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I N F O R M A T I O N   A N D   R E S E A R C H   S E R V I C E S

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No. 46 2001-02

Parliamentary Service Amendment Bill 2001

James Prest  
Law and Bills Digest Group  
10 September 2001

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# Parliamentary Service Amendment Bill 2001

**Date Introduced:** 23 August 2001

**House:** House of Representatives

**Portfolio:** The Parliament

**Commencement:** On a date to be fixed by Proclamation or within 6 months of Royal Assent.

## Purpose

The Parliamentary Service Amendment Bill 2001:

- Proposes that present arrangements for the mobility of employees between the Australian Public Service and the Parliamentary Service and vice versa will only apply to ongoing (ie. permanent) employees of the Parliamentary Service and the Australian Public Service, and
- Proposes arrangements for continuity which would apply where a joint parliamentary department is renamed or abolished with its functions conferred on another parliamentary department.

## Background

### Parliamentary Administration

The administration of the Parliament is conducted through five Parliamentary Departments: the Department of the House of Representatives, the Department of the Senate, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department.<sup>1</sup>

The Department of the House of Representatives and the Department of the Senate are responsible for the provision of procedural, information and administrative services to Members and Senators respectively. The Department of the Parliamentary Library is responsible for the provision of library, reference and research services to Members and Senators. The Department of the Parliamentary Reporting Staff (DPRS) provides

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reporting, information technology, telecommunications and broadcasting services to the Parliament. The Joint House Department performs building management, maintenance and catering functions associated with Parliament House.

## Staffing in the Parliamentary Service

This Bill proposes several amendments to the *Parliamentary Service Act 1999*. That Act provided for the creation of a separate Parliamentary Service distinct from the Australian Public Service (APS). In particular, it established a separate legal framework covering staff employed by the five Parliamentary Departments. It substantially replicated the terms of the *Public Service Act 1999* which made significant changes to the rights and obligations of APS employees as well as other matters relating to employment arrangements in the broader Australian Public Service (APS). The *Public Service Act 1999* replaced the employment framework contained in the *Public Service Act 1922*. Background to the *Public Service Act 1999* and the *Parliamentary Services Act 1999* was provided in previous Bills Digests.<sup>2</sup>

The Parliamentary Service created by the *Parliamentary Service Act 1999* consists of all persons employed by the (presently five) Parliamentary Departments, including Departmental Secretaries, SES and non SES staff.

The Parliamentary Departments are also subject to the *Workplace Relations Act 1996*. All Parliamentary Departments have negotiated certified agreements under this legislation.

## Inter-Service Mobility of Employees

The Report of the Joint Committee of Public Accounts (JCPA) Inquiry into the Public Service Bill 1997 made some comments about employees' mobility rights between the two Services. It recommended that:

The Parliamentary Service Bill should provide for reciprocal mobility arrangements between the Parliamentary Service and the Australian Public Service which enable staff of either service to compete on merit for jobs in the other service and to carry over relevant entitlements.<sup>3</sup>

The importance of questions of staff mobility were underlined by the Clerk of the Senate, Mr Evans in evidence to the 1997 JCPA Inquiry:

There must be ready mobility between the Public Service and the parliamentary service in the sense that public servants should be able to come readily to the parliamentary service and to bring with them the entitlements that they have as public servants...Without ready mobility, the parliamentary service will wither on the vine, because it relies for recruitment on the Public Service very heavily. We rely on getting good people coming from the Public Service and going back again. If they do not feel that they can readily move to the parliamentary service and go back again, we

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will not get the quality of staff that we have been getting in the past. So that mobility is absolutely crucial. The absence of it would so cripple the parliamentary departments that it would cripple the parliament.<sup>4</sup>

## Main Provisions

**Items 1 and 2** insert new definitions of ‘non-ongoing APS employee’ and ‘ongoing APS employee’ into the definitions section of the *Parliamentary Service Act*, (s.7). The Act already contains definitions of ‘non-ongoing Parliamentary Service employee’ and ‘ongoing Parliamentary Service employee’.

**Item 3** proposes the repeal of existing section 26 of the *Parliamentary Service Act*. It inserts **new sections 26 and 26A**.

Existing section 26 of the *Parliamentary Service Act* makes provision for reciprocal mobility of staff between the Public Service and the Parliamentary Departments without a break in continuity of employment or loss of accrued benefits.

