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The Parliament of the Commonwealth of Australia

Senate

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (No.2) 1984

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Attorney-General,
Senator the Honourable Gareth Evans, Q.C.)

This memorandum takes account of amendments made
by the House of Representatives to the Bill as introduced

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STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.2) 1984

General Outline

The amendments made by this Bill have a number of purposes such as the tidying up, correction or up-dating of legislation. Other amendments implement changes that are of minor policy significance or are of a routine administrative nature.

Clause 1 - Short title

Formal.

Clause 2 - Commencement

Sub-clause 2(2) provides that clauses 1 and 2 of the Bill come into operation on receiving Royal Assent.

Special provision for the commencement of some or all of the amendments to specified Acts contained in the First Schedule is made by sub-clauses 2(3) to 2(29). Reference to a special commencement provision is made in the notes on the relevant provision(s).

Sub-clause 2(31) provides that amendments to Acts made by this Bill that implement the change of designation from Director-General of Health to Secretary to the Department of Health and the change of designation from Director-General of Social Security to Secretary to the Department of Social Security and the transfer of the responsibility for the administration of certain Acts from the Department of Social Security to the Department of Housing and Construction, shall come into operation on the date fixed by Proclamation for the repeal and replacement of Schedules 2 and 3 of the Public Service Act 1922.

The remaining provisions of the Bill come into operation, in accordance with sub-clause 2(1), on the 28th day after the day on which the Act receives the Royal Assent.

Sub-clause 2(30) provides that the repeal of the Queensland Meat Inspection Agreement Act 1932 shall come into operation on 12 October 1984.

Sub-clause 2(32) provides that where an amendment of an Act comes into operation, or is deemed to have come into operation, on a day (called the commencement day) other than the 28th day after the day on which the Bill receives Royal Assent, sections 3 and 4, and sub-section 6(1), insofar as they apply to that amendment, shall come into operation, or be deemed to have come into operation, on the commencement day.

Clause 3 - Amendment of Acts

This clause provides that the Acts specified in Schedule 1 are amended as set out in that Schedule.

Clause 4 - Amendment of Acts consequential upon alteration of certain designations under Public Service Act 1922

This clause provides that the Acts specified in Schedule 2 are amended, or further amended as the case may be, as set out in that Schedule.

Clause 5 - Repeal

Sub-clause 5(1) provides for the repeal of the Acts specified in Schedule 3.

Sub-clause 5(2) provides for the repeal of the Queensland Meat Inspection Agreement Act 1932.

The purpose of the Queensland Meat Inspection Act 1932 was to approve the Agreement between the Commonwealth and Queensland with respect to the inspection of meat at the Abattoir of the Queensland Meat Industry Board.

Since Queensland has given formal notice of its intention to terminate the Agreement with effect on 12 October 1984, it is proposed that the Act be repealed with effect on that date.

Repeal of the Act will coincide with new arrangements between Queensland and the Commonwealth with respect to the inspection of meat intended for consumption within Australia that is produced at establishments in Queensland registered under the Export Control Act 1982.

Clause 6 - Transitional and savings

Sub-clause 6(1) provides for the continued effect of acts done or decisions made under the provisions of an Act that has been amended or repealed and re-enacted by a provision of this Bill, except where it is expressly provided to the contrary.

Sub-clause 6(2) specifically provides that regulations made under section 24 of the Excise Act 1901 shall continue in force as if made for the purposes of section 24 of that Act as amended by this Bill.

Sub-clause 6(3) provides for the continuation of proceedings instituted and still pending in the Federal Court of Australia in relation to a decision made under the Home Deposit Assistance Act 1982 by the person holding the office of Secretary to the Department of Housing and Construction in place of the Director-General of Social Security.

By virtue of sub-clause 6(31) this sub-clause shall come into operation on the day in which this Act receives Royal Assent.

Clause 7 - Transitional provisions relating to Copyright Act 1968

This clause provides special transitional provisions relating to certain acts done before the commencement of the clause. The effect of the provisions is referred to in the notes on the relevant amendments to which they relate.

Clause 8 - Transitional provisions relating to Overseas Telecommunications Act 1946

This clause provides special transitional provisions relating to the preservation of existing appointments. Sub-clauses 8(1) and (2) preserve the existing appointments of a person who holds office as a Commissioner and sub-clauses 8(3) and (4) provide that the General Manager may continue to hold office, and that sub-section 18(6) and section 32 of the Principal Act shall continue in force, until a person is appointed as Managing Director of the Commission or to act in that capacity. Sub-clause 8(5) defines 'Principal Act' for the purposes of this clause.

Clause 9 - Transitional provisions relating to certain offices under the Public Service Act 1922

This clause provides inter alia for -

- . the continued effect of acts done by;
- . the continued exercise of any power or function conferred on;
- . the continuation of any proceedings pending in a court or tribunal to which a person holding office was a party to those proceedings in his capacity as:
and

. the continuation in office of;

a person holding office as the Director-General of Health or as the Director-General of Social Security, as the case may be, under any Act that has been amended by this Bill to alter the designation Director-General of Health to Secretary to the Department of Health and to alter the designation Director-General of Social Security to Secretary to the Department of Social Security.

By virtue of sub-clause 2(29) this clause shall come into operation on the day fixed by Proclamation for the repeal and replacement of Schedules 2 and 3 of the Public Service Act 1922.

Schedule 1

Amendments of Acts

Amendment of the Aboriginal Councils and Associations Act 1976

It is proposed to amend the definition section, Section 3, in three ways.

First, the definition of "Aboriginal association" at present provides that only Aboriginals may be members of Aboriginal associations. The proposed amendment expands the definition by inserting a provision that will enable the non-Aboriginal spouse of an Aboriginal to be a member of an Aboriginal association.

Secondly, the definition "disposable estate or interest" is deleted because it is proposed to delete existing provisions requiring Aboriginal Councils and Incorporated Aboriginal Associations to obtain the permission of the Minister prior to mortgaging, charging or disposing of an estate or interest in land.

The third amendment inserts a definition of "spouse" for the purpose of the membership provisions of the Act.

The proposed amendments to paragraph 19(3)(c), 19(3)(d) and 29(b) delete provisions that require an Aboriginal Council to obtain the consent of the Minister prior to mortgaging, charging or disposing of any estate or interest in land.

The proposed amendments to paragraph 46(1)(c) and 46(1)(d) delete provisions that require an Incorporated Aboriginal Association to obtain the consent of the Minister prior to the mortgaging, charging or disposing of any estate or interest in land.

The proposed amendment to sub-section 49(1) inserts a provision that will enable the non-Aboriginal spouse of an Aboriginal to be a member of an Incorporated Aboriginal Association.

Proposed Section 49A provides where more than 75 per cent of the members agree, for the Rules of an Aboriginal association to contain provisions that would permit the association to confer specified membership rights on non-Aboriginals, other than the right to vote at meetings of the Association or the right to stand for election to the Governing Committee of the association.

The proposed amendment to paragraph 51(b) deletes provisions that require an Incorporated Aboriginal Association to obtain the consent of the Minister prior to giving a mortgage charge or other security upon or over an estate or interest in land.

Proposed sub-section 59A(1) will allow the Registrar to wholly or partially exempt an Incorporated Aboriginal Association from the annual audited financial reporting provisions of the Act when he is satisfied that the requirement to comply with the reporting provisions would be impracticable or unduly onerous. Proposed sub-section 59A(2) will empower the Registrar to require any Association, that has been granted an exemption, to comply with such other financial, accounting and reporting requirements as he thinks appropriate in view of the exemption.

The proposed amendments to sub-section 60(1) and paragraphs 61(1)(a) and 61(1)(b) are consequential to the insertion of the proposed Section 59A.

Sections 66, 78 and 78A relate to certain restrictions at present placed on the disposal of an estate or interest in land without the prior permission of the Minister. The proposed repeal of sections 66, 78 and 78A is consequential to

the deletion of those provisions that require an Aboriginal Council and an Incorporated Aboriginal Association to obtain Ministerial consent before mortgaging, charging or disposing of land.

Amendment of the Acoustic Laboratories Act 1948

The proposed amendments relate solely to the change of designation from "Director-General of Health" to "Secretary to the Department of Health".

Amendment of the Acts Interpretation Amendment Act 1984

The proposed amendment of section 19 corrects a drafting error.

By virtue of sub-clause 2(3) the proposed amendments made by this Act shall come into operation on 12 June 1984.

Amendment of the Aged or Disabled Persons Homes Act 1954

The proposed amendments relate solely to the change of designation from "Director-General of Social Security" to "Secretary to the Department of Social Security".

