



Prime Minister and Cabinet (Miscellaneous Provisions) Act 1995

No. 138 of 1995

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Prime Minister and Cabinet (Miscellaneous Provisions) Act 1995

No. 138 of 1995

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

[Assented to 5 December 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Prime Minister and Cabinet (Miscellaneous Provisions) Act 1995*.

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Provisions) No. 138, 1995*

Commencement

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

Amendments

3. The Acts referred to in the Schedule are amended in accordance with the applicable items in the Schedule, and the other items in the Schedule have effect according to their terms.

SCHEDULE

Section 3

**PART 1—AMENDMENTS OF THE ECONOMIC PLANNING
ADVISORY COUNCIL ACT 1983**

1. Title:

Omit “**Council**”, substitute “**Commission**”.

2. Heading to Part I:

Omit, substitute:

“PART 1—PRELIMINARY”.

3. Section 1:

Omit “*Council*”, substitute “*Commission*”.

4. Section 3:

Repeal, substitute:

Definitions

“3. In this Act, unless the contrary intention appears:

‘**Commission**’ means the Economic Planning Advisory Commission referred to in section 4;

‘**Commissioner**’ means the person who, from time to time, holds the office of Commissioner and includes a person acting in that office.”.

5. Parts II to V:

Repeal, substitute:

**“PART 2—ESTABLISHMENT, CONSTITUTION, FUNCTIONS
AND POWERS OF COMMISSION**

Establishment of Commission

“4. There is established a body by the name of the Economic Planning Advisory Commission.

Constitution of Commission

“5.(1) The Commission is constituted by a Commissioner.

“(2) The Commissioner, under the Minister, is responsible for the performance of the Commission’s functions.

Functions of Commission

“6. The Commission’s functions are:

SCHEDULE—continued

- (a) to investigate, or assist in the investigation of, matters relating to medium and long-term economic and social issues and provide, or assist in the provision of, information and advice to the Minister in respect of those matters; and
- (b) to promote public debate on, and public understanding of, economic and social issues; and
- (c) at the request of the Minister, to undertake special projects in respect of matters relating to economic and social issues; and
- (d) to seek, and report to the Minister on, the views of persons, and groups of persons, in industry, the trade union movement, and the community generally, in connection with the preparation of the annual Commonwealth budget.

Powers of Commission

“7.(1) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

“(2) Without limiting subsection (1), the Commission may:

- (a) at the Minister’s request, organise meetings of, and provide secretarial support to, any bodies or groups of people established to consider medium and long-term economic and social issues; and
- (b) with the Minister’s agreement, provide information on matters related to its functions to any bodies or groups of people conducting inquiries into medium and long-term economic and social issues; and
- (c) prepare reports and papers on matters within its functions and give them to the Minister; and
- (d) organise, and participate in, seminars and conferences on matters related to its functions.

Publication of Commission’s reports and papers

“8.(1) If a report or paper is prepared for the Minister by the Commission, the Minister may publish the report or paper by causing it to be made public in any way that he or she thinks appropriate.

“(2) Without limiting subsection (1), the way, or a way, in which the Minister may cause a report or paper prepared by the Commission to be made public is by causing it to be laid before each House of the Parliament.

“(3) If:

- (a) the Minister decides to publish a report or paper prepared by the Commission; and

SCHEDULE—continued

- (b) the report or paper contains economic information the publication of which would, in the Minister's opinion, be contrary to the public interest;

the Minister may publish the report with any deletions that the Minister considers necessary or desirable.

“(4) If, in accordance with paragraph (3)(b), the Minister publishes a report or paper with deletions, the Minister must make it publicly known that the report was published with deletions.

“PART 3—COMMISSIONER, STAFF AND CONSULTANTS

Appointment of Commissioner

“9.(1) The Commissioner is to be appointed by the Minister.

“(2) The Commissioner holds office for the period (which must not be more than 5 years) stated in the instrument of appointment, but is eligible for re-appointment.

Remuneration and allowances of Commissioner

“10.(1) The Commissioner is to be paid the remuneration determined by the Remuneration Tribunal, but, if no determination of that remuneration is in force, is to be paid the remuneration that is prescribed by the regulations.

“(2) The Commissioner is to be paid the allowances that are prescribed by the regulations.

“(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence of Commissioner

“11.(1) Subject to section 87E of the *Public Service Act 1922*, the Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.

