

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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Presented and read a first time

(SENATOR PATTERSON)

## A BILL

FOR

### **An Act to remove restrictions on serving in the public service after attaining the age of 65 years**

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

#### **PART 1—PRELIMINARY**

##### **Short title**

- 5     **1.** This Act may be cited as the *Public Service (Abolition of Compulsory Retirement Age) Amendment Act 1995*.

##### **Commencement**

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

##### **Objects**

- 10     **3.(1)** The objects of this Act are to ensure that age alone is not a bar to:  
    (a) a person being engaged in employment in the public service; or  
    (b) a person continuing to be employed in the public service.

*Public Service (Abolition of Compulsory  
Retirement Age) Amendment No. , 1995*

- (2) In this section, “**public service**” includes:
- (a) the Service within the meaning of the *Public Service Act 1922*; and
  - (b) the Commonwealth Teaching Service established under the *Commonwealth Teaching Service Act 1972*; and
  - (c) service under the *Members of Parliament (Staff) Act 1984*; and
  - (d) service in an office established by a law of the Commonwealth; and
  - (e) service as a member of the staff of a Commonwealth authority as defined by section 33 of this Act.

**PART 2—AMENDMENTS OF THE PUBLIC SERVICE ACT 1922**

**Interpretation**

4. In this Part, “Principal Act” means the *Public Service Act 1922*.

**5 Public Service Commissioner**

5. Section 11 of the Principal Act is amended by omitting subsection (4).

**Fixed-term appointments**

6. Section 37 of the Principal Act is amended:

- 10 (a) by omitting from subsection (1) “and not extending beyond the day on which the person will attain the age of 65 years”;
- (b) by omitting from subsection (2) “, not extending beyond the day on which the person will attain the age of 65 years”;
- (c) by omitting from subsection (6) “not later than the day on which the person will reach the age of 65 years”;
- 15 (d) by omitting from subsection (6A) “not later than the day on which the person will reach the age of 65 years”.

**Fixed-term appointments to Senior Executive Service**

7. Section 44 of the Principal Act is amended:

- 20 (a) by omitting from subsection (1) “and not extending beyond the date on which the person will attain the age of 65 years”;
- (b) by omitting from paragraph (1D)(a) “; or” and substituting “.”;
- (c) by omitting paragraph (1D)(b).

**Exchange of officers between Australian Public Service and Territorial Service**

25 8. Section 47D of the Principal Act is amended by omitting from subsection (3) “or has attained the maximum age for retirement fixed by this Act”.

**Retirement on ground of age—Secretaries of Departments**

9.(1) Section 76C of the Principal Act is repealed.

30 (2) Where, immediately before the commencement of this Act, a Secretary was continuing in employment after having attained the maximum retiring age within the meaning of section 76C of the Principal Act, any determination made under subsection (3) of that section fixing an age at which, or a period at the expiration of which, the Secretary is to retire from

35 the Service is void and of no effect.

**Retirement on ground of age—Senior Executive Service officers**

10.(1) Section 76J of the Principal Act is repealed.

(2) Where, immediately before the commencement of this Act, a Senior Executive Service officer was continuing in employment after having attained the maximum retiring age within the meaning of section 76J of the Principal Act, any determination made under subsection (3) of that section fixing an age at which, or a period at the expiration of which, that officer is to retire from the Service is void and of no effect. 5

### **Redeployment and retirement of Senior Executive Service officers**

11. Section 76L of the Principal Act is amended by omitting paragraph (4)(b).

### **Retirement on ground of age—officers** 10

12.(1) Section 76V of the Principal Act is repealed.

(2) Where, immediately before the commencement of this Act, an officer was continuing in employment after having attained the maximum retiring age within the meaning of section 76V of the Principal Act, any determination made under subsection (3) of that section fixing an age at which, or a period at the expiration of which, that officer is to retire from the Service is void and of no effect. 15

### **Interpretation**

13.(1) Section 81A of the Principal Act is amended by adding “or fixing an age upon the attainment of which an officer must retire from the Service” at the end of the definition of “terms and conditions”. 20

(2) Where, immediately before the commencement of this Act, an officer is serving on special terms and conditions of employment determined under subsection 81B(3) or 81C(3) and those terms and conditions include a requirement that the officer must retire from the Service upon attaining a particular age, those terms and conditions are, in so far only as they impose that requirement, void and of no effect. 25

### **Persons to whom Division applies**

14. Section 87K of the Principal Act is amended by omitting from subsection (12) “or attains the age of 65 years, whichever first occurs”. 30

