

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

ADMINISTRATIVE ARRANGEMENTS BILL 1987

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SCHEDULE

AMENDMENT OF PUBLIC SERVICE ACT 1922 RELATING TO THE BOARD AND THE
NEW DEPARTMENTAL STRUCTURE

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 15 September 1987)

(MINISTER FOR INDUSTRY, TECHNOLOGY AND COMMERCE, SENATOR BUTTON)

A BILL

FOR

**An Act to amend the *Acts Interpretation Act 1901* and the
Public Service Act 1922 in connection with certain
administrative arrangements, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Administrative Arrangements Act 1987*.

Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

10 **(2)** Part II shall be deemed to have come into operation on 24 July 1987.

PART II—AMENDMENT OF ACTS INTERPRETATION ACT 1901

Principal Act

3. In this Part the *Acts Interpretation Act 1901*¹ is referred to as the Principal Act.

Constitutional and official definitions

4. Section 17 of the Principal Act is amended by omitting paragraphs (i) and (ia).

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

References to Ministers and Departments

“19A. (1) Where a provision of an Act refers to a Minister, using the expression ‘the Minister’ without specifying which Minister is referred to, then, unless the contrary intention appears, the expression means:

- (a) if, for the time being, different Ministers administer the provision in respect of different matters:
 - (i) if 2 or more Ministers administer the provision in respect of the relevant matter—any one of those Ministers; or
 - (ii) if only one Minister administers the provision in respect of the relevant matter—that Minister;
- (b) if paragraph (a) does not apply and, for the time being, 2 or more Ministers administer the provision—any one of those Ministers; or
- (c) if paragraphs (a) and (b) do not apply—the Minister for the time being administering the provision.

“(2) Where an Act refers to a Minister, specifying the Minister merely by reference to the fact that the Minister administers a specified Act or enactment, subsection (1) applies as if references in paragraphs (1) (a), (b) and (c) to the provision were references to the specified Act or enactment.

“(3) Where a provision of an Act refers to a Department, using the expression ‘the Department’ without specifying which Department is referred to, then, unless the contrary intention appears, the expression means:

- (a) if, for the time being, different Ministers administer the provision in respect of different matters—the Department of State of the Commonwealth that:
 - (i) deals with the relevant matter; and
 - (ii) is administered by the Minister or Ministers administering the provision in respect of that matter; or
- (b) in any other case—the Department of State of the Commonwealth that:
 - (i) deals with the matters to which the provision relates; and

(ii) is administered by the Minister or Ministers for the time being administering the provision.

“(4) For avoidance of doubt, it is declared that where:

- (a) a provision of an Act is administered by 2 or more Ministers; and
- (b) by virtue of this section, the provision requires or permits anything to be done by or in relation to any one of those Ministers;

the provision shall not be taken to require or permit it to be done in any particular case by or in relation to more than one of those Ministers.”.

Reference to Minister, Department etc. where no longer any such Minister, or Department abolished etc.

6. Section 19B of the Principal Act is amended by omitting from paragraph (1) (c) “such Minister as is” (wherever occurring) and substituting “a Minister or Ministers”.

Reference to Minister, Department etc. inconsistent with changed administrative arrangements

7. Section 19BA of the Principal Act is amended by omitting from paragraph (1) (c) “such Minister as is” (wherever occurring) and substituting “a Minister or Ministers”.

References in agreements to a Department, Minister, officer or body

8. Section 19C of the Principal Act is amended:

- (a) by omitting from paragraph (a) “the Minister” (wherever occurring) and substituting “a Minister”; and
- (b) by omitting subparagraph (c) (ii) and substituting the following subparagraph:

“(ii) an officer or body specified, by order, by a Minister administering the new Department.”.

PART III—AMENDMENT OF PUBLIC SERVICE ACT 1922

Principal Act

9. In this Part the *Public Service Act 1922*² is referred to as the Principal Act.

Interpretation

10. Section 7 of the Principal Act is amended:

- (a) by omitting “the Minister” from the definition of “The Minister” in subsection (1) and substituting “a Minister”;
- (b) by omitting from subsection (1) the definition of “The Board”; and
- (c) by inserting in subsection (1) the following definition in its appropriate alphabetical position (determined on a letter-by-letter basis):

“ ‘Commissioner’ means the Public Service Commissioner;”.

11. (1) Sections 11 to 17 (inclusive) of the Principal Act are repealed and the following sections are substituted:

Public Service Commissioner

"11. (1) There shall be a Public Service Commissioner.