By virtue of sub-clause 2(4) the proposed amendment of the definition of "respite care bed" in section 10A of the Act in which "Secretary" is substituted for "Director-General" shall come into operation, or be deemed to have come into operation, as the case requires, on the date fixed by the Minister for the purposes of sub-section 2(7) of the Social Security and Repatriation Legislation Amendment Act 1984 or on the day fixed by Proclamation for the repeal and replacement of schedules 2 and 3 of the Public Service Act 1922, whichever is the later.

Amendment of the Archives Act 1983

The proposed amendment of sub-section 44(3) of the Act corrects an error. The reference in that sub-section to sub-section (5) of section (44) should be to sub-section (7).

The proposed amendment of section 71 allows regulations to be made to enable the Australian Archives to charge for making certain records available to the Commonwealth institutions identified in Schedule 2 of Archives Regulations (Statutory Rules 1984 No. 100).

The proposed additional paragraph 71(f) enables the Australian Archives to charge the Commonwealth institutions involved for all the services provided in respect of certain of their records.

By virtue of sub-clause 2(5) the proposed amendment made by this Act shall be deemed to have come into operation on 6 June 1984.

Amendment of Australian Shipping Commission Amendment Act 1983

The proposed amendments to the Schedule effect drafting changes.

By virtue of sub-clause 2(6) the proposed amendments made by this Act shall be deemed to have come into operation on 19 January 1984.

Amendment of the Australian Wine and Brandy Corporation Act 1980

The proposed amendment of sub-section 14(5) of the Act empowers the Minister to extend until the 30 June 1986 the terms of office of members of the Australian Wine and Brandy Corporation whose terms expired on 30 June 1984.

By virtue of sub-clause 2(7) the proposed amendment made by this Act shall come into operation on the day on which this Act receives the Royal Assent.

Amendment of the Broadcasting and Television Act 1942

The proposed amendments relate solely to the change of designation from "Director-General of Health" to "Secretary to the Department of Health".

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

Sub-section 3(1) of the Act defines "prescribed Commonwealth authority", but does not include an authority which is empowered to employ staff, other than under the Public Service Act 1922, on behalf of the Commonwealth, and the proposed amendment of sub-section 3(1) extends that definition to such authorities.

The proposed amendments to Section 25 will cure a technical deficiency in the existing section relating to the operation of delegations.

Amendment of the Commonwealth Functions (Statutes Review) Act
1981

It is proposed that sub-section 116(2) of the Act be amended to omit the word "Presale" from the reference to "I.W.T.O. Presale Test Certificate" and to confine the operation of the sub-section to samples of greasy wool.

This amendment is required to reflect changes to the nomenclature used by the International Wool Textile Organisation (I.W.T.O.) in its documentation. The legislation relates to the operation of testing services established to ensure that sampling and testing procedures followed and reported in test certificates for greasy wool for export comply with I.W.T.O. standards.

Amendment of the Commonwealth Places (Application of Laws) Act
1970

Item 3 of the Schedule to this Act is amended in a minor way in consequence of the insertion of new sub-section 9(3A) into the Director of Public Prosecutions Act 1983 to enable the Director of Public Prosecutions to take over prosecutions on indictment for offences against a law of the Commonwealth which have previously been instituted or carried on by the Special Prosecutor.

Amendment of the Commonwealth Teaching Service Act 1972

Sub-sections 25(1) and (3) of the Act are repealed

Consistent with the Government's Public Service Reforms, the Public Service Board will no longer be involved in the creation, abolition or relocation of positions in the Commonwealth Teaching Service.

The proposed amendment of sub-section 25(2) of the Act empowers relevant authorities to create and abolish positions without the present requirement that the Public Service Board authorize such action.

The proposed amendment of sub-section 26(1) of the Act removes the present involvement of the Public Service Board in the reclassification of positions.

Amendment of the Complaints (Australian Federal Police) Act 1981

The proposed amendments of sub-section 22(8) of the Act are consequential upon amendments of the Freedom of Information Act 1982 which were enacted by the Freedom of Information Amendment Act 1983. The proposed amendments omit incorrect references to the Freedom of Information Act 1982 and substitutes correct references to that Act.

By virtue of sub-clause 2(8) these proposed amendments shall be deemed to have commenced on 1 January 1984 which was the date of commencement of the Freedom of Information Amendment Act 1983.

Amendments of Copyright Act 1968

The proposed amendment of section 8 effects an alteration to the heading of the section.

There are several proposed amendments of the definition provisions in sub-section 10 (1) of the Act.

The proposed omission and re-making of the definition of "central records authority" is consequential upon the insertion of new declaration procedures in proposed section 10A and removes the references to limiting criteria which presently apply to bodies seeking declaration as central records authorities.

The proposed amendment of paragraph (c) of the definition of "educational institution" is a drafting change.

Paragraphs (d) and (e) of the definition of "educational institution" are omitted and substituted with new paragraphs (d), (e) and (f) so as to include within the definition a school of nursing, a teaching undertaking within a hospital and a teacher education centre. Such bodies are required to declare their status by publishing a notice in the Gazette.

New paragraphs (g), (h) and (j) of the definition of "educational institution" also extend the range of institutions and undertakings to be considered educational institutions for the purposes of the Act where a declaration made by the Attorney-General under new section 10A is in force in respect of those bodies.

A definition of the word "institution" is inserted in sub-section 10(1) so as to expressly include within the term those educational institutions (as defined) that are not institutions in the ordinary sense.

The proposed amendment of the definition of "institution assisting handicapped readers" in sub-section 10(1) is consequential upon inclusion of proposed new section 10A.

The proposed amendment of paragraph 10(3)(a) is a drafting change.

The proposed amendment of paragraph 10 (3) (1) makes a drafting correction.

The proposed amendment of paragraph 10 (3) (m) and the insertion of new paragraph 10 (3) (ma) are consequential upon the proposed amendments of section 49.

Proposed new sub-sections 10A (1)-(3) introduce a new administrative mechanism by which the Attorney-General may by notice published in the Gazette declare a particular body to be a central records authority, an educational institution or an institution assisting handicapped readers for the purposes of the Act. This mechanism replaces existing procedures by which regulations must be made to declare the status of such bodies.

By virtue of clause 7 the Attorney-General is deemed to have made a valid declaration under new section 10A in respect of any body already declared by regulations under the Act to be a central records authority, an educational institution or an institution assisting handicapped readers.

Proposed new sub-sections 10A(4) and 10A(6) are consequential upon the inclusion of new paragraphs (d), (e) and (f) of the definition of educational institution. Paragraphs 10(A)(4)(a) and (b) set out the particulars required to be included in a notice published by an institution for the purposes of any of those paragraphs. Proposed new sub-section 10A(5) enables an institution to revoke such a notice.

The proposed new section 48A is to clarify and extend the existing protection afforded to a library officer of a Parliamentary library. The new section will ensure that acts done by an authorized library officer in relation to a work in which copyright subsists will not constitute a breach of copyright where those acts are done for the sole purpose of assisting a person who is a member of the Parliament serviced by the library officer.

Section 49 makes provision for copying of published literary dramatic or musical works by libraries for students and members of Parliament who have made written requests and provided written declarations relating to the copying. There are three proposed amendments to sub-section 49 (1). One is a drafting change consequential upon proposed new sub-section 49 (9).

The proposed amendment of paragraph 49 (1) (a) enables library users to request a copy of the whole or a part of a published artistic work.

The proposed amendment of sub-paragraph 49 (1) (b) (i) removes references to members of Parliament and is consequential on the inclusion of new section 48A.

Proposed new sub-sections 49 (2A), (2B) and (2C) are designed to overcome difficulties which remote users of library services have in providing the written requests and declarations concerning the matters referred to in sub-section 49 (1) by enabling them to supply oral requests and declarations as to those matters. Upon receiving an oral request and declaration from a remote user, a library officer must declare that he is satisfied as to the truth of the statements made by the remote user before making and supplying a copy of the requested work.

Proposed amendments of sub-sections 49 (3), (4), (5), (6) and (7) are consequential on the insertion of new sub-sections 49 (2A) and (2C).

Additional amendments of sub-sections 49 (5) and (7) are consequential on the amendment of paragraph 49 (1) (a) and enable a library to copy the whole or part of an artistic work for a library user where a copy of the work is unavailable within a reasonable time at an ordinary commercial price.

The proposed inclusion of new sub-section 49 (9) reflects a drafting change in relation to the definition of the word "library" for the purposes of section 49.

Section 50 deals with the copying of published literary, dramatic or musical works by libraries on behalf of other libraries. The proposed amendments to sub-sections 50 (1) and (4) extend the copying that may be done under section 50 to include artistic works.

The proposed amendment of paragraph 50(1)(a) is consequential on the inclusion of new paragraph 50(1)(aa).