### **Right to re-enter Service by way of transfer or promotion**

15. Section 87M of the Principal Act is amended:

- (a) by inserting “or” at the end of paragraph (8)(a);
- (b) by omitting “; or” from paragraph (8)(b) and substituting “.”;
- (c) by omitting paragraph (8)(c). 35

**Application for re-appointment to Service**

16. Section 87N of the Principal Act is amended:

(a) by omitting subsections (3) and (4) and substituting the following subsection:

5 “(3) A person is not entitled to make application under subsection (1) on the ground that a prescribed condition of reappointment has been fulfilled if the employment in respect of which that condition has been fulfilled is to be, or has been, terminated by reason of the person’s resignation or invalidity.”;

10 (b) by omitting from subparagraph (7)(a)(iii) “or, if he or she furnishes a notification under paragraph 87Q(4)(b), on the day on which he or she attains the age of 65 years”.

**Application for reinstatement as person to whom Division applies**

17. Section 87P of the Principal Act is amended:

15 (a) by omitting from subsection (2) “, subject to subsection (3),”;

(b) by omitting subsection (3);

(c) by omitting subsection (6).

**Re-appointment to Service**

18. Section 87Q of the Principal Act is amended:

20 (a) by omitting subsection (3);

(b) by omitting subsection (4) and substituting the following subsection:

25 “(4) Where, within the period of 21 days, or such further period as the Board allows, after a person receives a notice under subsection (1), the person reports for duty at the place specified in the notice, the person shall be deemed:

30 (a) to have been reappointed to the Service under this section on the day (in this subsection referred to as the ‘day of re-appointment’) immediately following the day on which the person’s employment by the relevant public authority or as the holder of the relevant public office, as the case may be, was terminated or ceased; and

(b) to have been so reappointed as an unattached officer with the classification specified in the notice; and

35 (c) to have been absent from the Service on leave of absence without pay during the period (if any) from and including the day of reappointment to and including the day immediately preceding the day on which the person reports for duty in the Service.”.

**Provisions relating to former officers who resigned to certain commissions**

**19.** Section 87ZA of the Principal Act is amended:

- (a) by inserting at the end of paragraph (1)(a) “and”;
- (b) by omitting paragraph (1)(b).

**PART 3—AMENDMENTS OF THE MEMBERS OF  
PARLIAMENT (STAFF) ACT 1984**

**Interpretation**

5       **20.** In this Part, “**Principal Act**” means the *Members of Parliament (Staff) Act 1984*.

**Rights of officers employed by office-holders**

**21.** Section 17 of the Principal Act is amended by inserting after “matter” in paragraph (4)(d) “(except the officer’s age)”.

**Rights of officers employed by Senators and Members**

10       **22.** Section 24 of the Principal Act is amended by inserting after “matter” in paragraph (4)(d) “(except the officer’s age)”.