"(2) The Commissioner shall be appointed by the Governor-General. 5

"(3) The Commissioner shall be appointed on a full-time basis for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

"(4) A person who has attained the age of 65 years shall not be appointed as the Commissioner and a person shall not be appointed as the Commissioner for a period that extends beyond the day on which the person will attain the age of 65 years. 10

"(5) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Prime Minister. 15

"(6) Where an officer is appointed as the Commissioner, the person shall be deemed, upon the appointment, to become an unattached Secretary.

Remuneration

"12. (1) The Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration is in operation, the Commissioner shall be paid such remuneration as is prescribed. 20

"(2) The Commissioner shall be paid such allowances as are prescribed.

"(3) This section has effect subject to the *Remuneration Tribunals Act 1973*. 25

Leave of absence

"13. The Prime Minister may grant to the Commissioner leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Prime Minister determines. 30

Disclosure of interests

"14. The Commissioner shall give the Prime Minister written notice of all direct or indirect pecuniary interests that the Commissioner has or acquires in any business whether in Australia or elsewhere or in any body corporate carrying on such business. 35

Annual report by Commissioner

"15. The Commissioner shall, as soon as practicable after 30 June in each financial year, prepare and furnish to the Prime Minister a report in relation to the activities of the Commissioner during that year.

Resignation

"16. The Commissioner may resign by giving the Governor-General a signed notice of resignation.

Suspension and removal

"17. (1) The Governor-General may remove the Commissioner from office on an address praying for the Commissioner's removal on the ground of misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

"(2) The Governor-General may suspend the Commissioner from office on the ground of misbehaviour or physical or mental incapacity. 10

"(3) Where the Governor-General suspends the Commissioner from office, the Prime Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension. 15

"(4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Commissioner should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Commissioner from office. 20

"(5) If, at the expiration of 15 sitting days of a House of Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.

"(6) The suspension of the Commissioner from office under this section does not affect any entitlement of the Commissioner to be paid remuneration and allowances. 25

"(7) If the Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or assigns remuneration for their benefit, the Governor-General shall remove the Commissioner from office. 30

"(8) If the Commissioner is absent from duty, except on leave granted by the Prime Minister under section 13, for 14 consecutive days or for 28 days in any 12 months, the Governor-General may remove the Commissioner from office. 35

"(9) The Commissioner shall not be removed or suspended from office except as provided by this section.

Delegation by Commissioner

"18. (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Commissioner, delegate to a person (not being a person engaged as a

consultant under section 4 of the *Members of Parliament (Staff) Act 1984*) any of the Commissioner's powers or functions under this Act or under any other law, other than this power of delegation.

"(2) Without limiting the generality of subsection (1), the reference in that subsection to the powers of the Commissioner under this Act shall be read as including a reference to the powers of the Commissioner under section 82D.

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

"(4) A power or function delegated under subsection (1) or sub-delegated under subsection (3), when exercised or performed by the delegate or sub-delegate, shall, for all purposes, be deemed to have been exercised or performed by the Commissioner.

"(5) A delegation of a power or function under subsection (1):

- (a) may be absolute or conditional;
- (b) does not prevent the exercise of the power or the performance of the function by the Commissioner;
- (c) subject to paragraph (d), continues in force notwithstanding that the person who gave the delegation has ceased to be Commissioner; and
- (d) may be revoked by instrument in writing signed by the Commissioner for the time being.

"(6) A sub-delegation of a power or function under subsection (3) by the Secretary of a Department:

- (a) may be absolute or conditional;
- (b) does not prevent the exercise of the power or the performance of the function by the Commissioner or by the Secretary;
- (c) subject to paragraph (d), continues in force notwithstanding that:
 - (i) the person who gave the delegation has ceased to be Commissioner; or
 - (ii) the person who gave the sub-delegation has ceased to be Secretary of the Department; and
- (d) may be revoked by instrument in writing signed by the Secretary of the Department for the time being.

"(7) Where:

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

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

"(8) Where the Commissioner has delegated a power or function under subsection (1):

- (a) the Commissioner may give directions to the delegate with respect of the exercise of the power or the performance of the function; and
- (b) if the delegate has sub-delegated the power or function under subsection (3), the delegate:
 - (i) shall, if the Commissioner has given a direction to the delegate under paragraph (a) with respect to the exercise of the power or the performance of the function, give a corresponding direction to the sub-delegate; and
 - (ii) may, subject to any direction given to the delegate by the Commissioner under paragraph (a), give directions to the sub-delegate with respect to the exercise of the power or the performance of the function.