“(2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

Resignation of Commissioner

“12. The Commissioner may resign his or her office by writing signed by him or her and delivered to the Minister.

Ending of appointment of Commissioner

“13.(1) The Minister may end the appointment of the Commissioner because of misbehaviour or physical or mental incapacity.

SCHEDULE—continued

“(2) If the Commissioner:

- (a) engages in paid employment outside the duties of his or her office without the approval of the Minister; or
- (b) is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months; or
- (c) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

the Minister must end the Commissioner’s appointment.

Terms and conditions not provided for by Act

“14. The Commissioner holds office on the terms and conditions (if any), in relation to matters not provided for by this Act, that are determined by the Minister.

Acting Commissioner

“15. The Minister may appoint a person to act as the Commissioner:

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is absent from Australia or, for any reason, is unable to perform the functions of his or her office.

Staff

“16.(1) The staff required to assist in the performance of the Commission’s functions are to be people appointed or employed under the *Public Service Act 1922*.

“(2) The Commissioner has all the powers of a Secretary under the *Public Service Act 1922* as they relate to the branch of the Australian Public Service comprising the Commission’s staff.

Consultants

“17.(1) The Commissioner may, on behalf of the Commonwealth, engage persons who have suitable qualifications and experience as consultants to the Commission.

“(2) The terms and conditions of engagement of the persons engaged under subsection (1) are those determined by the Commissioner.

SCHEDULE—continued

“PART 4—MISCELLANEOUS

Annual report

“18.(1) The Commissioner must, as soon as practicable after each 30 June, prepare and give to the Minister a report of the Commission’s operations during the year that ended on that 30 June.

“(2) The Minister must cause a copy of every report given to the Minister under subsection (1), to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Regulations

“19. The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Transitional

“20. In any Act, in any instrument under an Act, in any award or other industrial determination or order or any industrial agreement, in any other order (whether executive, judicial or otherwise), in any contract, in any pleading in, or process issued in connection with, any legal proceedings or in any other instrument, a reference to the Economic Planning Advisory Council is taken, except in relation to matters that occurred before the commencement of this section, to be a reference to the Commission.”.

SCHEDULE—continued

**PART 2—AMENDMENTS OF THE PARLIAMENTARY
ALLOWANCES ACT 1952**

6. Paragraphs 3(2)(a) and (b):

After “he” insert “or she”.

7. Paragraphs 5(1)(a), (b) and (c):

After “his” insert “or her”.

8. Subsection 5A(1):

After “his” insert “or her”.

9. Subsection 5A(2):

Omit “his re-election or, if he”, substitute “his or her re-election or, if he or she”.

10. Paragraph 6(1)(b):

Omit “Chairman of Committees of the Senate or of the House of Representatives”, substitute “Deputy President and Chairman of Committees of the Senate or Deputy Speaker of the House of Representatives”.

11. Subsections 6(4) and (5):

Omit, substitute:

“(4) The allowances payable to a Deputy President and Chairman of Committees of the Senate who is re-elected at an election of the Senate are to be reckoned to and including the day next before the day on which his or her successor as Deputy President and Chairman of Committees of the Senate is chosen.

“(5) The allowances payable to a Deputy Speaker of the House of Representatives who is re-elected at a general election of that House are to be reckoned to and including the day next before the day on which his or her successor as Deputy Speaker of that House is chosen.”.

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SCHEDULE—continued

**PART 3—AMENDMENT OF THE PARLIAMENTARY
PRESIDING OFFICERS ACT 1965**

- 12. Section 2 (definition of “Deputy Presiding Officer”):**
Omit from paragraph (b) “and Chairman of Committees”.

SCHEDULE—continued

PART 4—AMENDMENTS OF THE PUBLIC SERVICE ACT 1922

13. Subsections 9(7H), (7J) and (7K):

Omit, substitute:

“(7H) The President or the Speaker, or the President and the Speaker, as the case may be, may, by signed writing, delegate to an officer or employee of the Parliament all or any of his, her or their powers, as the case may be, under this Act (other than the powers to make recommendations to the Governor-General under subsections (1), (6) and (7G)).”

14. Subsection 9(2AA):

After “this section” insert “and section 9AB”.

