a) the Secretary of a Department or the chief executive officer of a Commonwealth authority; and
- (b) the organisation that is, as provided by the regulations, the appropriate organisation;

both request the Agency in writing to arrange for the performance of functions stated in the request in relation to matters so stated that:

- (c) affect the employment of Commonwealth employees by the Department or authority; and
- (d) relate to the administration of the Department or authority;

the Agency may perform those functions.”.

Insertion of new sections

11.(1) After section 58 of the Principal Act the following sections are inserted:

Certain purported appeals against non-appellable promotions in the Service may be treated as applications for review

“58A.(1) In this section:

‘non-appellable promotion’ has the same meaning as in Division 4 of Part III of the Public Service Act;

‘Public Service Act’ means the *Public Service Act 1922*.

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“(2) If:

- (a) an officer purports to appeal under section 50B of the Public Service Act, within the period prescribed for the purposes of subsection (3) of that section or within any extension of that period under subsection (4) of that section, against a promotion; and
- (b) the officer was not entitled to appeal merely because the promotion was a non-appellable promotion;

the Agency may direct in writing that this section is to apply in respect of the purported appeal.

“(3) If the Agency gives such a direction, it must give written notice to the officer telling the officer that the direction has been given and requiring the officer, if he or she wishes the purported appeal to be treated as an application for review of the promotion under section 50DAA of the Public Service Act, to give the Agency, within the period of 14 days after the day on which the notice is given, a written notice:

- (a) requesting that the purported appeal be treated as such an application for review; and
- (b) stating whether the ground for the review is that it would be unreasonable for the promotion to stand because of:
 - (i) a breach of section 33 of the Public Service Act in connection with the making of the promotion; or
 - (ii) a serious defect in the selection process; and
- (c) giving particulars of the alleged breach or alleged defect.

“(4) If the officer gives the Agency a notice as required by subsection (3), the purported appeal is taken, for the purposes of the Public Service Act and this Act, to be an application for review of the promotion duly made in accordance with section 50DAA of the Public Service Act.

Certain purported appeals against non-appellable promotions outside the Service may be treated as applications for review

“58B.(1) In this section:

‘non-appellable promotion’ means a promotion that is not subject to appeal.

“(2) If:

- (a) a person purports to appeal under a provision of an enactment (the **‘relevant enactment’**), within the period prescribed for the purpose by or under the relevant enactment, against a promotion; and
- (b) the person was not entitled to appeal merely because the promotion was a non-appellable promotion; and

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- (c) the person would have been entitled to apply to the Agency for review of the promotion;

the Agency may direct in writing that this section is to apply in respect of the purported appeal.

“(3) If the Agency gives such a direction, it must give written notice to the person telling the person that the direction has been given and requiring the person, if he or she wishes the purported appeal to be treated as an application for review of the promotion by the Agency, to give the Agency, within the period of 14 days after the day on which the notice is given, a written notice:

- (a) requesting that the purported appeal be treated as such an application for review; and
- (b) stating the grounds for the review; and
- (c) giving particulars of the matters alleged to support those grounds.

“(4) If the person gives the Agency a notice as required by subsection (3), the purported appeal is taken, for the purposes of the relevant enactment and this Act, to be an application to the Agency for review of the promotion duly made in accordance with that enactment.

Certain purported applications for review of appellable promotions in the Service may be treated as appeals

“58C.(1) In this section:

‘appellable promotion’ means a promotion that is not a non-appellable promotion within the meaning of Division 4 of Part III of the Public Service Act;

‘Public Service Act’ means the *Public Service Act 1922*.

“(2) If:

- (a) an officer purports to apply to the Agency under section 50DAA of the Public Service Act, within the period prescribed for the purposes of that section, for review of a promotion; and
- (b) the officer was not entitled to make such an application for review merely because the promotion was an appellable promotion;

the Agency may direct in writing that this section is to apply in respect of the purported application.

“(3) If the Agency gives such a direction, it must give written notice to the officer telling the officer that the direction has been given and requiring the officer, if he or she wishes the purported application for review to be treated as an appeal against the promotion under section 50B of the Public Service Act, to give the Agency, within the period of 14 days after the day on which the notice is given, a written notice requesting that the purported application for review be treated as such an appeal.

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“(4) If the officer gives the Agency a notice as required by subsection (3), the purported application for review is taken, for the purposes of the Public Service Act and this Act, to be an appeal against the promotion duly made in accordance with section 50B of the Public Service Act.

Certain purported applications for review of appellable promotions outside the Service may be treated as appeals

“58D.(1) In this section:

‘appellable promotion’ means a promotion that is subject to appeal.