Acting Commissioner

"18A. (1) The Prime Minister may appoint a person to act as Commissioner:

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

"(2) An appointment to act as Commissioner may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

"(3) A person appointed under subsection (1) to act during a vacancy in the office of Commissioner shall not continue so to act for more than 12 months.

"(4) Where a person is acting as Commissioner otherwise than by reason of a vacancy in the office of Commissioner and the office becomes vacant while the person is so acting, then, subject to subsection (2), the person may continue so to act until the Prime Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first occurs.

"(5) While a person is acting as Commissioner, that person may exercise all the powers, and shall perform all the functions, of the Commissioner.

"(6) The Prime Minister may:

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Commissioner; and

(b) terminate such an appointment at any time.

“(7) A person appointed to act as Commissioner may resign by giving the Prime Minister a signed notice of resignation.

“(8) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

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

Staff

“18B. (1) The staff required to assist the Commissioner in the exercise of the Commissioner’s powers, and the performance of the Commissioner’s functions, shall be persons appointed or employed under this Act.

“(2) The Commissioner has all the powers of a Secretary under this Act so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.”.

(2) A delegation by the Board under subsection 16 (1) of the Principal Act that was in force immediately before commencement continues in force, on and after commencement, as if it were given by the Commissioner under subsection 18 (1) of the amended Act.

(3) A sub-delegation by a Secretary under subsection 16 (1A) of the Principal Act that was in force immediately before commencement continues in force, on and after commencement, as if it were given by the Secretary under subsection 18 (3) of the amended Act.

(4) A delegation or sub-delegation continued in force by subsection (2) or (3) continues in force subject to the provisions of the amended Act.

(5) An instrument (other than a delegation) that was made by the Board and was in force immediately before commencement continues in force, on and after commencement, as if it were made by the Commissioner.

(6) Without limiting the generality of subsection (5), a reference in that subsection to an instrument includes a reference to a determination under section 82D of the Principal Act.

(7) A reference in any Act, in any instrument under an Act or in any award or other industrial determination or order to the Board shall, except in relation to matters that occurred before commencement, be construed as a reference to the Commissioner.

(8) Subject to subsection (9), a person who was, on 23 July 1987, a member of the Board shall be deemed to have become an unattached Secretary on 24 July 1987.

(9) Subsection (8) does not apply to a person who was already an unattached Secretary on 23 July 1987.

(10) Where, immediately before commencement, an office was in the branch of the Australian Public Service that was under the direct control of the Head of the Board, the office, on and after commencement, continues in existence, subject to the amended Act, as an office in the branch of the Australian Public Service referred to in subsection 18B (2) of the amended Act.

(11) In this section:

“amended Act” means the Principal Act as amended by this Act and as in force at any time after commencement;

“commencement” means the commencement of this section.

Powers of Commissioner

12. Section 19 of the Principal Act is amended:

- (a) by omitting from subsection (1) “Board” (wherever occurring) and substituting “Commissioner”;
- (b) by omitting from paragraph (1) (a) “its duties” and substituting “the Commissioner’s functions”; and
- (c) by omitting from subsection (3) “\$40” and substituting “\$1,000 or imprisonment for 6 months, or both”.

Repeal of section 19A

13. Section 19A of the Principal Act is repealed.

Records of officers

14. Section 21 of the Principal Act is amended by omitting from subsection (1) “Board” and substituting “Commissioner”.

15. Section 22 of the Principal Act is repealed and the following section is substituted:

Australian Public Service Management Advisory Board

“22. (1) There is hereby established a body to be known as the Australian Public Service Management Advisory Board.

“(2) The functions of the Board are:

- (a) to advise the Commonwealth Government on significant issues relating to the management of the Australian Public Service; and
- (b) to be a forum for consideration of major management activities affecting the Australian Public Service as a whole.

“(3) The Board shall consist of the following members:

- (a) the Secretary to the Department of the Prime Minister and Cabinet;
- (b) the Commissioner;
- (c) the Secretary to the Department of Industrial Relations;

- (d) the Secretary to the Department of Finance;
- (e) such other Secretaries as are nominated, in writing, by the Prime Minister;
- (f) at least 2 other persons nominated, in writing, by the Prime Minister.

“(4) One of the members of the Board nominated under paragraph (3) (f) shall be nominated after consultation between the Prime Minister and the Australian Council of Trade Unions. 5

“(5) One of the members nominated under paragraph (3) (f) shall be a person who has management expertise in the private sector.