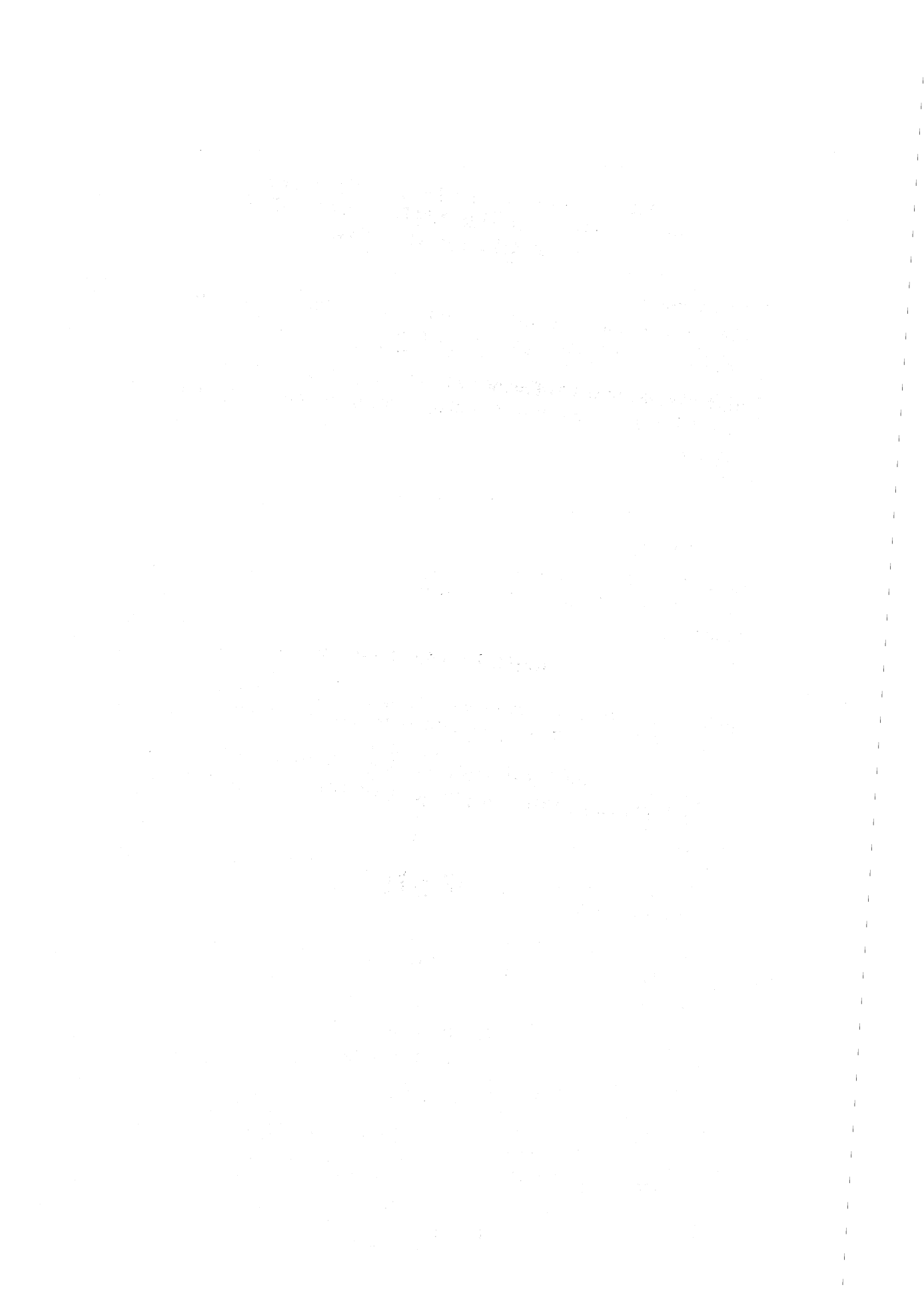
**23.** Before section 31 of the Principal Act the following section is inserted in Part IV:

**Engagement or employment**

15       “30. Notwithstanding any other provision in this Act:

(a) a person must not be refused engagement under Part II or employment under Part III or IV by reason only that the person has attained, or has not attained, a particular age; and

20       (b) a person must not be engaged under Part II or employed under Part III or IV for a period the expiration of which is determined by reference only to the date on which the person will attain a particular age.”.





**PART 4—AMENDMENTS OF THE MERIT  
PROTECTION (AUSTRALIAN GOVERNMENT  
EMPLOYEES) ACT 1984**

**Interpretation**

- 5      **24.** In this Part, “**Principal Act**” means the *Merit Protection (Australian Government Employees) Act 1984*.

**Period of appointment of members**

- 25.** Section 64 of the Principal Act is amended by omitting subsection (2).



**PART 5—AMENDMENTS OF THE COMMONWEALTH  
TEACHING SERVICE ACT 1972**

**Interpretation**

5 **26.** In this Part, “**Principal Act**” means the *Commonwealth Teaching Service Act 1972*.

**Officers**

**27.** Section 20 of the Principal Act is amended by inserting after subsection (4) the following subsection:

10 “(4A) Terms and conditions determined under subsection (4) must not include provision for an officer to cease to hold office by reason only that the officer has attained a particular age.”.

**Recruitment of officers**

**28.** Section 21 of the Principal Act is amended by omitting subparagraph (2)(c)(i).

15 **Employees**

**29.** Section 23 of the Principal Act is amended by inserting after subsection (4) the following subsection:

20 “(4A) Terms and conditions determined under subsection (4) must not include a provision for a temporary employee’s employment to terminate by reason only that the employee has attained a particular age.”.

**Right to re-enter Commonwealth Teaching Service by way of transfer or promotion**

25 **30.** Section 43U of the Principal Act is amended by omitting paragraphs (7)(b) and (c) and substituting the following word and paragraph:

“or (b) the annulment of his or her appointment while a probationary employee.”.

**Application for re-appointment to Service**

30 **31.** Section 43V of the Principal Act is amended:

(a) by omitting paragraphs (3)(a) and (3)(b);

(b) by omitting subsection (4);

(c) by omitting from subparagraph (7)(a)(iii) “or, if he furnishes a notification under paragraph (b) of subsection (4) of section 43W, on the day on which he attains the age of 65 years,”.