15. After section 9AA:

Insert:

Modifications of certain provisions in relation to officers of the Parliament

“9AB.(1) In this section and in sections 50DAA, 50DA, 50DB, 50DC and 50G as those sections have effect as modified by Schedule 4:

‘office of the Parliament’ has the same meaning as in section 9;

‘responsible authority’ means:

(a) in relation to a promotion to, or the creation of, an office of the Parliament:

- (i) if the office is, or is to be, an office in the Department of the Senate—the President of the Senate; or
- (ii) if the office is, or is to be, an office in the House of Representatives—the Speaker of the House of Representatives; or
- (iii) if the office is, or is to be, an office in the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff or the Joint House Department—the President of the Senate and the Speaker of the House of Representatives; or

(b) in relation to a transfer to an office of the Parliament:

- (i) if the transfer is to an office in the Department of the Senate—the Clerk of the Senate; or
- (ii) if the transfer is to an office in the Department of the House of Representatives—the Clerk of the House of Representatives; or

SCHEDULE—continued

- (iii) if the transfer is to an office in the Department of the Parliamentary Library—the Parliamentary Librarian; or
 - (iv) if the transfer is to an office in the Department of the Parliamentary Reporting Staff—the Principal Parliamentary Reporter; or
 - (v) if the transfer is to an office in the Joint House Department—the Secretary of the Joint House Department; or
- (c) in relation to action that precedes a promotion or transfer to an office of the Parliament and may involve either a promotion or a transfer—the person or persons who, under paragraph (a), would be the responsible authority in relation to such a promotion and the person who, under paragraph (b), would be the responsible authority in relation to such a transfer.

“(2) The application of the provisions of this Act referred to in column 1 of Schedule 4 in relation to a promotion or transfer to, or the creation of, an office of the Parliament is subject to the modifications set out in columns 2 and 3 of that Schedule.”.

16. Subsections 25(6) to (8):

Omit, substitute:

“(6) Subject to subsections (8A) and (8B), the Secretary of a Department must, as soon as practicable after 30 June in each year, and in any event not later than 15 October in that year (the ‘due date’), prepare and give to the Minister administering the Department a report on the operation of the Department during the year that ended on that 30 June.

“(7) A report prepared under subsection (6) must be in accordance with requirements from time to time presented to the Parliament by the Prime Minister after approval by the Joint Committee of Public Accounts.

“(8) Subject to subsection (8C), the Minister administering a Department must cause a copy of a report given to him or her under subsection (6) to be laid before each House of the Parliament on or before 31 October in the year in which the report is given.

“(8A) If the Secretary of a Department is of the opinion that it will not be reasonably possible to prepare and give to the Minister administering the Department a report referred to in subsection (6) on or before the due date, the Secretary may, before that date, apply to the Minister for an extension of the period within which the report is to be prepared and given.

“(8B) If the Secretary makes such an application:

SCHEDULE—continued

- (a) the Secretary must give to the Minister a written statement explaining why, in the Secretary's opinion, it will not be reasonably possible to prepare and give the report on or before the due date; and
- (b) the Minister may grant any extension that he or she considers reasonable in the circumstances; and
- (c) the Secretary must prepare and give the report to the Minister within the period of extension.

“(8C) If the Minister is of the opinion that, having regard to the period of extension, it will not be reasonably possible to cause a copy of the report to be laid before each House of the Parliament on or before 31 October, the Minister must, on or before that date, cause to be laid before each House of the Parliament:

- (a) a copy of the statement given under paragraph (8B)(a) in respect of the application; and
- (b) a statement setting out:
 - (i) the period of extension granted; and
 - (ii) the Minister's reasons for granting the extension; and
 - (iii) the date on or before which the report will be prepared and given; and
 - (iv) the date (which must not be later than 7 days after the date referred to in subparagraph (iii)) on or before which a copy of the report will be laid before that House.

“(8D) If the Secretary of a Department fails to give a report to the Minister administering the Department on or before the date by which it is required by the preceding provisions to be given:

- (a) the Secretary must, not later than 14 days after that date, give to the Minister a written statement explaining why the report was not given as required; and
- (b) the Minister must cause a copy of the statement to be laid before each House of the Parliament within 3 sitting days of that House after the day on which he or she receives the statement.

“(8E) If:

- (a) a Minister is required by this section to cause a copy of a report, or a statement, to be laid before a House of the Parliament on or before a particular day; and
- (b) it is not possible to cause the copy of the report, or the statement, to be laid before the House before that day; and
- (c) the House is not sitting on that day; and

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SCHEDULE—continued

(d) the rules or orders of the House do not allow papers to be presented when the House is not sitting;
the Minister must cause the copy of the report, or the statement, to be laid before the House within 5 sitting days of the House after that day.”.

