

Public Service (Amendment) Bill (No 2)

EXPLANATORY MEMORANDUM

Clause 1 describes the purpose of the Bill as being to recognise agreements between the Minister and approved associations and for other matters.

Clause 2 provides for the Act to come into operation on receiving Royal Assent.

Clause 3 cites the *Public Service Act 1974* as the Principal Act.

Clause 4 provides for the insertion of a new section 36B into the Principal Act to enable employees with more than two years continuous service to be transferred or promoted to fill a vacancy in the Service as if the employee were an officer. The provisions cover all employees except those to whom award terms and conditions made by a Commonwealth or State industrial tribunal are applied.

The proposed section 36B (*d*) enables such employees to appeal against a provisional promotion or transfer, other than a transfer of an unattached officer. It is also proposed in section 36B (*c*), that such employees, if they fulfill the qualification and probationary requirements of sections 30 and 34 of the Act, will be appointed as officers of the Service on confirmation of their provisional promotion or transfer.

Clause 5 inserts a new section 37 (11AA) to ensure that an employee who applies to fill a vacancy under the new section 36B is not considered to be an unattached officer, in respect of whom no appeal against a provisional promotion or transfer is possible.

Clause 6 replaces the existing section 38A (3) with provisions that specify salary on promotion be paid when an officer commences duty in the new office or four weeks after notice of the provisional promotion or four weeks after an office about to become vacant, becomes vacant, whichever first occurs.

Clause 7 replaces Division 6, Part III dealing with the employment of temporary employees with the following new sections:

- (a) Section 40 (1) enables the Public Service Board to authorise the employment of suitably qualified persons as employees.
- (b) Section 40 (2) provides that temporary employment is to be for an initial fixed term of not more than 3 years but may be further extended.
- (c) Section 40 (3) provides that any extension beyond 5 years can only be made where the Board specifies that special circumstances exist.
- (d) Section 40A states that temporary employees are subject to the Act and Regulations in the same manner as applies to officers of the Service.
- (e) The proposed new section 40B requires a minimum of 4 weeks notice on either side to terminate temporary employment unless the circumstances justify summary dismissal, or a lesser period of notice is mutually agreed.

Clause 8 provides for the inclusion of a new Division 1A into Part IV of the Principal Act to make provision for agreements between the Government as the employer and approved associations. This is designed to give legal effect to an agreement negotiated with the VPSA on redundancy and redeployment of officers of the Service, with the following new sections:

- (a) Section 43A defines “approved association” referred to in the Division as meaning an association of officers or employees approved for the time being in accordance with regulations made under section 73 (2) (h) of the Principal Act.
- (b) Section 43B provides that the Minister and an approved association may enter into agreements with respect to remuneration, entitlements and terms and conditions of employment. Such agreements can only apply to officers for whom the approved association may make representations to the Board. The agreement may be varied or revoked by a subsequent agreement.
- (c) Section 43C provides that the Board may declare that an agreement reached under section 43B is an approved agreement; this declaration is a statutory rule subject to disallowance by Parliament.
- (d) Section 43D provides that an officer who fails to accept a final offer of redeployment in accordance with an approved agreement, is deemed to have resigned for the purposes of the Act. An officer redeployed to a public statutory authority under an approved agreement, is deemed to continue to be an officer for the purposes of transfer or promotion to fill a vacancy in the Service where notice of that vacancy has been given. An officer so redeployed is also entitled to relocation expenses under the determinations.

Clause 9 amends section 64A (2) of the Principal Act to exclude agreements in force under the new Division 1A of Part IV of the Act. This is necessary to ensure that existing requirements concerning redundancies do not prevail over agreements on redundancy under the new Division 1A of Part IV.

Clause 10 amends section 72 of the Principal Act to make clear that severance payments may lawfully be made in accordance with approved agreements.