“(2) If:

- (a) a person purports to apply to the Agency under a provision of an enactment (the **‘relevant enactment’**), within the period prescribed for the purpose by or under the relevant enactment, for review of a promotion; and
 - (b) the person was not entitled to make such an application for review merely because the promotion was an appellable promotion; and
 - (c) the person would have been entitled to appeal against the promotion;
- the Agency may direct in writing that this section is to apply in respect of the purported application.

“(3) If the Agency gives such a direction, it must give written notice to the person telling the person that the direction has been given and requiring the person, if he or she wishes the purported application for review to be treated as an appeal against the promotion, to give the Agency, within the period of 14 days after the day on which the notice is given, a written notice requesting that the purported application for review be treated as such an appeal.

“(4) If the person gives the Agency a notice as required by subsection (3), the purported application for review is taken, for the purposes of the relevant enactment and this Act, to be an appeal against the promotion duly made in accordance with that enactment.”.

(2) Sections 58A and 58B of the Principal Act as amended by this section apply to any purported appeal made after the commencement of this section against a promotion, whether the promotion was made before, or is made after, that commencement.

(3) Sections 58C and 58D of the Principal Act as amended by this section apply to any purported application made after the commencement of this section for a review of a promotion, whether the promotion was made before, or is made after, that commencement.

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Insertion of new section

12. Before section 80 of the Principal Act the following section is inserted in Part IV:

Agency not subject to direction

“79A. Neither the Agency, nor a member of the Agency while acting as such, is subject to direction by any other person or by any body or authority other than a court.”.

Offences

13. Section 81 of the Principal Act is amended:

(a) by omitting the penalty at the end of subsection (1) and substituting the following penalty:

“Penalty: Imprisonment for 6 months.”;

(b) by omitting the penalty at the end of subsection (2) and substituting the following penalty:

“Penalty: Imprisonment for 1 year.”;

(c) by omitting subsection (3) (including the penalty at the end of that subsection) and substituting the following subsection:

“(3) A person must not:

(a) obstruct or hinder:

(i) the Agency or a member or acting member in the performance of the Agency’s functions; or

(ii) a Review Committee or a member of a Review Committee (within the meaning of Division 2 of Part II) in the performance of the Committee’s functions; or

(b) disrupt a hearing of the Agency or such a Review Committee.

Penalty: Imprisonment for 6 months.”.

Officers to observe secrecy

14. Section 84 of the Principal Act is amended:

(a) by adding at the end of paragraph (1)(a) “or”;

(b) by inserting after paragraph (1)(a) the following paragraphs:

“(aa) a member of a Joint Selection Committee; or”;

(ab) a member of a Review Committee within the meaning of Division 2 of Part II; or”;

(c) by omitting the penalty at the end of subsection (2) and substituting the following penalty:

“Penalty: Imprisonment for 6 months.”;

(d) by omitting from subsection (5) “is not compellable” and substituting “is not competent and may not be required”.

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Regulations

15. Section 85 of the Principal Act is amended by inserting in paragraph (2)(g) “Redeployment and Retirement Appeal Committee or a” before “Disciplinary Appeal Committee”.

5 Additional amendments

16. The Principal Act is amended as set out in the Schedule.

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SCHEDULE

Section 16

Provision amended	Amendment
Subsection 3(1)	Insert the following definition: “‘ Commissioner ’ means the Public Service Commissioner;”.
Subsection 3(1) (Definition of “Public Service Board”)	Omit the definition.
Subsection 17(5)	Omit “Board”, substitute “Commissioner”.
Subparagraph 23(1)(b)(i)	Omit “Public Service Board” (wherever occurring), substitute “Commissioner”.
Paragraph 28(1)(b)	Omit “Public Service Board”, substitute “Commissioner”.
Subsection 28(2)	Omit “Public Service Board”, substitute “Commissioner”.
Paragraph 33(b)	Omit “Public Service Board”, substitute “Commissioner”.
Section 44	Omit from subsections (1) and (2) “Public Service Board” (wherever occurring), substitute “Commissioner”.
Subsection 56(1)	Omit “Public Service Board”, substitute “Commissioner”.
Subsection 56(2)	Omit “Board”, substitute “Commissioner”.

NOTE

- 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; Nos. 94 and 196, 1992; and No. 33, 1994.

NOTE ABOUT SECTION HEADING

- On the day on which section 16 of this Act commences, the heading to section 44 of the *Merit Protection (Australian Government Employees) Act 1984* is amended by omitting “**Public Service Board**” and substituting “**Public Service Commissioner**”.

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*[Minister's second reading speech made in—
Senate on 30 June 1994
House of Representatives on 10 November 1994]*