Proposed new paragraph 50(1)(aa) interacts with new section 48A to enable an officer of a Parliamentary Library to request a copy of a work from an officer of another library for the purpose of assisting a member of the Parliament serviced by the first-mentioned library.

The proposed amendment of sub-section 50(3) makes a drafting correction.

The proposed omission and substitution of sub-section 50 (7) and the insertion of new sub-section 50 (7A) remove an unintended effect of the existing provisions concerning the making of declarations which has placed additional burdens on libraries requesting inter-library copies of works for supply to users.

Sub-sections 53B (1) and (2) provide, in substance, that, pursuant to the statutory licence scheme established under the Act, an educational institution may copy works for its own teaching purposes and a resource centre may copy works for the teaching purposes of other educational institutions. The proposed omission and substitution of sub-sections 53B (1) and (2) removes the distinction between educational institutions and resource centres and ensures that the expanded range of educational institutions, as defined in section 10, are entitled to copy under the statutory licence scheme for their own teaching purposes or for the teaching purposes of any other educational institution.

The proposed amendment of sub-section 53B(3) is a drafting change.

The proposed amendment of sub-section 53B (9) makes a drafting correction.

The proposed omission of sub-section 53B (14) removes the definition of "resource centre" for the purposes of section 53B. The proposed amendments of the definition of "educational institution" will ensure that a body presently satisfying the definition of a "resource centre" will be included within the new categories of educational institutions.

Section 53D establishes a statutory licensing scheme under which an institution assisting handicapped readers is able to make a sound recording or large print, braille or photographic version of published copyright material for use by a handicapped reader without infringing copyright. Such institutions are not, at present, able to make a reproduction of a work under the statutory scheme in order to make handicapped readers' copies using the reproduction of that work. Proposed new sub-sections 53D (11A), (11B) and (11C) will enable an institution assisting handicapped readers to make, or have made on its behalf, a reproduction of a work

(referred to as a "prescribed reproduction") in order to make handicapped readers' copies under the statutory licensing scheme without infringing copyright. The prescribed reproduction must not be used for any other purpose and must be destroyed within 3 months after its making.

Proposed new section 104A complements new section 48A in widening the protection from copyright infringement to be afforded Parliamentary librarians in dealing with the copyright subsisting in subject-matter other than works such as sound recordings, radio or television broadcasts or films.

The proposed amendment of sub-section 195A(1) is consequential on the drafting changes made to sub-section 203H(5).

The proposed insertion of sub-section 195A(3) will ensure that the statutory obligations placed upon any educational institution and any institution assisting handicapped readers in relation to record-keeping matters are not avoided if the body ceases to hold the status of such an institution.

Proposed new sub-section 195A(4) inserts a definition of the word "institution" for the purposes of Part X to take into account the new categories of institutions which may assume record-keeping and other responsibilities under the Act.

Sections 203A to 203D provide for offences in relation to a failure by a person or administrative body to make accurately, keep and arrange records and associated declarations in relation to copying by libraries and educational institutions and a failure by a person or administrative body to comply with statutory requirements concerning the deposit of copying records with, and retention of such records by, central records authorities.

The proposed amendments of sub-sections 203A (5) and 203C (4) together with the insertion of new sub-sections 203B (6A) and (6B) and 203D (5) will re-cast and, in some cases, extend the

defences available to a person or body prosecuted for a breach of any of the abovementioned sections so that an offence is not committed if the defendant satisfies the court that he took all reasonable precautions and exercised due diligence to avoid committing the offence charged. These amendments do not alter the structure of the offence provisions already contained in the Act but seek to modify the effects of those provisions where the conduct of the defendant has been reasonable in all the circumstances.

The proposed amendment of sub-section 203B(6) is a drafting change.

The proposed insertion of new sub-sections 203E (8) and (9) is also intended to provide defences based on reasonable belief and reasonable care where a person or body is charged with failing to provide all reasonable facilities and assistance to a person properly exercising a right to inspect copying records and declarations retained by a library or educational institution.

The insertion of proposed new sub-sections 203E (10) and (11) is intended to protect the privacy of users of copyright material by preventing the misuse of information obtained by a person from an inspection of library copying records under section 203E. The provision is not intended to prevent copyright owners or their agents from pursuing legitimate activities directed to enforcing a right which a person may have under the Act.

The proposed amendments of sub-sections 203F(1) and (4) recast the offences of making a false or misleading copying record, declaration or notice so that they apply only where the defendant knew, or ought reasonably to have known, that the record, declaration or notice was false or misleading.

Similarly, the proposed amendment of sub-section 203F (2) recasts the offence of destroying a copying record or declaration before the end of the prescribed retention period so that the offence applies only where the defendant knew, or ought reasonably to have known, that the prescribed period had not expired.

The proposed amendment of sub-section 203G (13) brings the defence provisions concerning the retention of copying records by a person to whom copying records have been returned by the body administering a central records authority into line with modifications to the other defence provisions referred to above.

Existing sub-section 203H (1) prevents a person from relying upon immunities to copyright infringements contained in sections 49, 50, 51A and 53B of the Act in respect of the copying of a work by or on behalf of an institution unless a notation has been made on each copy specifying the name of the relevant institution and the date the copying was done.

The proposed omission of sub-sections 203H (1) and (2) and the re-making of sub-section 203H(1) largely effect drafting changes and also impose a requirement on the makers of "prescribed reproductions", referred to in new sub-section 53D(11A), to note that the article is a prescribed reproduction made in reliance on that sub-section.

Sub-section 203H(3) is proposed to be amended in two ways. The first effects a drafting change. The second is consequential on the proposed amendments to section 53D.

Proposed new sub-section 203H(3A) is also consequential on the proposed amendments to section 53D and provides for the form of a message to be embodied on a record which has been made in reliance on sub-section 53D(11A).

The proposed amendments of paragraphs 203H (4) (a) and (b) also bring the defence provisions in relation to offences concerning notations into line with the modifications made to the defence provisions in relation to record keeping offences.

The proposed amendments of sub-sections 203H(5)-(9) and the inclusion of new sub-section 203H(10) largely effect drafting changes and changes consequential on the proposed amendments to sub-sections 203H(1), (3) and (3A).

Amendment of the Crimes Act 1914

The insertion of a definition of a "State" and "Territory" in section 3 has the effect of properly reflecting the self-governing status of the Northern Territory in matters relating to law and justice.

Although there is an existing offence of conspiring to defraud the Commonwealth the Crimes Act 1914 does not contain a substantive offence of defrauding the Commonwealth. This is an anomalous situation and may result in needless conspiracy charges. The penalty for conspiracy to defraud is inadequate and it is proposed to increase it to the same penalty that may be imposed for offences against the Crimes (Taxation Offences) Act 1980. The same penalty is prescribed in the proposed new offence of defrauding the Commonwealth.

Proposed new section 29D provides that a person who defrauds the Commonwealth or a public authority under the Commonwealth is guilty of an indictable offence. The penalty is \$50,000 or imprisonment for 5 years or both.

The offence of conspiracy to defraud the Commonwealth set out in paragraph 86(1)(e) is omitted and replaced with proposed new section 86A in similar terms that imposes a penalty of \$50,000 or imprisonment for 5 years or both.

By virtue of sub-clause 2(9) the proposed amendments made by this Act shall come into operation on the day on which this Act receives the Royal Assent.

Amendment of the Customs Act 1901

The proposed amendments to section 4(1), the definition section, is to correct a drafting error in the term "prescribed narcotic substance" and to correct the spelling of the term "trafficable".

The proposed amendment of section 163(1) will make it clear that the regulation making power of the section extends to prescribing the amount of any remission, rebate or refund for the purposes of the circumstances prescribed in Customs Regulation 126.

The proposed amendment of section 163(2) is consequential upon the proposed amendment of section 163(1).

The proposed amendments to paragraphs 235 (2)(c)(ii), 235(2)(d) and 235(3)(a) correct the spelling of the term "trafficable" wherever that term occurs in those paragraphs.

Amendment of the Defence Act 1903

Section 123A of the Act exempts Army messes, etc. from the application of State and Territory licensing laws with regard to intoxicating liquor. Section 44D of the Naval Defence Act 1910 and Air Force Regulation 16 make similar provision with regard to the Navy and the Air Force, respectively.

It is necessary for similar provision to be made in respect of the Australian Defence Force Academy (which is a joint-Service establishment) and any other joint-Service establishments that may be set up.

Section 123A is repealed and substituted to provide the appropriate exemption in respect of all parts of the Defence force, including joint-Service establishments.

Paragraph 124(1)(w) of the Act provides that regulations under the Act may provide penalties for offences against the regulations not exceeding a fine of \$500 or imprisonment for 3 months.