“(6) The Secretary to the Department of the Prime Minister and Cabinet shall be the Chairperson of the Board.”. 10

16. After section 22C of the Principal Act the following section is inserted in Part IIA:

Joint Council

“23. (1) The regulations may make provision for the establishment of a Joint Council. 15

“(2) The Joint Council shall be representative of the Commissioner and of Departments and of organisations of officers or employees and shall be constituted in such manner as is prescribed.

“(3) The Joint Council shall have such functions in relation to the Service as are prescribed.”. 20

Regulations

17. (1) Section 97 of the Principal Act is amended:

- (a) by omitting from subsection (1) all the words from and including “The Board” to and including “namely:—” and substituting the following: 25

“The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (aa) required or permitted by this Act to be prescribed; or
- (ab) necessary or convenient to be prescribed for carrying out or giving effect to this Act; 30

and in particular for the following:”;

- (b) by omitting from paragraph (1) (q) “Board” and substituting “Commissioner”;
- (c) by omitting from paragraph (1) (r) “Board” and substituting “Commissioner”; and 35
- (d) by omitting subsection (2). 35

(2) All regulations in force under the Principal Act immediately before commencement continue in force on and after that date except in so far as they are inconsistent with the amended Act, but any such regulations may be amended or repealed by regulations made under the amended Act. 40

(3) In this section:

“amended Act” means the Principal Act as amended by this Act and as in force at any time after commencement;

“commencement” means the commencement of this section.

5 Amendments relating to the Board and the new Departmental structure

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

References in instruments to Secretaries

19. (1) The Secretary of a Department may, by written notice published in the *Gazette*, declare that references to the Secretary in a relevant instrument are to be, or are to include, references to: 10

- (a) an unattached Secretary; or
- (b) a Senior Executive Service officer;

in the Department who is specified in the notice.

(2) Where a Secretary makes a declaration under subsection (1) in relation to a relevant instrument, references to the Secretary in that instrument shall, as from the day of publication of the declaration in the *Gazette* or such later day as is specified in the declaration, be read as or include, as the case requires, references to the specified unattached Secretary or Senior Executive Service officer, as the case requires. 15

(3) In this section: 20

“instrument” means:

- (a) an Act;
- (b) an instrument (including rules, regulations or by-laws) made, granted or issued under an Act;
- (c) an award or other industrial determination or order;
- (d) an industrial agreement;
- (e) a contract;
- (f) a pleading in, or process issued in connection with, any legal or other proceeding; or
- (g) any other instrument; 25

“relevant instrument” means an instrument that was in force immediately before the commencement of this section and includes:

- (a) a provision of such an instrument; and
- (b) a class of such instruments. 30

35 PART IV—MODIFICATION OF ACTS

Regulations modifying Acts

20. (1) The Governor-General may make regulations making such modifications of an Act as are necessary or convenient to be made in consequence of:

- (a) a Minister administering 2 or more Departments; or
- (b) a Department being administered by 2 or more Ministers.

(2) This section ceases to have effect at the end of one year after its commencement.

(3) In this section, "modifications" includes additions, omissions and substitutions.

SCHEDULE

Section 18

AMENDMENT OF PUBLIC SERVICE ACT 1922 RELATING TO THE BOARD AND THE NEW DEPARTMENTAL STRUCTURE

Subsection 25 (4):

Omit "Head of the Public Service Board of the Board, the".

Subsections 36 (3) and (4):

Omit the subsections, substitute the following subsections:

"(3) The Prime Minister shall not recommend, for the purposes of subsection (2), that a person be appointed under subsection (1) to an office of Secretary unless the Prime Minister has received a written report in relation to the filling of the vacancy or expected vacancy from:

- (a) in the case of the office of Secretary to the Department of the Prime Minister and Cabinet—the Commissioner; and
- (b) in any other case—the Secretary to the Department of the Prime Minister and Cabinet.

"(4) A report under subsection (3) in relation to an appointment of a person as Secretary of a Department shall be disregarded for the purposes of that subsection unless the person preparing the report has, before preparing the report, consulted with the person who is the Minister administering that Department at the time when the appointment is made."

Subsection 37 (12):

Omit the subsection, substitute the following subsection:

"(12) The Prime Minister shall not recommend, for the purposes of subsection (11), the taking of an action under this section unless the Prime Minister has received a written report in relation to the taking of the action from:

- (a) in the case of action in relation to the office of Secretary to the Department of the Prime Minister and Cabinet—the Commissioner; and

SCHEDULE—continued

- (b) in any other case—the Secretary to the Department of the Prime Minister and Cabinet."

