Ministers of State Amendment Bill (No. 2) 1987

Date Introduced: 15 September 1987
House: Senate
Presented by: Senator the Hon. John Button, Minister for Industry, Technology and Commerce

Digest of Bill

Purpose
To amend the Ministers of State Act 1952 (the Principal Act) to allow for an increase in the number of Ministers.

Background
Following the election of the 35th Parliament in July 1987, the Prime Minister announced new Ministerial arrangements on 22 July 1987: Under the new arrangements there are planned to be 18 Departments (one of which, Aboriginal Affairs, is planned to be replaced by a statutory commission), replacing 28 in the last government; and 30 Ministers, replacing the 27 in the last government. As the Principal Act currently stands, a maximum of 27 Ministers may be appointed. As a result, three proposed Ministers were sworn in as Parliamentary Secretaries when the Ministry was sworn in by the Governor-General on 24 July 1987.

Since the announcement some doubt has been raised as to whether the Constitution will allow more than one Minister to be appointed to administer a Department as the new arrangements envisage. Briefly, section 64 of the Constitution provides that the Governor-General may appoint officers to administer the Departments established by the Governor-General. It was argued that this provision allowed only one Minister to be appointed per Department. Section 44 of the Constitution, which provides that a person, other than a Minister of State, is to be incapable of sitting as a Member of the House of Representatives if they hold an office of profit under the Crown, was also raised. It was argued that if only one Minister was allowed per Department, the junior Ministers would be in an office of profit under the Crown and therefore ineligible to sit.

The matters were referred to the Solicitor-General for advice and his opinion was dated 30 July 1987. On the first question referred, i.e. whether more than one Minister could be appointed to administer a Department, the Solicitor-General noted previous advice on this matter from past Attorneys-General, counsel and academics. Except for the dissenting view expressed by Garfield Barwick, the opinions were either neutral or in favour of allowing more than one Minister per Department. In conclusion, the
Solicitor-General rejected Barwicks' dissenting view and concluded that section 64 of the Constitution allowed 'more than one Minister of State (to) be appointed to administer one department'.

The question of whether a Minister may be appointed without portfolio responsibilities was also referred to the Solicitor-General. On this matter, the Solicitor-General concluded that a Minister should be appointed to administer a Department or, where there is more than one Minister responsible for the Department, the Minister should be allocated some of the functions of the Department.

Main Provisions
Clause 3 will amend section 4 of the Principal Act to increase the maximum number of Ministers from 27 to thirty.

References
2. Ibid., p. 18.

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

16 September 1987

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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