The proposed amendment of paragraph 124(1)(w) increases the maximum penalties that may be prescribed, to a fine of \$2,000 or imprisonment for 12 months, or both.

Amendment of the Defence (Re-establishment) Act 1965

The proposed amendments relate solely to the change of designation from "Director-General of Social Security" to "Secretary to the Department of Social Security".

Amendment of the Delivered Meals Subsidy Act 1970

The proposed amendments relate solely to the change of designation from "Director-General of Social Security" to "Secretary to the Department of Social Security".

Amendment of the Director of Public Prosecutions Act 1983

The proposed insertion of paragraph 6(1)(ba) is to enable the Director of Public Prosecutions, in circumstances where the appointment of a Special Prosecutor has, for whatever reason, terminated, to carry on prosecutions on indictment for indictable offences against the laws of the Commonwealth which have been instituted or carried on by the Special Prosecutor.

The proposed insertion of sub-section 9(3A) is to enable the Director of Public Prosecutions, in circumstances where the appointment of a Special Prosecutor has, for whatever reason, terminated, to take over prosecutions on indictment for offences against a law of the Commonwealth which have been instituted or carried on by the Special Prosecutor.

Minor amendments are made to paragraphs 14(1)(a) and sub-section 14(2) consequential upon the above.

Amendments of the Excise Act 1901

The proposed amendment of section 24 expressly provides the authority, as required by section 61 of the Act, for excisable goods to be moved, altered, or interferred with, prior to entry for home consumption, if those goods are used in the manufacture of other excisable goods. By virtue of clause 6(2) the regulations made under this section as proposed to be amended shall continue to have effect.

The proposed amendment of section 78 expressly provides that the regulation making power in that section extends to prescribing the amount of any remission, rebate or refund in the circumstances provided for in Excise Regulation 50.

Amendment of the Family Law Act 1975

The proposed amendment of sub-sections 116(C)(1), (2) and (5) substitutes the words "under the regulations or under the Rules of Court" for "or under the regulations" to make it clear that the regulations may fix, or provide for the fixing or limiting of, the amounts that may be paid to legal practitioners by legal aid bodies in relation to matters arising under the Act, the Regulations or the Rules of Court.

By virtue of sub-clause 2(10) the proposed amendments made by this Act shall come into operation, or be deemed to have come into operation, as the case requires, on the commencement of Part III of the Family Law Amendment Act 1983.

Amendment of the Federal Court of Australia Act 1976

The proposed new section 51A is to empower the Federal Court to award interest on damages for a period prior to judgment, a power it currently does not have. The High Court has recently commented that it is anomalous that neither the High Court or the Federal Court have the statutory power to award such interest.

This amendment will give to the Federal Court similar powers to those possessed by other superior Courts in Australia.

Amendment of the Handicapped Persons Assistance Act 1974

The proposed amendments relate solely to the change of designation from "Director-General of Social Security" to "Secretary to the Department of Social Security".

Amendment of the Health Insurance Act 1973

The proposed amendments relate to, or are consequential to, the change of designation from "Director-General of Social Security" to "Secretary to the Department of Social Security".

Amendment of the Health Legislation Amendment Act (No.2) 1983

The proposed amendments relate solely to the change of designation from "Director-General of Health" to "Secretary to the Department of Health".

By virtue of sub-clause 2(11) the proposed amendment made by this Act shall come into operation, or be deemed to have come into operation, as the case requires, on the commencement of sub-section 40(2) of the Act.

Amendment of the Home Deposit Assistance Act 1982

The proposed amendments relate solely to, or are consequential to, the change of designation from "Director-General of Social Security" to "Secretary" because the responsibility for the administration of this Act now rests with the Department of Housing and Construction.

Amendment of the Home Nursing Subsidy Act 1956

The proposed amendments relate solely to the change of designation from "Director-General of Health" to "Secretary to the Department of Health".

Amendment of the Homes Savings Grant Act 1964

The proposed amendments relate solely to, or are consequential to, the change of designation from "Director-General of Social Security" to "Secretary" because the responsibility for the administration of this Act now rests with the Department of Housing and Construction.

Amendment of the Homes Savings Grant Act 1976

The proposed amendments relate solely to, or are consequential to, the change of designation from "Director-General of Social Security" to "Secretary" because the responsibility for the administration of this Act now rests with the Department of Housing and Construction.

Amendment of the Income Tax Assessment Act 1936

The proposed amendments relate solely to the change of designation from "Director-General of Social Security" to "Secretary to the Department of Social Security" and "Director-General of Health" to "Secretary to the Department of Health".

Amendment of the Industrial Research and Development
Incentives Act 1976

The proposed amendment of sub-section 4(1) omits those paragraphs in the definition of "industrial research and development" which relate to computer software production thereby removing the distinction made in the definition between computer software projects and projects relating to other material products or processes.

Amendment of the Judiciary Act 1903

The proposed new section 77MA of the Act is to empower the High Court to award interest on damages for a period prior to judgment, a power it currently does not have. The High Court has recently commented that it is anomalous that neither it or the Federal Court have the statutory power to award such interest.

This amendment will give to the High Court similar powers to those possessed by other superior Courts in Australia.

Amendment of the Members of Parliament (Staff) Act 1984

It is proposed to omit Section 32. This section refers to the operation of the Public Service Arbitration Act 1920, and is no longer necessary following the repeal of that Act. Section 32 has not been proclaimed to come into operation.

By virtue of sub-clause 2(12) the proposed amendment made by this Act shall come into operation, or be deemed to have come into operation, as the case requires, on the commencement of section 32.

Amendment of the Merit Protection (Australian Government Employees) Act 1984

The proposed amendment of Section 3 of the Act extends the definition of "Commonwealth authority" to include an authority which is empowered to employ staff, other than under the Public Service Act 1920, on behalf of the Commonwealth.

The proposed section 37A will require that every extension of the jurisdiction of the Merit Protection and Review Agency, which is made under an enactment (other than an Act) or which is not an enactment which may be disallowed by Parliament, be reported to Parliament by the tabling of a copy of such an enactment.

Sub-section 56(2) requires the Merit Protection and Review Agency to report to the Minister or to the Public Service Board, on request, on an inquiry which it conducts under sub-section 56(1). The proposed amendment to sub-section 56(2) requires the Agency to provide a copy of the report to the Commonwealth employee to whom the inquiry is related.

Section 83 of the Act provides for the making of Annual Reports by the Merit Protection and Review Agency. The proposed amendment to Sub-section 83(3) requires the Agency to include a list of all of the authorities coming within its jurisdiction in its Report.

The proposed amendment to section 85 corrects two typographical errors.

By virtue of sub-clause 2(13) the proposed amendments made by this Act (other than the amendment of paragraphs (a), (b) and (d) of the definition of "Commonwealth Authority" in section 3) shall -

- (a) in the case of the insertion of proposed section 37A come into operation, or be deemed to have come into operation, as the case requires, on the commencement of sub-sections 15(1), section 21 or sub-sections 39(1) and 47(1) or the first of those sub-sections to come into operation;

- (b) in the case of the amendment of sub-section 56(2) - come into operation, or be deemed to have come into operation, as the case requires, on the commencement of that sub-section;

- (c) in the case of the amendment of sub-section 83(3) - come into operation, or be deemed to have come into operation, as the case requires, on the commencement of that sub-section; and

- (d) in the case of the amendments of section 85 - come into operation, or be deemed to have come into operation, as the case requires, on the commencement of that section.

Amendment of the Narcotic Drugs Act 1967

The proposed amendments relate solely to the change of designation from "Director-General of Health" to "Secretary to the Department of Health".

Amendment of the National Crime Authority Act 1984

Most of the following amendments are "tidying-up" amendments to clarify matters and remove ambiguities in the Act resulting from the large number of amendments moved during its passage.

Other amendments are necessary to take account of certain aspects of the complementary "underpinning legislation" to the enacted by the States.

In these notes "the Authority" refers to the National Crime Authority and "the Committee" refers to the Intergovernmental Committee, both of which are established by the Act.

New paragraph 9(1)(aa) is to be inserted to give the Committee specific power to consult with the Commonwealth Minister where that Minister proposes to refer to the Authority a matter relating to a relevant Criminal activity. This is consequent upon an amendment made during the passage of the Act through the Senate, by which consultation only, rather than approval, is required in the case of Commonwealth references.

Paragraph 9(1)(a) is to be amended to refer to approval by the Committee in the case of proposed references to the Authority by State Ministers. This is also consequential upon the matters referred to above in relation to new paragraph 9(1)(aa).

New sub-sections 9(3) and 9(4) are to be inserted to replace existing sub-sections 9(3), (4) and (5) that require that the relevant State Minister vote in favour of a resolution approving reference to the Authority of a matter under State Law.