Subsection 76E (3):

Omit the subsection, substitute the following subsection:

"(3) The Prime Minister shall not recommend, for the purposes of subsection (2), that an appointment to an office of Secretary be terminated unless the Prime Minister has received a written report in relation to the termination from:

- (a) in the case of the office of Secretary to the Department of the Prime Minister and Cabinet—the Commissioner; and
- (b) in any other case—the Secretary to the Department of the Prime Minister and Cabinet."

Subsection 87B (1A):

Omit "The Board shall not make a regulation", substitute "Regulations shall not be made".

Subsection 87B (2):

Omit "The Board shall not make a regulation", substitute "Regulations shall not be made".

Schedules 2 and 3:

Omit the Schedules, substitute the following Schedules:

"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 Aboriginal Affairs
 The Department of Administrative Services
 The Department of the Arts, Sport, the Environment, Tourism and Territories
 The Attorney-General's Department
 The Department of Community Services and Health
 The Department of Defence
 The Department of Employment, Education and Training
 The Department of Finance
 The Department of Foreign Affairs and Trade
 The Department of Immigration, Local Government and Ethnic Affairs
 The Department of Industrial Relations

SCHEDULE—continued

The Department of Industry, Technology and Commerce
 The Department of Primary Industries and Energy
 The Department of the Prime Minister and Cabinet
 The Department of Social Security
 The Department of Transport and Communications
 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 Aboriginal Affairs
 The Secretary to the Department of Administrative Services
 The Secretary to the Department of the Arts, Sport, the Environment, Tourism and Territories
 The Secretary to the Attorney-General's Department
 The Secretary to the Department of Community Services and Health
 The Secretary to the Department of Defence
 The Secretary to the Department of Employment, Education and Training
 The Secretary to the Department of Finance
 The Secretary to the Department of Foreign Affairs and Trade
 The Secretary to the Department of Immigration, Local Government and Ethnic Affairs
 The Secretary to the Department of Industrial Relations
 The Secretary to the Department of Industry, Technology and Commerce
 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 Transport and Communications
 The Secretary to the Department of the Treasury
 The Secretary to the Department of Veterans' Affairs

NOTES

- No. 2, 1901, as amended. For previous amendments, see No. 4, 1916; No. 8, 1918; No. 23, 1930; No. 24, 1932; No. 10, 1937; No. 7, 1941; No. 78, 1947; No. 79, 1948; No. 80, 1950; No. 69, 1957; No. 19, 1963; No. 52, 1964; No. 93, 1966; Nos. 79 and 216, 1973; No. 144, 1976; No. 35, 1978; No. 1, 1980; No. 61, 1981; Nos. 26 and 80, 1982; No. 39, 1983; Nos. 27 and 63, 1984 (as amended by No. 165, 1984); No. 72, 1984; and No. 193, 1985.
- No. 21, 1922, as amended. For previous amendments, see No. 46, 1924; No. 41, 1928; No. 19, 1930; No. 21, 1931; No. 72, 1932; No. 38, 1933; Nos. 45 and 46, 1934; No. 72, 1936; No. 41, 1937; No. 72, 1939; No. 88, 1940; No. 5, 1941; No. 19, 1943; Nos. 11, 29 and 43, 1945; No. 16, 1946; Nos. 1, 38, 52 and 84, 1947; Nos. 35 and 75, 1948; Nos. 51 and 80, 1950; Nos. 46 and 48, 1951; No. 22, 1953; No. 63, 1954; No. 18, 1955; Nos. 13 and 39, 1957; No. 11, 1958; Nos. 17 and 105, 1960; Nos. 2 and 75, 1964; Nos. 47 and 85, 1966; Nos. 2 and 115, 1967; Nos. 59, 114 and 120, 1968; No. 6, 1972; Nos. 21, 71, 73 and 209, 1973; No. 59, 1974; No. 40, 1975; Nos. 193 and 194, 1976; Nos. 6 and 80, 1977; Nos. 36 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980 (as amended by No. 166, 1985); No. 61, 1981; Nos. 26 and 80, 1982; No. 111, 1982 (as amended by No. 39, 1983); Nos. 39, 56 and 92, 1983; No. 63, 1984 (as amended by No. 165, 1984); No. 165, 1984; Nos. 65, 166 and 187, 1985; Nos. 28, 29 and 76, 1986; and No. 153, 1986.

1987

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE SENATE

ADMINISTRATIVE ARRANGEMENTS BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of
the Prime Minister
the Hon. R.J.L. Hawke, AC, MP)

ADMINISTRATIVE ARRANGEMENTS BILL 1987

OUTLINE

This Bill gives effect to aspects of the major changes to the structure of Commonwealth administration announced by the Prime Minister on 14 July 1987. The Bill amends the Acts Interpretation Act 1901 and the Public Service Act 1922.