Proposed **new section 26** provides for the mobility arrangements of the present *Parliamentary Services Act* to be available to *all ongoing* employees in both Services, and to enable those employees to transfer their accrued leave entitlements to their new employer. The new section provides for the portability of annual leave, and personal or carer's leave (however they may be described) if an ongoing employee in one Service is engaged in the other Service as an ongoing employee.

Section 26, as presently drafted means that Parliamentary Service employees do not have mobility rights to Australian Public Service Statutory Agencies such as the Ombudsman's office. The Explanatory Memorandum states: “The drafting of section 26 of the *Parliamentary Service Act* resulted in employees of the Parliamentary Service having mobility rights with Australian Public Service Departments and Executive Agencies created under the Public Service Act but not with Australian Public Service Statutory Agencies (for example, Centrelink or the Australian Taxation Office).

Proposed **new section 26A** addresses the other situation where an ongoing employee is engaged as a non-ongoing employee in the other Service. The Explanatory Memorandum states that it: “deals with the situation where an ongoing employee...is granted leave without pay to take up employment as a non-ongoing employee in the other Service. These provisions also cover arrangements for the portability of annual leave, and personal or carer's leave (however they may be described) between Services.”

**Item 4** inserts **new sections 54A and 54B** which address the situations of change of name of a Parliamentary Department or abolition of a Parliamentary department (but not the Department of the Senate or Department of the House of Representatives). These

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arrangements would apply where a joint parliamentary department is renamed or abolished with its functions conferred on another parliamentary department.

## Concluding Comments

The Bill serves to clarify questions of mobility of all *ongoing* employees between the APS and Parliamentary Service. In this way it facilitates mobility. This mobility is essential to maintain a high standard of staffing within the Parliamentary Service over time.

The impact of the Bill on the rights of temporary, non-permanent (ie *non-ongoing*) employees is less certain. These employees were engaged for a specified term or for the duration of a particular task, or for duties that are irregular or intermittent - as is set out in the Parliamentary Service Act, paragraphs 22(2)(b) and (c). Therefore it is argued that there is no need to provide for portability of leave entitlements between the APS and Parliamentary Service for these employees. On this view, the 'normal' approach to non-ongoing employees will apply at the end of their contracts – under which any remaining unused leave entitlements are 'paid out' in cash.

The government's position is to explain that changes to section 26 are necessary to correct an inadvertent omission from the legislation, and to implement the original intention of the legislation, especially to ensure consistency between the regime set out in the *Public Service Act 1999* and the *Parliamentary Service Act 1999*. The Explanatory Memorandum explains "section 26 did not operate as intended because of drafting changes between the 1997 and 1999 Public Service Bills which were not picked up in section 26 of the Parliamentary Service Bill 1999." According to the Second Reading Speech, that section 26 only apply to ongoing employees was "the original intent of both the Parliament and the government when the Parliamentary Service Bill was developed between 1997 and 1999 but was not fully reflected in the ensuing Act."

On the other hand, it may be the case that the Bill proposes to reduce the rights of temporary employees by removing mobility rights which, *prima facie*, appear to apply to them. There are a significant number of employees in both Services engaged on a 'non-ongoing' basis for various reasons, including the lower overall cost of employing persons on this basis. Arguably this reflects broader trends in sections of the Australian workplace - a process of creeping 'casualisation' of the workforce.

Further, it should be noted also that the Bill does not use the phrase "on the same terms and conditions" which is presently contained in s.26 of the Act. The Explanatory Memorandum is silent on this point. However, on its face, it appears that the Bill may detrimentally affect the rights of ongoing employees as well as those of non-ongoing employees, as their specific terms and conditions will not be transferred to their new workplace. In some measure this is a recognition of the fact of variations in working terms and conditions that apply under the certified agreements of different Departments within both the APS and the Parliamentary Service.

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## Endnotes

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- 1 *Parliamentary Services Act 1999*, s.54.
- 2 Elen Perdikogiannis and Bob Bennett, Information and Research Services, *Bills Digest No 177 of 1998–99* (Public Service Bill 1999); Bob Bennett, Information and Research Services, *Bills Digest No 18 of 1999–2000* (Parliamentary Service Bill 1999).
- 3 Submissions, volume 2, p. 137.
- 4 Transcript of evidence, 7 August 1997, pp .126–127.

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