Essentially, the new provisions delete the references to the Commonwealth Minister, which is no longer required as a consequence of the matters referred to above in relation to new paragraph 9(1)(aa).

Sub-section 10(6) is to be amended by deleting the reference to the Commonwealth Minister, and this is again consequential upon the matters referred to above, in relation to new paragraph 9(1)(aa).

New sub-sections 10(4A), (4B), (4C) and (4D) are to be inserted to make provision for the Authority to request the Commonwealth Minister to refer matters to the Authority under section 13 of the Act.

The Commonwealth Minister may request the Committee to consider such a request simultaneously with a request by the Authority under sub-section 10(1) in relation to a State reference. Provision is made for written requests by the Authority to the Minister and written and oral submissions by the Authority where appropriate. Consultation between the Authority and the Commonwealth Minister at the request of the latter is also provided for.

Sub-section 22(7) is to be amended to include a reference to "mutilation" of things (including documents) in relation to search warrants.

Paragraph 24(2)(a) is to be amended to cater for cases where an order for delivery up of a witness' passport is made under State Law.

Paragraph 24(2)(c) is to be amended consequential upon the amendment to paragraph 24(2)(a) referred to above.

Paragraph 27(2)(a) is to be amended consequential upon the insertion of new paragraph 27(2)(aa), referred to below.

New paragraph 27(2)(aa) is to be inserted to include in the provisions as to legal and financial assistance a reference to applications to the Federal Court under sub-section 32(8) in relation to documents claimed to contain matter that is personal or of a non-business nature.

Sub-section 28(2) requires that a summons to a witness shall be accompanied by a copy of the notice by which the relevant matter to which the hearing relates was referred to the Authority. The amendment inserts words to explicitly cover cases where more than one matter or more than one notice is involved.

Sub-section 28(3) is to be amended to cover cases where a hearing by the Authority relates to more than one special investigation.

Sub-section 31(2) relates to warrants for the arrest of witnesses, and is to be amended to include the standard reference to "premises, vehicle, vessel or aircraft". This is a "tidying-up" amendment.

Sub-sections 32(1) and (6) are to be amended to remove superfluous references to "things".

Paragraph 32(6)(a) is to be amended consequential upon new sub-section 32(13) referred to below.

New sub-section 32(8A) is to be inserted to require a person seeking to apply to the Federal Court under sub-section 32(8) to notify the Authority in writing that the person proposes to apply for an order for the excision or concealment of part of the relevant document.

New paragraph 32(11)(a) is to be amended consequential upon the insertion of new sub-section 32(8A) referred to above.

Paragraph 32(12)(c) is to be amended consequential upon the insertion of new sub-section 32(13) referred to below.

New sub-paragraphs 32(12)(c)(i) and (ii) are inserted consequential upon the insertion of new sub-section 32(13) referred to below.

New sub-section 32(13) is to be inserted to provide definitions of "document" and "prescribed notice" for the purposes of section 32, and also to define "relevant day" in relation to the computation of time for applications for review of certain decisions made by, and notices issued by, the Authority.

New sub-sections 32(14) and (15) are to be inserted to specifically provide for cases where the Authority's decision under sub-section 32(1) relates to a plurality of questions or documents, or where a notice given by a person under sub-section 32(8A) relates to a plurality of documents.

New section 32A is to provide that persons seeking review of decisions of, or requirements by, the Authority may apply to the Supreme Court of a State in circumstances where the relevant special investigation relates to a matter with respect to which a reference to the Authority by a Minister of the Crown of that particular State is in force and no other relevant reference (by the Commonwealth or another State) is in force.

New sub-section 32A(2) provides a special procedure under which, in appropriate cases, the Authority is to notify the person concerned as to whether such circumstances do or do not apply in relation to a specified State and indicating accordingly whether the Federal Court of Australia or the relevant State Supreme Court has jurisdiction in the matter.

New sub-section 32A (4) governs the effect of section 32, with appropriate modifications, in relation to such cases.

New sub-sections 32A(5) (6) and (7) make consequential provisions for the transfer of matters by the relevant Supreme Court to the Federal Court where appropriate, and for the exercise of jurisdiction by those Courts as appropriate.

New sub-section 32A(8) extends the definition of "document" for the purposes of new section 32A.

New section 35A is to be inserted to ensure that persons convicted of offences under either the Commonwealth Act or a State Law shall not be liable to be punished twice for the same act or omission. This provision against "double jeopardy" complements provisions to be made in State "underpinning" legislation.

New sub-section 56A is to be inserted to ensure that a State law may confer powers, functions or duties upon, or vest jurisdiction in, the Federal Court of Australia, and to remove any doubt in this regard.

By virtue of sub-clause 2(14) the proposed amendments of this Act shall be deemed to have come into operation in 1 July 1984.

Amendment of the National Health Act 1953

The proposed amendments relate solely to the change of designation from "Permanent Head" to "Secretary" implemented by the Public Service Reform Act 1984 and the change of designation from "Director-General of Social Security" to "Secretary to the Department of Social Security" implemented by this Bill.

By virtue of sub-clause 2(15) the proposed amendments of sub-sections 105AAA (1), (2), (4), (5) and (6) and paragraphs 105AC(1AA)(a) and (b) and (1B)(a) of the Act shall be deemed to have come into operation on 23 July 1984.

Amendment of the National Library Act 1960

Section 11 is repealed and substituted by proposed Section 11 that recasts the acting provisions in accordance with the standard modern form.

Section 13 is repealed, having regard to the repeal of the Remuneration Act 1974, and substituted by proposed Section 13 with provisions to the same effect drafted in a modern form.

With the repeal of the Remuneration Act 1974, it is necessary to re-enact provisions to the same effect. The opportunity is being taken to recast them in a modern form.

Section 17A(3), relating to terms and conditions of appointment, is repealed.

Section 17J is repealed and is substituted by proposed Section 17J with similar provisions drafted in the standard modern form. Also the proposed Section 17J enables the Minister to appoint a person to act as Director-General.

Amendment of the Naval Defence Act 1910

Section 44D of the Act exempts Navy messes, etc, from the application of State and Territory licensing laws with regard to intoxicating liquor.

Section 44D is omitted because provision on this matter for the Navy is in future proposed to be made by section 123A of the Defence Act 1903 as amended by this Bill.

Paragraph 45(1)(e) of the Act provides that regulations under the Act may provide penalties for offences against the regulations not exceeding a fine of \$500 or imprisonment for 3 months.

The proposed amendment of paragraph 45(1)(e) increases the maximum penalties that may be prescribed, to a fine of \$2,000 or imprisonment for 12 months, or both.

Amendment of the Off-shore Installations (Miscellaneous Amendments) Act 1982

The proposed amendment of paragraph 47(d) corrects a drafting error.

By virtue of sub-clause 2(16) the proposed amendment of this Act shall be deemed to have come into operation on 1 July 1984.

Amendment of the Overseas Students Charge Act 1979

The proposed new section 6A is designed to overcome confusion which has arisen on the question of liability of a student notwithstanding that such student does not physically attend the institution where he or she is enrolled.

The proposed section 6A will amplify the matter of enrolment under the Act and will make it clear that an overseas student who is enrolled in a prescribed course but who is not required to actually attend the prescribed institution at which he is enrolled in the year of study will not be liable to pay the charge.

Amendment of the Overseas Student Charge Collection Act 1979

The Act allows a Migration Officer to issue a temporary entry permit to an overseas student for a calendar year only. The proposed sub-section 6(1A) will allow the temporary permit to extend beyond a calendar year to enable the student to obtain examination results and to consider whether to re-enrol. The amendment in no way alters the liability for overseas student charges.

Amendment of the Overseas Telecommunications Act 1946

The definition of "Chairman" in section 5 is omitted and new definitions of "Chief Commissioner" "Deputy Chief Commissioner", "Managing Director" and "part-time Commissioner" are inserted into section 5 of the Act to correspond to positions on the restructured Commission.

Sections 9 to 17 inclusive of the Act are repealed and replaced by the following sections 9 to 17C inclusive.

Proposed section 9 provides that the Commission is to consist of seven Commissioners who will include:

- (a) the Managing Director;
- (b) a Commissioner being an officer of the Department;
- (c) a Commissioner to represent officers and employees of the Commission; and
- (d) 4 other Commissioners.

The Commissioners are to be appointed by the Governor-General. The Managing Director is to be appointed as a full-time Commissioner and other Commissioners are to be part-time Commissioners. When appointing the Commissioner referred to in (c) above the Governor-General is to have regard to any advice furnished by the Minister who is to have consulted the appropriate organization representing officers and employees. The performance of the functions or powers of the commission are not affected by a vacancy in the Commission. Regulations may be made to provide for the rights of a person appointed as Managing Director.