Amendments to the Acts Interpretation Act

The amendments to the Acts Interpretation Act 1901 are intended to clarify and put beyond doubt the scope of certain provisions of that Act in their application to the new ministerial arrangements. The amendments expressly recognise for the purposes of that Act the situations where a Minister administers two or more Departments or where a single Department is administered by two or more Ministers.

Amendments to the Public Service Act

The amendments to the Public Service Act 1922 give effect to the decision recommended in the Report of the Efficiency Scrutiny Unit to abolish the Public Service Board and to replace it by a Public Service Commissioner who will have independent statutory responsibility for the policy aspects of recruitment, promotion, mobility, discipline and retirement.

The Bill replaces the provisions constituting the Public Service Board with provisions establishing an office of Public Service Commissioner and provisions for the appointment, tenure, remuneration etc of the Commissioner. It also includes an interim provision so that all references to the Board in legislation and other instruments are to be read as references to the Commissioner. Further legislation will be required to effect the detailed distribution of the Board's powers and functions to the Public Service Commissioner, the Departments of Industrial Relations and Finance and to departments generally.

Financial Impact

Abolition of the Public Service Board, allocation of responsibility for its functions elsewhere and establishment of a Public Service Commissioner will eliminate duplication of functions while ensuring resource savings over time.

The Department of Finance estimates that the abolition of the Board will save the Commonwealth approximately \$8 million in 1987/88 and \$16.5 million in 1988/89.

NOTES ON CLAUSES

PART I : PRELIMINARY

Clause 1 - Short Title

Provides for the Act to be cited as the Administrative Arrangements Act 1987.

Clause 2 - Commencement

Subclause 2 (1) provides that the Act (other than that part relating to the Acts Interpretation Act 1901) shall come into operation on the day it receives the Royal Assent.

Subclause 2 (2) provides that the amendments to the Acts Interpretation Act 1901 contained in Part II of the Bill are deemed to have come into operation on 24 July 1987 which was the day of the swearing in of the new Ministry.

PART II : AMENDMENT OF ACTS INTERPRETATION ACT 1901

Clause 3 - Principal Act

Formal.

Clause 4 - Constitutional and official definitions

This clause repeals the definition of 'The Minister' in paragraph 17 (i) and the definition of 'The Department' in paragraph 17 (ia) of the Act. Revised definitions are substituted by clause 5.

Clause 5 - References to Ministers and Departments

This clause inserts a new section 19A with the heading 'References to Ministers and Departments'. It substitutes for the definitions of 'The Minister' and 'The Department' which appear in paragraphs 17 (i) and 17 (ia) respectively, definitions which expressly refer to the various administrative arrangements which can be made for the Ministerial administration of legislation and departments. The intention of the amendments is not to break new ground but to make it clear that references to 'the Minister' in relation to the administration of a provision of an Act refer, where that provision is administered by 2 or more Ministers in the same respect, to any one of those Ministers.

Proposed subsection 19A (4) declares for the avoidance of doubt that where a provision of an Act is administered by 2 or more Ministers, and by virtue of the application of proposed section 19A the provision requires or permits anything to be done by or in relation to any one of those

Ministers, proposed section 19A does not have the effect of requiring or permitting it to be done in any particular case by or in relation to more than one of those Ministers. This subsection is intended to ensure that the application of proposed section 19A will not give rise to unnecessary duplication or administrative uncertainty.

Clause 6 - Reference to Minister, Department etc. where no longer any such Minister, or Department abolished, etc.

Clause 7 - Reference to Minister, Department etc. inconsistent with changed administrative arrangements

Clauses 6 and 7 amend subsections 19B (1) and 19BA (1) of the Act respectively. These provisions permit the Governor-General to make orders converting outdated references to 'a particular Minister of State' in legislation into references consistent with the current Ministerial nomenclature and administrative arrangements. The amendments will ensure that, where appropriate, the Governor-General may make orders under sections 19B and 19BA converting references to a particular Minister into references to 2 or more Ministers where 2 or more Ministers administer the provision in which the outdated reference appears.

Clause 8 - References in agreements to a Department, Minister, officer or body

This clause is intended to ensure that section 19C which deals with situations where the functions of a Department in relation to the administration of matters to which an agreement relates are allotted to another Department is capable of appropriate application where 2 or more Ministers administer the Department to which the function has been allotted.