17. After Schedule 3:

Insert:

“SCHEDULE 4

Subsection 9AB(2)

MODIFICATIONS OF ACT IN RELATION TO PARLIAMENTARY DEPARTMENTS

Column 1 Provision modified	Column 2 Omit	Column 3 Substitute
Subsection 33AAA(1) (definition of “non-appellable promotion”)	50	9
Subsection 33AAA(1) (definition of “prescribed day”)	49B,	9, 49B,
Subsections 50DAA(4), (5), (6) and (7)	Secretary (wherever occurring)	responsible authority
Paragraph 50DAA(7)(b)	the Secretary’s Department	a Department in relation to which he or she is, or they are, the responsible authority
Subsection 50DA(1)	the Secretary of	the responsible authority in relation to
Subsection 50DA(1)	section 50	section 50 or 9, as the case may be,
Subsections 50DA(3) and (4)	Secretary (wherever occurring)	responsible authority
Paragraph 50DA(5)(b)	Secretary of	responsible authority in relation to

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Column 1 Provision modified	Column 2 Omit	Column 3 Substitute
Subsection 50DA(6)	Secretary (wherever occurring)	responsible authority
Subsection 50DA(6)	section 50	section 50 or 9, as the case may be
Paragraph 50DA(7)(b)	appeal under section 50B or	
Subsections 50DA(9), (10) and (11)	Secretary (wherever occurring)	responsible authority
Subsection 50DB(1)	the Secretary of	the responsible authority in relation to
Subsection 50DB(1)	section 50 or 50DA	section 50 or section 9, or section 50DA, as the case may be,
Subsection 50DB(2)	the Board	the President of the Senate, the Speaker of the House of Representatives, or both the President of the Senate and the Speaker of the House of Representatives, as the case may be,
Subsection 50DB(3)	Secretary (wherever occurring)	responsible authority
Paragraphs 50DB(3)(a) and (b)	Secretary's	responsible authority's
Paragraph 50DB(4)(b)	Secretary of	responsible authority in relation to
Subsection 50DB(5)	appeal under section 50B or	
Subsection 50DB(6)	Secretary (wherever occurring)	responsible authority

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SCHEDULE—continued

Column 1 Provision modified	Column 2 Omit	Column 3 Substitute
Subsection 50DB(6)	section 50, and a promotion so made is subject to appeal under section 50B or review under section 50DAA, as the case requires	section 9 or 50, as the case may be, and a promotion so made is subject to review under section 50DAA
Subsection 50DB(7)	whether or not the promotion is subject to appeal under section 50B or review under section 50DAA	that the promotion is subject to review under section 50DAA
Paragraph 50DB(10)(a)	Secretary	responsible authority
Subsections 50DB(11) and (12)	Secretary (wherever occurring)	responsible authority
Subsection 50DC(1)	Secretary	responsible authority
Subsection 50E(2)	50	9
Subsection 50E(3)	(3) Where, upon the determination of an appeal against the promotion under section 50 of an officer to an office, another officer is promoted to that office by force of subsection 50D(5), salary at the rate applicable to that office is payable to that other officer on and from the prescribed day in respect of the first-mentioned promotion.	

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SCHEDULE—continued

Column 1 Provision modified	Column 2 Omit	Column 3 Substitute
Subsection 50G(1)	Board, or the Secretary of the Department,	responsible authority
Subsection 50G(2)	50	9
Subsection 50G(3)	(3) Where a promotion is cancelled by or under this section, any appeal under section 50B against the promotion shall be deemed to lapse on the date of the cancellation.	

18. Application

(1) A delegation given under subsection 9(7H) of the *Public Service Act 1922* and in force immediately before the commencement of this Act continues in force as if it had been given under subsection 9(7H) of that Act as amended by this Schedule.

(2) The amendment made by item 16 applies in relation to annual reports in respect of the year beginning on 1 July 1995 and all later years and, despite that amendment, subsections 25(6) to (8) of the *Public Service Act 1922* as in force immediately before the commencement of this Act continue to apply in relation to annual reports in respect of earlier years.

*[Minister's second reading speech made in—
Senate on 29 March 1995
House of Representatives on 22 November 1995]*