Proposed section 10 provides that Commissioners are to hold office for a period specified in the instrument of appointment but not exceeding five years. A Commissioner is to be eligible for re-appointment on the expiration of the term for which he or she was appointed. A person who has attained the

age of 65 years should not be appointed as a Commissioner and should not be appointed or re-appointed for a period that extends beyond the date at which the age of 65 years is attained by that person. The Commissioner who is an officer of the Department administered by the Minister is to hold office during the pleasure of the Governor-General.

Proposed section 11 provides that remuneration and allowances paid to Commissioners should be those determined by the Remuneration Tribunal except in the case of the Commissioner who represents the Department administered by the Minister. Where no determination is made by the Remuneration Tribunal then remuneration and allowances are to be those as prescribed by regulations.

Proposed section 12 provides that a Commissioner is to be appointed to be the Chief Commissioner of the Commission and another to be the Deputy Chief Commissioner by the Governor-General. Commissioners so appointed are to hold office until the expiration of the term of office as a Commissioner. A Commissioner ceases to hold office if he or she ceases to be a Commissioner or resigns from office as Chief Commissioner. A Commissioner appointed Chief Commissioner or a Deputy Chief Commissioner may resign from that office by written notice delivered to the Governor-General. A Commissioner is to be eligible for re-appointment as Chief Commissioner or Deputy Chief Commissioner.

Proposed section 13 provides that the Minister is able to grant leave of absence to a Commissioner upon such terms and conditions as he determines.

Proposed section 14 provides that Commissioners should be able to resign their office by written notice delivered to the Governor-General.

Proposed section 15 provides that the appointment of a Commissioner other than the one appointed to represent the Department may be terminated by the Governor-General for reasons of misbehaviour or physical or mental incapacity. The Governor-General shall terminate the appointment of a Commissioner:

- (a) if he or she becomes bankrupt, applies to take the benefit of law for bankrupt or insolvent debtors or compounds with his creditors or makes an assignment to his creditors.
- (b) if he or she has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission otherwise than as a member and the nature of the interest is not disclosed at a meeting of the Commission.
- (c) if a part-time Commissioner is absent except on leave of absence granted by the Minister from three consecutive meetings of the Commission.

The Governor-General shall also terminate the appointment of the Managing Director where he engages in paid employment outside the duties of his office without Ministerial approval or is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months.

Where a Commissioner discloses a pecuniary interest in a matter being considered by the Commission it is to be recorded in the minutes of the Commission and the Commissioner is not to take part in any deliberation or decision with respect to the matter. A pecuniary interest, however, does not include provision of services of the type supplied by the Commission.

Proposed section 16 provides that the Minister may appoint a person to act as Managing Director during a vacancy in the office or during a period when the Managing Director is absent from duty or unable to perform his functions. A person may not to act in the vacancy for more than 12 months. If a part-time Commissioner has been appointed to act as Managing Director the office of the part-time Commissioner is deemed to be vacant. A person may be appointed to act in the office of a part-time Commissioner on a similar basis to that of the Managing Director.

The Minister determines the terms and conditions of an acting appointment and may terminate the appointment at any time. Where a person is acting in a position of the Commission and the position becomes vacant then the person may resign the acting appointment by written notice delivered to the Minister.

Proposed section 17 provides that when the Chief Commissioner is absent from duty the Deputy Chief Commissioner is to act as Chief Commissioner.

Proposed section 17A provides that the Chief Commissioner or 4 Commissioners may convene such meetings of the Commission as necessary.

Proposed section 17B provides that Managing Director is to manage the affairs of the Commission within the powers of the Act and in accordance with the policies and directions given by the Commission.

Proposed section 17C provides that the Commission may delegate any of its powers under the Act.

Sub-section 18(1) of the Act is amended to remove reference to the general manager and sub-section 18(6) and section 32 are omitted for the same reason.

Transitional provisions in clause 8 provide that persons currently holding appointments under the Act will continue to hold those appointments as if the amendments had not been made. A similar transitional position applies to the general manager.

By virtue of sub-clause 2(17) the proposed amendments and clause 8 of this Act shall come into operation on the day which this Act receives the Royal Assent.

Amendment of the Patents Act 1952

Proposed new sub-sections 41(1A), (1B), (1C), (1D) require the preparation of an abstract where a patent applicant lodges a complete specification following the earlier lodgment of an application accompanied by a provisional specification. The provisions correspond to those contained in section 35 which apply where an application is accompanied at lodgment by a complete or petty patent specification.

The proposed amendments of sub-section 58A(1) (definition of "Treaty") have the effect that the text of the Patent Cooperation Treaty and the Regulations annexed to the Treaty will include amendments to the Treaty and the Regulations which have been and are made from time to time pursuant to Articles 47, 58, 60 and 61 of the Treaty.

The proposed amendments of paragraphs 58A(2)(a) and (b) provide for the Act to recognise any amendments which are made, under Article 34 of the Patent Cooperation Treaty or Rule 91 of the Regulations annexed to the Treaty, to the description, drawings or claims of an international application, in addition to amendments made under Article 19.

The proposed amendments of sub-sections 58A(3), (4), and (5) are consequential on the amendments of sub-section 58A(1)(definition of "Treaty").

The proposed amendment of sub-section 58C(1) is consequential on the provisions of sections 35 relating to abstracts of specifications.

By virtue of sub-clause 2(18) the proposed amendments of this Act (other than the amendment of section 58A of the Act) shall come into operation, or be deemed to have come into operation, as the case requires, on the date fixed by Proclamation for the purposes of sub-section 2(11) of the Statute Law (Miscellaneous Provisions) Act (No.2) 1983.

Amendment of the Postal Services Act 1975

Proposed sub-clause 43(7) provides that regulations may make provision for and in relation to the review of a decision of the Australian Postal Commission upon application by an officer affected by the decision.

Proposed sub-section 109(3A) is added to section 109 of the Act to provide that an administration fee, at a prescribed rate, should be payable to the Commission by a judgment creditor who seeks an attachment of the salary of an officer or employee.

Proposed sub-section 109(3B) provides that where an amount is deducted it should be paid to the judgment creditor subject to the succeeding sub-clause.

Proposed sub-section 109(3C) provides that if the whole or part of the administration fee has not been paid then the Commission may apply the part of the deduction to the administration fee. The remainder of the deduction is to be paid to the judgment creditor.

Proposed sub-section 109(3D) provides that if the administration fee is deducted in the above way from the salary of an officer or employee then:-

- (a) the judgment creditor shall be deemed to have paid the whole or part of the administration fee;
- (b) the amount equal to the amount applied shall be deemed to have been paid by the Commission on account of salary; and
- (c) an amount equal to the amount so applied shall be deemed to have been paid by the officer to the judgment creditor.

The proposed omission of sub-section 109(6), amendment to sub-section 190(8) and insertion of new sub-section 109(8A) are consequential to the foregoing amendments of section 109.

Amendment of the Poultry Industry Levy Collection Act 1965

Section 3 is omitted. A proposed new definition is substituted in section 3 to provide for a change in the name of the former Council of Egg Marketing Authorities of Australia to the Australian Egg Marketing Council.

Amendment of the Poultry Industry Levy Act 1965

A proposed new definition in section 4 provides for a change in name of the former council of Egg Marketing Authorities of Australia to the Australian Egg Marketing Council.

Amendment of the Poultry Industry Assistance Act 1965

A proposed new definition in section 3 provides for a change in name of the former Council of Egg Marketing Authorities of Australia to the Australian Egg Marketing Council.

Amendment of the Public Order (Protection of Persons and Property) Act 1971

Sub-section 23(2) provides that proceedings for the commitment of a person for trial on indictment or for the summary prosecution of an offence against the Act shall be instituted only with the consent in writing of the Director of Public Prosecutions. Prior to the enactment of the Director of Public Prosecutions (Consequential Amendments) Act 1983 such proceedings could only be instituted with the consent of the Crown Solicitor or a Deputy Crown Solicitor.

The proposed amendment of sub-section 23(2) will enable the Director of Public Prosecutions to delegate the consent power. The proposed amendment to sub-section 11(3) is consequential on the amendment of section 23.

Amendment of the Public Service Act 1922

Sub-section 7(1) of the Act defines "Chief Officer" by reference to the exercise of powers under sub-section 26(2) of the Act. Chief Officer powers have now been relocated to section 26A of the Act, and the proposed amendment sub-section 7(1) reflects that change.

Section 12A of the Act provides for the appointment of persons to act as members of the Public Service Board for a period not exceeding 6 months. Consistent with the extension of the period for which a person may act as a Secretary of a Department, the proposed amendments to sub-section 12A(1), (3), (7) and 39(5) extend the period under section 12A to 12 months.