PART III : AMENDMENTS OF PUBLIC SERVICE ACT 1922

Clause 9 - Principal Act

Formal.

Clause 10 - Interpretation

An amendment to the definition of "The Minister" is required to reflect the new administrative arrangements under which some departments are administered by more than one Minister.

The definition of "The Board" is omitted to reflect the abolition of the Public Service Board and a new definition of "Commissioner" is inserted.

Clause 11 - Repeal of sections and substitution of new sections

Subclause (1) repeals sections 11 to 17 (inclusive) of the Principal Act which sections provided for the constitution, appointment, duties etc of the Public Service Board.

New sections are substituted providing for an office of Public Service Commissioner as follows -

Section 11 - Public Service Commissioner

Proposed subsections (1), (2) and (3) provide for appointment of a Public Service Commissioner by the Governor-General on a full-time basis for a period not exceeding 5 years.

Provision is made in subsection (4) so that a person over 65 may not be appointed as, or remain in the office of, Commissioner. Subsection (5) provides that the Commissioner will hold office on such terms and conditions in respect of matters not provided for by the Act as are determined by the Prime Minister. Subsection (6) provides that where an officer of the Australian Public Service is appointed as Commissioner, the person shall be deemed to become an unattached Secretary.

Section 12 - Remuneration

This section provides for the method of determining the remuneration and allowances payable to the Commissioner. As is usual with statutory office holders, remuneration is to be determined by the Remuneration Tribunal and allowances are to be as prescribed.

Section 13 - Leave of absence

Provides for the Commissioner to be granted leave by the Prime Minister on such terms and conditions as to remuneration or otherwise as the Prime Minister determines.

Section 14 - Disclosure of interests

Requires the Commissioner to give written notice to the Prime Minister of all direct or indirect pecuniary interests in any business.

Section 15 - Annual report by Commissioner

Requires the Commissioner to prepare and furnish an annual report to the Prime Minister.

Section 16 - Resignation

Provides for resignation by the Commissioner.

Section 17 - Suspension and removal

Provides tenure provisions appropriate to the independence of the office of Public Service Commissioner similar to those applying to the Ombudsman.

Section 18 - Delegation by the Commissioner

The section provides the Commissioner with the same broad powers of delegation as the Board had under former section 16 of the Act.

Section 18A - Acting Commissioner

Subsection (1) enables the Prime Minister to appoint a person to act as Commissioner during a vacancy in the office or during periods when the Commissioner is unable to perform the duties of the office.

Subsection (2) provides that such an appointment may be expressed to have effect only in certain specified circumstances.

Subsection (3) provides that an acting appointment during a vacancy in the office may not continue for more than 12 months. Subsection (4) provides that where an acting appointment has been made and the office becomes vacant then the person may continue to act until the Prime Minister directs otherwise, the vacancy is filled or a period of 12 months from the date the vacancy occurs expires, whichever first occurs.

Subsection (5) provides that where a person is acting as Commissioner he or she may exercise all the powers and shall perform all the functions of the Commissioner.

Subsection (6) enables the Prime Minister to determine the terms and conditions of an appointment to act and to terminate such an appointment at any time.

Subsection (7) enables a person appointed to act as Commissioner to resign by giving the Prime Minister a signed notice of resignation.

Subsection (8) provides that anything done by or in relation to a person purporting to act is not invalid on certain grounds.

Section 18B - Staff

Subsection (1) provides that the staff required to assist the Commissioner shall be persons appointed or employed under the Public Service Act 1922.

Subsection (2) provides for the Commissioner to have all the powers of a Secretary in relation to his or her staff.

Subclauses 11 (2), (3), (4), (5) and (6) save delegations, sub-delegations and instruments made under the repealed provisions.

Subclause (7) provides that a reference in legislation and other legal provisions to the Board shall be construed as a reference to the Commissioner. This is an interim provision pending further legislation which will effect the detailed formal distribution of the Board's powers and functions to other agencies.

Subclauses (8) and (9) deem the members of the Public Service Board following their resignation from the Board to be unattached Secretaries, putting them on the same footing as former Secretaries who have been assigned duties as Associate Secretaries.

Subclause (10) provides for offices in the Office of the Public Service Board to become offices in the new Public Service Commission.

Subclause (11) defines certain terms for the purposes of the section.

Clause 12 - Powers of Commissioner

Amends section 19 to replace references to the Board by references to Commissioner. The opportunity has also been taken to bring the penalty provision up to date by increasing it from \$40 to \$1000 or 6 months imprisonment or both.

Clause 13 - Repeal of section 19A

Section 19A relating to the Joint Council is repealed. It is remade as proposed section 23 by clause 16.

