Date introduced: 23 October 1986
House: House of Representatives
Presented by: Hon. Ralph Willis, M.P., Minister for Employment and Industrial Relations

DIGEST OF BILL

Purpose

To alter the conditions of service for Commonwealth public servants particularly as regards appeals, the power to retire or redeploy and disciplinary proceedings.

Background

The conditions of service for Commonwealth public servants are dictated by a number of Acts and the regulations made under those Acts. The major Acts are the Public Service Act 1922, the Commonwealth Employees (Redeployment and Retirement) Act 1979 and the Merit Protection (Australian Government Employees) Act 1984.

The Public Service Act 1922 and its regulations are the major determinants of the conditions of service. The Act deals with the structure of the Service, appointments, transfers and promotions, discipline and the retirement or redeployment of Secretaries and members of the Senior Executive Service. The Act is administered by the Public Service Board, which also has power to make regulations under the Act.

The Commonwealth Employees (Redeployment and Retirement) Act 1979 was introduced to facilitate the transfer of Commonwealth employees within the Service and to allow for both voluntary and compulsory early retirement. The criteria for redeployment is the efficient and economical use of staff, while if redeployment is not possible the officer may be compulsorily retired. This Act was amended in 1985 to include inefficiency and loss of essential qualifications as grounds for redeployment or retirement. There were 16 compulsory retirements of excess staff under the Act in 1983-84[1] and 61 in 1984-85.[2]
Under the Merit Protection (Australian Government Employees) Act 1984 a number of review committees were established under the auspices of the Merit Protection and Review Agency. The committees, which include the Promotions Appeal Committee, the Disciplinary Appeal Committee and the Redeployment and Retirement Review Committee, review decisions made under the other public service Acts.

The measures to be introduced by this Bill were announced to the House of Representatives by the Prime Minister on 25 September. In addition, the Prime Minister announced that an Efficiency Scrutiny Unit would be established.

Main Provisions

Amendments to the Public Service Act 1922

Section 26 of the Public Service Act 1922 (the Principal Act) will be amended by clause 17 to clarify a Secretaries authority to delegate their power either conditionally or unconditionally.

Promotions to a position of Clerical Administrative Class 9 or its equivalent will no longer be subject to appeal (clause 20 which will amend section 33AAA of the Principal Act to insert a definition of non-appealable promotion).

A new section 33C will be substituted into the Principal Act by clause 24 to give Secretaries the power to, with the consent of the officer involved, declare people to be unattached. Such power is currently exercised by the Public Service Board (the Board).

The eligibility criteria for appointment to the Service contained in section 34 of the Principal Act will be replaced with the criteria that the Board is satisfied that the person is a fit and proper person for appointment (clause 25).

Section 47 of the Principal Act, which requires all appointments to be on probation, will be repealed and a new section 47 substituted. The major changes in the new section will allow appointment without probation in certain circumstances; people who are not Australian citizens will not be able to have their appointment confirmed except under arrangements approved by the Prime Minister and a Secretary will be able to terminate an appointment prior to
confirmation if satisfied that the person will be an excess officer if appointed or that the person will not be granted Australian citizenship. People currently on probation will be deemed to be covered by the current section 47 (clause 33).

A new section 47C will be substituted into the Principal Act by clause 34 and will require people who resigned to contest an election for a Commonwealth, State or Territory legislature to be re-appointed at the same classification if the resignation took place no earlier than six months before nominations closed.

Except in circumstances prescribed by regulation, vacancies shall not be filled by promotion unless the position is advertised (clause 38 which will amend section 50 of the Principal Act).

A new section 50A will be substituted into the Principal Act by clause 39 and will alter the selection criteria for promotion. Under the proposed section, the Secretary will be required to appoint the person who, in their opinion, is the most efficient person to have applied for that position. Proposed sub-section 50A(2) contains the matters that the Secretary is to have regard to in determining efficiency, which include abilities, qualifications, work performance, relevant personal qualities and the potential for career development in the Service.

People will, except in prescribed circumstances, be excluded from appealing against a promotion unless they have applied for that position and there will be no appeals against non-appealable promotions (clause 40 which will amend section 50B of the Principal Act).

Clause 41 will repeal sections 50D, 50DA, 50E, 50EA and 50EB of the Principal Act, which deal with appeals, and substitute new sections 50D, 50DAA, 50DA, 50DB, 50DC and 50DE. Proposed section 50D will require an appeal committee to determine which officer is the more efficient, having regard to criteria similar to those in proposed section 50A, and to disallow or allow the appeal. If the committee is of the opinion that none of the parties is capable of efficiently performing the required duties, it may disallow the appeal/s and cancel the promotion. Where an appeal is successful or a promotion cancelled, that decision will have effect and the relevant Secretary will be required to notify the decision in the Gazette.
An officer who has unsuccessfully applied for a non-appealable position will be able to seek to have the decision reviewed by the Merit Protection and Review Agency (MPRA) on the grounds that it would be unreasonable for the promotion to stand as there has been a breach of section 33, which requires merit to be the principal for promotion, or a serious defect in the selection process. The MPRA will be required to consider the matter, unless it considers the application to be frivolous, vexatious or not made in good faith, and, if satisfied of the above matters, recommend to the relevant Secretary that the promotion be cancelled. The Secretary will not be bound by the recommendation (proposed section 50DAA).