The proposed amendment to paragraph 51A(1)(a) of the Act is intended to ensure that regulations relating to the selection of officers for the temporary performance of the duties of another office and appeals against such selection can continue to apply to the situation where an officer is directed to perform the duties of an office with lower maximum salary than that applying to the office held by the officer but where, nonetheless, the officer will be entitled to be paid higher duties allowance. Sub-section 51A(2) is repealed as a consequence of the amendment proposed to paragraph 51A(1)(a) as its purpose is now achieved by sub-section 28(4) of the Act.

The proposed amendment to paragraph 87(1)(b), of the definition of "Commonwealth authority", reflects changes made to the companies legislation of the Territories, which is now found in the Companies Act 1981 of the Commonwealth rather than in a law of the Territory itself. Bodies which are incorporated under either a law of the Commonwealth or a law of a Territory may now be brought within the officers' mobility scheme of which sub-section 87(1) is a part.

Section 95 is repealed. This section saved certain provisions of Acts which were repealed by the Public Service Act in 1922. No one to whom those saved provisions applied remains in the Australian Public Service and it is appropriate that the section now be repealed.

The proposed amendment of section 96, which concerns the offence of impersonation at examinations and tests, is to provide that the penalty for the offence shall be a fine, a term of imprisonment or both.

Schedules 2 and 3 to the Act are omitted and substituted to provide an updating and various changes in title. Schedule 2 specifies the Australian Public Service Departments and Schedule 3 specifies the Secretaries of those Departments.

By virtue of sub-clause 2(19) the proposed amendments of the definition of "Chief Officer" in sub-section 7(1) of this Act shall be deemed to have come into operation on 1 July 1984.

By virtue of sub-clause 2(20) the proposed repeal and replacement of Schedules 2 and 3 of this Act shall come into operation on a date to be fixed by Proclamation.

Amendment of the Public Service Reform Act 1984

The proposed amendment to paragraph 5(5)(a) corrects a typographical error.

The definition of "Commonwealth authority" in Sub-section 5(8) of the Act does not include an authority which is empowered to employ staff, other than under the Public Service Act, on behalf on the Commonwealth. The proposed amendments to paragraphs (a), (b), and (d) of sub-section 5(8) extend that definition to such authorities.

The proposed amendment of paragraph 22B(1)(d) to be inserted into the Act by amendment of sub-section 11(1), forms the basis for the creation and implementation of equal employment opportunity programs. The definition of "employment matters" includes the phrase "conditions of service" which should, for consistency with other provisions in the Act, read "terms and conditions of service". A grammatical error and a typographical error are also corrected.

The proposed amendment to section 22C, to be inserted into the Act by the amendment of sub-section 12(1), concerns the making of industrial democracy plans. It is currently stated to be proclaimed to come into operation "after section 22B of the Act". It may be necessary to proclaim section 22C before section 22B comes into operation, and the proposed amendment removes the relationship between sections 22B and 22C.

Section 22C is also subject to sub-section 12(4) of the Act, which imposes a requirement on Secretaries of Departments to report on the implementation of industrial democracy plans. It is appropriate to insert that requirement into section 22C itself rather than placing it in the Act.

The proposed omission of sub-section 12(4) is consequential upon the previously mentioned to section 22C.

The proposed amendment of paragraph 18(b) corrects a typographical error.

The proposed amendments of Sections 29B and 29C, to be inserted into the Act by amendment of section 19, provides for the declaration and occupation of part-time offices. Sub-sections 29B(2) and 29C(5) are replaced with a new sub-section 29B(2), which is a clearer statement of the principle that an office may not be declared to be a part-time office, or that such a declaration may not be varied, amended or revoked, without the consent of the officer holding the office. The proposed amendment of section 29D is to omit a reference to sub-section 29B(2) and to amend an incorrect cross-reference.

Section 33AAA includes a definition of "promotion" which does not deal adequately with an officer who moves from an office with a higher maximum salary than that to which he is moving but who will be paid a higher salary. The proposed amendment of section 33AAA(1) to be inserted into the Act by amendment of Section 21 will provide for that situation in the definition of "promotion".

Sub-section 130(3) was drafted as a consequential amendment to reflect certain changes which were to have been made to section 82 of the Public Service Act 1922. These changes are no longer to be made and sub-section 130(3) is repealed.

The proposed amendment of section 141 provides for the omission of proposed section 18 of the Governor-General Act 1974 as that section is no longer necessary following the repeal of the Public Service Arbitration Act 1920.

Sub-section 151(5), is repealed and substituted by an appropriate amendment of section 30AC of the Student Assistance Act 1973.

Sub-sections 152(2), (3), (4) and (5) are omitted. These sub-sections were drafted as consequential amendments in anticipation of certain changes to section 82 of the Public Service Act 1922 that will not be made.

The proposed amendment to Schedule 4 to the Act corrects several incorrect citations of other Acts.

By virtue of sub-clause 2(21) the proposed amendments of this Act shall -

- (a) in the case of the amendments of paragraph 5(5)(a), sub-section 5(8), 11(1) and 12(1) and (4), paragraph 18(b), sections 19 and 21, paragraph 67(j), sub-section 130(3), section 141 and sub-sections 151(5) and 152(2), (3), (4) and (5) of this Act - come into operation, or be deemed to have come into operation, as the case requires, on the commencement of, or on the respective dates of the commencement of, those provisions of this Act; and
- (b) in the case of the amendments of Items 1 and 3 of Schedule 4 to this Act - be deemed to have come into operation on 1 July 1984.

Amendment of the Quarantine Amendment Act 1984

The proposed amendment of Schedule 1 implements a drafting change.

By virtue of sub-clause 2(22) the proposed amendment of this Act shall be deemed to have come into operation on 26 April 1984.

Amendment of the Radiocommunications Act 1983

Proposed amendment of paragraph 93(2)(d) and new sub-section 93(2A) enables an on the spot fine of fifty dollars (\$50) to be levied or the lesser of:

- (a) one fifth of the maximum penalty a court may impose;
or
- (b) twice the annual licence fee applicable to the appropriate class of licence.

By virtue of sub-clause 2(23) the proposed amendments of this Act shall come into operation, or be deemed to have come into operation, as the case requires, on the date fixed by Proclamation for the purposes of sub-section 2(1) of this Act.

Amendment of the Re-establishment and Employment Act 1945

The proposed amendment relates solely to the change of designation from "Director-General of Social Security" to "Secretary to the Department of Social Security".

Amendment of the Sales Tax (Exemptions and Classifications) Act 1935

The proposed amendment relates solely to the change of designation from "Director-General of Health" to "Secretary of the Department of Health".

Amendment of the Shipping Registration Amendment Act 1984

The proposed amendment of paragraphs 20(e) and (h) implement drafting changes.

By virtue of sub-clause 2(24) the proposed amendments of this Act shall come into operation, or be deemed to have come into operation, as the case requires, on the commencement of section 20 of this Act.

Amendment of the Social Security Act 1947

The Public Service Reform Act 1984 implemented the policy of the Government to make certain reforms to the Australian Public Service.

One of those reforms was the change in the designation of departmental heads from "Permanent Head" to "Secretary". Consistent with that reform the amendments to this Act propose to replace the title "Director-General of Social Security" with the title "Secretary to the Department of Social Security".

Sub-sections 6(1) and 143(1) are amended to replace the title "Director-General of Social Security" with the title "Secretary to the Department of Social Security". The proposed amendment to paragraph (6)(1)(f) corrects a drafting error.

Amendment of the Statute Law (Miscellaneous Provisions) Act
(No.1) 1984

The proposed amendment of Schedule 1, amendments of Navigation Act 1912, corrects a drafting error.

By virtue of clause 2(25) the proposed amendment of this Act shall be deemed to have come into operation on 23 July 1984.

Amendment of the Superannuation Act 1976

The proposed amendments to sub-section 58(3) are consequential upon amendments made to the Public Service Act 1922 and the Commonwealth Employees (Redeployment and Retirement) Act 1979 by the Public Service Reform Act 1984.

By virtue of sub-clause 2(26) the proposed amendments in paragraph (a) would operate from 1 July 1984 (the date of commencement of section 81 of the Public Service Reform Act 1984). The remainder of the amendments would operate from the date of commencement of section 84 of the Public Service Reform Act 1984.

Amendment of the Telecommunications Act 1975

Proposed amendments to Paragraphs 10(1)(d) and (e) would allow land vested in the Commission to be disposed of by sale or lease without having to establish that it is not required for the purposes of the Commission. This places Telecom in the same position in relation to its property as Australia Post.