Clause 14 - Records of officers

Amends section 21 to replace references to the Board by references to the Commissioner.

Clause 15 - Management Advisory Board

Repeals section 22 which required the Public Service Board to prepare an annual report. (The annual report provision for the Commissioner is in proposed section 15 inserted by clause 11). In its place a new section 22 is proposed:

Subsection (1) establishes the Australian Public Service Management Advisory Board.

Subsection (2) outlines the Board's functions: it will advise the Government on significant issues relating to the management of the Australian Public Service and be a forum for consideration of major management activities affecting the Service as a whole.

Subsections (3) to (6) provide for the Board to consist of the Secretary to the Department of the Prime Minister and Cabinet (Chairperson), the Public Service Commissioner, the Secretaries to the Departments of Industrial Relations and Finance, such other Secretaries as are nominated by the Prime Minister and at least 2 other persons nominated by the Prime Minister, one of whom is to have management expertise in the private sector and one of whom is to be nominated after consultation with the ACTU.

Clause 16 - Joint Council

Remakes former section 19A (repealed by clause 13) as new section 23 immediately after section 22C (relating to industrial democracy), which is a more appropriate location in the Act for this provision which enables regulations to be made to provide for the establishment of the Joint Council. Minor changes are made to the provision reflecting the replacement of the Board by the Commissioner.

Clause 17 - Regulations

Replaces the Board regulation-making power which was subject to approval by the Governor-General by the more usual Governor-General regulation-making power.

Subclause (2) is a savings provision to keep regulations made by the Board under section 97 in force.

Clause 18 - Amendments relating to the Board and the new Departmental structure

Provides for amendments as set out in the Schedule. These include replacing references to the Head of the Public Service Board in relation to the appointment of Secretaries by references to the Secretary to the Department of the Prime Minister and Cabinet.

8.

New Schedules 2 and 3 are substituted for the existing Schedules 2 and 3 to the Principal Act to reflect the new departmental structure.

Clause 19 - References in instruments to Secretaries

Permits a portfolio Secretary to declare in the Gazette that references to the Secretary in instruments are to be read as, or are to include, a reference to an unattached Secretary or a Senior Executive Service officer.

The purpose of this provision is to enable officers who have been assigned duties as Associate Secretaries, or SES officers, for example Deputy Secretaries, to stand in for or otherwise perform the powers and functions of portfolio Secretaries.

This provision is additional to and not in substitution for the usual powers of delegation and is expected to be used only where there are insufficient powers of delegation to permit Secretaries adequately to devolve their responsibilities to Associate Secretaries or Deputy Secretaries.

PART IV: MODIFICATION OF ACTS

Clause 20 - Regulations modifying Acts

Permits the Governor-General to make regulations modifying Acts if this is necessary or convenient as a consequence of the new administrative arrangements.

The provision is subject to a 1 year sunset clause, during which time any necessary amendments can be made to the legislation affected.

**THE SCHEDULE - AMENDMENTS OF THE PUBLIC SERVICE ACT 1922
RELATING TO THE BOARD AND THE NEW DEPARTMENTAL STRUCTURE**

Subsection 25 (4)

Removes the provision that gave the Head of the Board the powers of a Secretary in relation to staff of the Board. These powers are provided to the Commissioner in new subsection 20 (2).

Subsections 36 (3) and (4)

Substitutes the Secretary to the Department of the Prime Minister and Cabinet for the Head of the Board in relation to reporting to the Prime Minister on the appointment of Secretaries. (The Public Service Commissioner will have this reporting role in relation to the appointment, or termination of the appointment, of the Secretary to the Department of the Prime Minister and Cabinet).

9.

Subsection 36 (4) is also amended to provide flexibility so that in cases where there are changes to administrative arrangements, the report in relation to the appointment of a person as Secretary may be prepared after consultation with the person who comes to be a Minister administering the relevant department by the time the appointment is made.

Section 37

Substitutes the Secretary to the Department of the Prime Minister and Cabinet for the Head of the Board in relation to the making of reports on fixed-term Secretary appointments.

Section 76E

Substitutes the Secretary to the Department of the Prime Minister and Cabinet for the Head of the Board in relation to the making of reports on the termination of Secretary appointments.

Subsections 87B (1A) and (2)

These are consequential amendments reflecting the substitution of the Governor-General for the Board in the regulation making power in section 97.

Schedules 2 and 3

New Schedules 2 and 3 are substituted for the existing Schedules 2 and 3 to reflect the new departmental structure.