Proposed section 50DA will provide for Joint Selection Committees and is substantially the same as existing section 50DA.

Proposed section 50DB will introduce management initiated joint selection committees. Such committees will only be able to be used in circumstances specified by the Board and the relevant Secretary will have to notify the appropriate staff organisation. The committee will comprise a person nominated by the MPRA, the relevant Secretary and, if the appropriate staff organisation nominates a person within the prescribed time, that person. The Secretary will not be bound by any recommendation.

The procedure of joint selection committee is contained in proposed section 50DC, while proposed section 50E deals with when promotions and transfers will take effect, which is generally as provided by the regulations.

Section 51 of the Principal Act will be amended to give the Board power to permanently transfer officers between Departments where such a transfer is necessary for the efficient administration of the Service (clause 44).

Section 52 will be amended to remove the right to decline a transfer between Departments. Officers will still be able to decline transfers or promotions within a Department (clause 45).

Conduct in breach of section 33, which deals with selection by merit, will be included in the categories of failure to fulfil duty (clause 49 which will amend section 56 of the Principal Act).
The maximum amount that may be deducted from salary for a failure to fulfil duty will be increased from $40 to $500 (clause 51 which will amend section 62 of the Principal Act).

Clause 55 will amend section 63D of the Principal Act to remove the right to appeal to a Disciplinary Appeal Committee where minor disciplinary action is taken.

Clause 78 will insert a new Division 8C, titled Redeployment and retirement of officers other than Secretaries of Departments and Senior Executive Service officers, into Part III of the Principal Act.

Proposed section 76S states that an officer will only be inefficient if they fail to attain or sustain a standard of efficiency that could reasonably be expected to be attained or sustained. Proposed sub-section 76S(3) contains the matters that must be regarded in determining efficiency (which include the written selection criteria, the duty statement and any written work standards) and the matters that may be considered (which include selection criteria and duty statements for similar duties). The proposed section also defines when an officer will not be qualified to perform their duties. This will be where the officer ceases to hold an essential qualification or the essential qualification is revoked or withdrawn.

Proposed section 76W deals with the powers of Secretaries and the Board. Where a Secretary is satisfied of a relevant matter and that it would be in the interests of the efficient administration of the Department, they may reduce an officers classification or retire the officer. However, where the officer has not consented to the proposed action and the Secretary has been unable to find suitable employment within their Department, the Board will, unless satisfied that it would not be in the best interests of the efficient administration of the Service to transfer the officer to another Department, take all reasonable action to find suitable alternative employment in the Service. Relevant matter is defined in proposed sub-section 76W(6) to be that the officer is unable to perform their duties due to physical or mental incapacity, inefficiency, that the officer is not qualified to perform their duties and that the officer is an excess officer.

Officers will be able to appeal against a decision under proposed section 76W to an Appeal Committee on the ground that the decision is unreasonable (proposed section 76Z).
A new Division 9A will be inserted into Part III of the Principal Act by clause 84. Under the proposed Division, where the Prime Minister has certified that a function is to be transferred to the Service, the Board will be able to declare the people who are performing that function to be members of the Service (proposed section 81B).

Clause 99 will amend section 91 of the Principal Act to transfer the power to approve work outside the Service from the Board to Department Secretaries.

Amendments to the Merit Protection (Australian Government Employees) Act 1984

A new section 15A will be inserted into this Act to allow a Promotions Appeal Committee to refuse to consider an appeal if all members of the Committee are satisfied that the appeal is frivolous, vexatious or not made in good faith (clause 109).

Section 22 and 23 of this Act, which deal with the constitution of Redeployment and Retirement Appeal Committees, will be repealed by clause 113 and new sections substituted. The major change will be to give the Committees power to hear appeals against decisions under proposed section 76W of the Public Service Act 1922.

A new section 26A will be inserted into the Principal Act by clause 116 to enable Redeployment and Retirement Committees to hear appeals from Commonwealth employees outside the Service. This amendment is a consequence of the proposed repeal of the Commonwealth Employees (Redeployment and Retirement) Act 1979.

Repeal of the Commonwealth Employees (Redeployment and Retirement) Act 1979

This Act will be repealed by clause 129.

For further information, if required, contact the Law and Government Group.

26 November 1986

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References


This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.