Proposed new sub-clause 40(7) provides that regulations may make provision for and in relation to the review of a decision of the Australian Telecommunications Commission under paragraph 40(4)(b). The purpose of this amendment is to enable officers on probation to have rights of appeal against decisions to terminate the probationer's appointment. The amendment is to parallel similar appeal rights which relate to excess officers and retirement on inefficiency, incapacity or similar grounds in sections 55 and 56 of the Act.

Proposed amendment to Paragraph 94(2)(fa) is to correct a cross reference following amendment of the Satellite Communications Act 1984.

Proposed new sub-clause 104(3A) provides that an administration fee, at a prescribed rate, should be payable to the Commission by a judgement creditor who seeks an attachment of the salary of an officer or employee.

Proposed new sub-clause 104(3B) provides that where an amount is deducted it should be paid to the judgement creditor subject to the following sub-clauses.

Proposed new sub-clause 104(3C) provides that if the whole or part of the administration fee has not been paid then the Commission may apply the part of the deduction to the administration fee. The remainder of the deduction is to be paid to the judgement creditor.

Proposed new sub-clause 104(3D) provides that if the administration fee is deducted in the above way from the salary of an officer or employee then:-

- (a) the judgement creditor shall be deemed to have paid the whole or part of the administration fee;
- (b) the amount equal to the amount applied shall be deemed to have been paid by the Commission on account of salary; and
- (c) an amount equal to the amount applied shall be deemed to have been paid by the officer to the judgement creditor.

The proposed omission of sub-section 104(6) amendment to sub-section 104(8) and insertion on new sub-section 104(8A) are consequential to the foregoing amendments to section 104.

The purpose of the proposed amendments is to provide for rights to the Commission similar to those provided to the Commonwealth by virtue of section 64 of the Public Service Act 1922.

By virtue of sub-clause 2(27) the proposed amendment of paragraph 94(2)(fa) of this Act shall be deemed to have come into operation on 26 April 1984.

Amendment of the Therapeutic Goods Act 1966

The proposed amendments relate solely to the change of designation from "Director-General of Health" to "Secretary to the Department of Health".

Amendment of the Trade Practices Act 1974

The proposed new sub-section 65A(1) grants an exemption to prescribed information providers in relation to prescribed publications from the operation of sections 52, 53, 53A, 55, 55A and 59 of the Act. Proposed paragraph 65A(1)(a) provides that the exemption does not operate in relation to publication in connection with the supply or promotion of relevant interests in land, relevant goods or services or where publication is pursuant to a contract, arrangement or understanding with the supplier, or a related body corporate, of lands, goods or services. Proposed paragraph 65A(1)(b) also excludes from the exemption the publication of an advertisement by a prescribed information provider.

Proposed new sub-section 65A(2) defines a prescribed publication to be a publication by a prescribed information provider where the publication was made in the course of carrying on a business of publishing information including a radio or television broadcast.

Proposed new sub-section 65A(3) contains a number of definitions. Prescribed information provider is defined to mean a person who carries on a business of providing information including holders of broadcasting and television licences, the Australian Broadcasting Corporation and the Special Broadcasting Service. Relevant goods or services or relevant interests in land are defined to mean lands, goods and services of a kind supplied by a prescribed information provider or a related body corporate.

The proposed new sub-section 79A(1) is concerned with enforcement of penalties imposed under the Act following a default. By proposed paragraphs 79A(1)(a) to (c), the court will be empowered, following default, to make orders in relation on one of the following: a prison sentence, community service or periodic detention, where possible under

State or Territory law, or to treat the fine as a civil judgement debt. By virtue of section 17A of the Commonwealth Crimes Act 1914 imprisonment can only be imposed as a last resort.

Proposed new sub-section 79A(2) deals with the situation where a person fails to comply with orders relating to community service or periodic detention. By proposed paragraphs 79A(2)(a) to (c) the court may, having regard to the extent of the compliance, either reduce the fine, impose a prison sentence, or both.

Proposed new sub-section 79A(3) allows the court where it has imposed a prison sentence, to make an order, at any time before execution of the prison sentence, for payment of the fine by specified instalments which, if met in full, discharges the prison order.

Proposed new sub-section 79A(4) provides that where the court has imposed a prison sentence on default of payment of a fine, the court may discharge the prison order on the giving of security for payment of the fine.

Proposed new sub-section 79A(5) provides the rate at which default prison sentences are to be calculated. The rate is one day's imprisonment for each twenty five dollars (\$25) of the amount of the fine that is from time to time unpaid. The same default rate currently applies in New South Wales, South Australia and the Australian Capital Territory.

Proposed new sub-section 79A(7) provides that where following default on the payment of three or more fines imposed in relation to the same or substantially similar offences occurring within a two-year period, and on order for imprisonment is made for a period which exceeds in the aggregate five years, all orders shall cease after a period of imprisonment of five years is served.

Proposed new sub-section 79A(8) provides that section 18A of the Commonwealth Crimes Act 1914, hitherto used for the enforcement of fines imposed under the Act will no longer be used.

Proposed new sub-section 79A(9) defines "community service order" to be an order requiring a person to perform community service and "periodic detention order" to be an order for a person to submit periodically to a specified authority for a specified period.

Proposed new sub-section 79A(10) empowers the Governor-General to make arrangements with the governors and Administrators of the States and Territories in relation to the enforcement of the various orders referred to in new section 79A.

By virtue of sub-clause 2(28) the proposed new section 65A shall come into operation on the day on which this Act receives the Royal Assent and the proposed new section 79A shall come into operation on the day fixed by Proclamation for the purpose of this sub-clause.

Amendment of the Tuberculosis Act 1948

The proposed amendments relate solely to the change of designation from "Director-General of Health" to "Secretary to the Department of Health".

SCHEDULE 2

Amendments of Acts consequential upon Alteration of Certain Designations under the Public Service Act 1922.

One of the reforms, implemented by the Public Service Reform Act 1984, was to change the designation of departmental heads from "Permanent Head" to "Secretary". Consistent with that reform this Bill proposes to replace the title "Director-General of Health" with the title "Secretary to the Department of Health" and the title "Director-General of Social Security" with the title "Secretary to the Department of Social Security". In relation to the Home Deposit Assistance Act 1982, the Homes Savings Grant Act 1964 and the Home Savings Grant Act 1976 administrative responsibility has been transferred from the Department of Social Security to the Department of Housing and Construction. The alteration of the foregoing designations and transfer of administrative responsibility is effected in Schedule 2 by omitting "Director-General" (wherever occurring) and substituting "Secretary" as specified in the following Acts:-

Aged or Disabled Persons Homes Act 1954

Aged or Disabled Persons Hostels Act 1972

Delivered Meals Subsidy Act 1970

Health Insurance Act 1973

Home Deposit Assistance Act 1982

Homes Savings Grant Act 1964

Homes Savings Grant Act 1976

Social Security Act 1947

SCHEDULE 3

Repeal of Acts

Repeal of Bounty (Drilling Bits) Act 1980

The operation of this Act expired on 31 December 1982.

Repeal of Bounty (Non-Adjustable Wrenches) Act 1981

The operation of this Act expired on 31 December 1982.

Repeal of Bounty (Polyester-Cotton Yarn) Act 1978

The operation of this Act, as amended by the Bounty Polyester-Cotton Yarn) Amendment Act 1980 and the Bounty (Polyester-Cotton Yarn) Amendment Act 1981, expired on 31 December 1981.

Repeal of Bounty (Refined Tin) Act 1980

The operation of this Act expired on 31 December 1982.

Repeal of Bounty (Rotary Cultivators) Act 1979

The operation of this Act, as amended by the Bounty (Rotary Cultivators) Amendment Act 1980, expired on 7 May 1981.

Repeal of Bounty (Steel Products) Act 1983

The operation of this Act expired on 31 December 1983

Repeal of Remuneration Act 1974

The operation of the Remuneration Act 1974, has been superseded by determinations of the Remuneration Tribunal made under sub-section 7(3) of the Remuneration Tribunals Act

1973. Sub-section 7(3) gives the Tribunal jurisdiction over the holders of public offices, including offices established under a law of the Commonwealth.

The purpose of the Remuneration Act 1974 was to allow the holders of certain statutory offices, established before the Remuneration Tribunal came into existence, to continue to be paid in accordance with regulations until determinations could be made by the Tribunal. Because of certain provisions of the National Library Act 1960 and the Commonwealth Schools Commission Act 1973, the Remuneration Act still had application in respect of certain offices established by those Acts.

The relevant provisions of the Commonwealth Schools Commission Act were amended on 1 July 1984. In order to exhaust the provisions of the Remuneration Act 1974, section 13 of the National Library Act 1960 is to be amended in this Bill to bring it into line with current provisions.







