Australian Federal Police Amendment Bill (No. 2) 1989

Date Introduced: 4 October 1989
House: Senate
Portfolio: Justice

Digest of Bill

Purpose
To allow the Commissioner of the Australian Federal Police (AFP) to determine the terms and conditions of employment for all employees of the AFP. The Bill will also introduce fixed term employment for all employees.

Background
Employees of the (AFP) can be divided into three categories, the Commissioner; members of the AFP; and support staff. The terms and conditions of employment differ for each group. The Commissioner is employed on a fixed term contract for a maximum of seven years, and is eligible for re-appointment. The second group consists of the other members of the AFP and the conditions of employment for this group are determined in accordance with the Australian Federal Police Act 1979 (the Principal Act). This Act provides for agreements between the appropriate Minister and the relevant staff association (the Australian Federal Police Association – AFPA), and establishes a Tribunal to arbitrate on most disagreements, although certain matters, such as appointments, discipline and dismissals, are excluded from arbitration. There were 2713 members of the AFP on 30 June 1988. The final group comprises the 'civilian' support staff for the AFP. Section 16 of the Principle Act provides that these staff are to be appointed and employed under the Public Service Act 1922. The staff are represented by a number of different associations which reflect the work performed, including the Public Sector Union (PSU), the Australian Journalists Association (AJA) and the Professional Officers' Association (POA).

The terms and conditions of employment differ amongst government authorities and corporations. Independent corporations, such as Australia Post and Telecom, have wide powers to determine the terms and conditions of employment of their employees. Employees of other bodies, such as the recently established Australian Securities Commission and inspectors employed by the Industrial Relations Commission, are employed under the Public Service Act 1922.

The major reason advanced for the removal of Public Service Act 1922 coverage is that a unified workforce will allow greater flexibility and efficiency in the use of all AFP staff. A major change will be the introduction of fixed-term contracts for all employees of the AFP. In the second reading
speech for this Bill, the Minister notes that there will be an AFP Adjustment Payment of 12.5% of accumulated salary for fixed-term employment. The explanatory memorandum estimates that, in current dollar terms, this will cost $5.4 million in 2020, although offsets in invalidity costs are expected.

The reaction from the various staff associations represented in the AFP has varied. The AFPA has generally not been opposed to the changes, while the PSU, the main public sector union, has been opposed to the proposals on a number of grounds. The main criticism from the PSU has been that security of tenure will be removed and that this could be used as a precedent for fixed term contracts in the public service generally. The Minister for Industrial Relations is reported to have given an assurance that the fixed term contracts are a result of the structure and role of the AFP and will not be used as a precedent for the general public service. However, the PSU continues to oppose the changes.

Main Provisions
Clause 6 will amend section 6 of the Principal Act to define staff members of the AFP as employees who are not police officers.

Section 16 of the Principle Act, which deals with support staffs employment under the Public Service Act 1922, will be repealed by clause 12.

Section 17 of the Principal Act will be amended to provide for fixed term contracts, with a maximum term of 5 years (with occupants eligible for re-appointment) for Deputy Commissioners of the AFP. As well, the terms and conditions of appointment for Deputy Commissioners that are not included in the Principal Act are to be determined by the Commissioner, rather than the Governor-General, as is the present practice (clause 14).

Section 24 of the Principal Act allows the Minister to determine the number of members of the AFP. The amendments contained in clause 18 will allow the Minister to determine the number of staff members as well.

The Commissioner will have power to appoint and promote people within the staff of the AFP (proposed section 26B).

Proposed section 26D deals with terms of appointment. Those appointed under sections 25 (commissioned officers), 26 (non-commissioned officers) and 26B may only be appointed for a period that is less than the prescribed period, although they may be re-appointed. A person is not to be appointed for a period that will take their retirement age beyond the maximum retirement age (proposed section 26D).

The term of a member or staff member of the AFP will cease when the period for which they were appointed is over or, if before then the person who made the appointment determines that the period is to cease at an earlier date, the earlier date. A person is not to make such a determination in relation to an
event that could be dealt with under the Discipline Regulations or where the person has been found guilty of a criminal offence (these matters may be dealt with under the Regulations) (proposed section 26E).

Current section 30 of the Principal Act, which deals with agreements with staff associations, will be repealed and a new section 30 inserted by clause 24. Under the proposed section, the Commissioner will have power to determine the terms and conditions for members and staff members of the AFP. Subject to any determination by the Commissioner, members and staff members will be entitled to an adjustment payment. The Minister may give the Commissioner general guidelines to be followed when making determinations.

A person currently employed under the Public Service Act 1922 will have the option to elect to be eligible to receive an adjustment payment. If such an election is made, the person will cease to be covered by that Act. If the person fails to make such an election before the end of their first appointment, they will not be eligible for re-appointment.

Section 36 of the Principal Act will be amended to extend the promotion on efficiency provision contained in the Principal Act to staff members of the AFP (clause 29).

Sections 38A, 38B and 38C of the Principal Act, which deal with redeployment, will be repealed by clauses 33 and 34. Proposed, new section 38B will allow the Commissioner to retire people because of physical or mental incapacity. A person may appeal against such a decision (clause 36). The proposed section also provides that where the Commissioner certifies that the only reason a person is not offered a new appointment is physical or mental disability, the person will be taken to have resigned on the grounds of invalidity.

Proposed section 39D deals with matters excluded from the Industrial Relations Commission. Matters arising from proposed section 26E (which deals with the termination of appointments) will be excluded from the definition of industrial dispute and so excluded from the Commission's jurisdiction. As well, the Commission is not to take the adjustment payment into account when exercising its powers in relation to industrial issues.

For the purposes of the Superannuation Act 1976, people appointed for a fixed period are to be taken to be temporary employees employed under contract (proposed section 39E).

Section 41 of the Principal Act, which deals with the loss of superannuation in certain circumstances, will be amended to include staff members in the scheme. Similarly, section 46 will be amended to include adjustment payments in the funds that may be withheld or recovered.
Division 3 of the Bill deals with transitional provisions for those currently employed under the Public Service Act 1922. Basically, the terms and conditions of employment determined by the Commissioner are to be at least as favourable as the current terms and conditions. Employees, other than the Commissioner, Deputy Commissioners or fixed term senior executive officers, previously employed under this Act will be taken to remain covered by that Act until the prescribed day or, if they specify that they wish to resign from the AFP prior to that date, the date specified. If no such request is made, the person will be deemed to be employed under the new conditions after the prescribed date.

References

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

10 October 1989

Bills Digest Service
Legislative Research Service

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

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