35 **Re-appointment to Service**

**32.** Section 43W of the Principal Act is amended:

(a) by omitting subsection (3);

(b) by omitting subsection (4) and substituting the following subsection:

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“(4) Where, within a period of 21 days, or within such further period as the Secretary allows, after a person receives a notice under subsection (1), the person reports for duty at the place specified in the notice, the person shall be deemed:

- (a) to have been reappointed to the Commonwealth Teaching Service under this section on the day (in this subsection referred to as the ‘day of reappointment’) immediately following the day on which the person’s appointment in the Teaching Service of the Northern Territory was terminated or ceased; and 5
- (b) to have been so reappointed with the designation and at the salary, or at the salary within the limits of salary, specified in the notice; and 10
- (c) to have been absent from the Commonwealth Teaching Service on leave of absence without pay during the period (if any) from and including the day of reappointment to and including the day immediately preceding the day on which the person reports for duty in the Commonwealth Teaching Service.”. 15

## PART 6—OTHER AMENDMENTS

### Interpretation

33. In this Part:

“Commonwealth authority” means:

- 5 (a) a body, whether incorporated or not, established for a public purpose by a law of the Commonwealth or of a Territory, other than such a body that is declared by the regulations under the *Public Service Act 1922* not to be a Commonwealth authority for the purposes of this Part; or
- 10 (b) a body corporate incorporated under a law of the Commonwealth or of a State or Territory, being a body corporate in which the Commonwealth has a controlling interest, other than such a body that is declared by the regulations under the *Public Service Act 1922* not to be a Commonwealth authority for the purposes of this Part;

15 “Commonwealth office” means:

- (a) an office or appointment the holder of which is appointed by the Governor-General or by a Minister under a law of the Commonwealth or a law of a Territory; or
- 20 (b) any other office or appointment the holder of which is appointed by the Governor-General, or by a Minister, being an office or appointment declared by the regulations under the *Public Service Act 1922* to be a Commonwealth office, or included in a class of offices or appointments declared by the regulations under the *Public Service Act 1922* to be a class of Commonwealth offices, for the purposes of this Part;

25 but it does not include:

- (c) an office of Justice or Judge of a federal court or of a court of a Territory; or
- (d) an office the holder of which has, by virtue of an Act, the status of a Justice or Judge of a court referred to in paragraph (c);
- 30 (e) or an office or appointment in the Australian Federal Police or in the Police Force of a Territory; or
- (f) an office or appointment in the Defence Force; or
- 35 (g) an office or appointment that is declared by the regulations under the *Public Service Act 1922* not to be a Commonwealth office or included in a class of offices or appointments declared by the regulations under the *Public Service Act 1922* not to be a class of Commonwealth offices, for the purposes of this Part;

“eligible Commonwealth employment” means:

- 40 (a) employment as the holder of a Commonwealth office; or
- (b) employment by a Commonwealth authority;

**“employment”** means:

- (a) employment in a full-time capacity; or
- (b) employment in a part-time capacity;

**“Territory”** means a Territory other than the Northern Territory or the Australian Capital Territory.

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### **Laws establishing Commonwealth offices amended**

**34.** Where a law of the Commonwealth or a Territory in force immediately before the commencement of this Act establishes a Commonwealth office, that law has effect, after the commencement of this Act, as if any provision of that law:

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- (a) that prevents a person from being appointed to hold that office for a period expiring beyond the day on which the person will attain the age of 65 years or any other age; or
- (b) that prevents a person who has attained the age of 65 years or any other age from being appointed to hold that office;

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had been repealed by this Act.

### **Terms and conditions of eligible Commonwealth employment**

**35.** Where a law of the Commonwealth or a Territory in force immediately before the commencement of this Act fixes, or authorises the fixing, of the terms and conditions of any eligible Commonwealth employment, that law has effect, after the commencement of this Act, as if it contained the following provisions:

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- (a) age limits must not be fixed for the engagement of a person in that employment; and
- (b) if the employment of a person is to be for a fixed period, that period must not be determined by reference to the date on which the person will attain the age of 65 years or any other age; and
- (c) the terms and conditions of the employment must not provide for the employment to cease upon the employee attaining the age of 65 years or any other age.

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### **Superannuation contributions**

**36.** Where a person is a contributor to the Superannuation Fund as:

- (a) an eligible employee in respect of the *Superannuation Act 1976*; or
- (b) a member in respect of the *Superannuation Act 1990*; or
- (c) a member or contributor in respect of any other fund established by a Commonwealth authority;

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and that person continues in employment after attaining the age of 65 years, payments or contributions in respect of a superannuation fund are payable only in accordance with provisions which allow the relevant fund to accept payments or contributions in respect of persons aged 65 years or older.



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