Date Introduced: 17 April 1985
House: House of Representatives
Presented by: Hon. M.J. Young, M.P., Special
Minister of State

Short Digest of Bill

Purpose

To amend the management initiated redeployment and retirement provisions to ensure the efficient and economical use of Australian Federal Police, and to give the Police Commissioner the powers of a Secretary to a Department relating to the Public Service staff employed in the Australian Federal Police.

Background

The Australian Federal Police (AFP) was formed following consideration during the 1970s of the functions of a Federal police force. A report by the former head of the London Metropolitan Police, Sir Robert Mark G.B.R., Q.P.M. was commissioned following the Hilton bombing in Sydney in February 1978. The report recommended the amalgamation of the ACT Police and the Commonwealth Police to form the AFP.[1] This was effected by the Australian Federal Police Act 1979 (the Principal Act).

Since then there have been 2 reports recommending changes to the AFP, the Administrative Review Council's (ARC) Report to the Attorney-General on sections 38 and 39 of the Principal Act[2] and a Joint Management Review of the AFP.[3] The ARC's report on sections 38 and 39, which deal with management initiated redeployment and retirement, follows a request by the Attorney-General, in a letter to the ARC dated 17 June 1980, that it express its views as to the most appropriate form of review of decisions made under sections 38 and 39.[4] The Joint Management Review of the AFP was conducted in 1984 by a team comprising senior members of the AFP and representatives of Price Waterhouse Pty Ltd. The Joint Management Review's Report No. 1 was completed in February 1984.

Under the current provisions dealing with management initiated redeployment and retirement, the Commissioner has the power to retire or transfer at the same
or lower rank, officers who, in the Commissioner's opinion, have become unfit or incapable of performing their duties (section 38) or have become redundant due to excessive numbers in a classification (section 39). At present, there is no specialised method to review the Commissioner's decisions, officers who are adversely affected have to rely on the general methods of review. The only method of review currently available is judicial review, principally through the Administrative Decisions (Judicial Review) Act 1977.

The ARC considered this form of review insufficient as such a review could only determine the legality, rather than the merits, of the Commissioner's decision and, would involve an application to the Federal Court of Australia at substantial legal cost.[5]

In its analysis of the most appropriate body to review the Commissioner's decisions, the ARC noted the various methods of appeal available to other Commonwealth employees affected by management initiated retirement or redeployment. The most important of the review bodies is the Commonwealth Employees Redeployment and Retirement Tribunal, created by the Commonwealth Employees (Redeployment and Retirement) Act 1979, dealing with appeals from public servants. Although noting that this body was established to deal with much the same questions as the ARC was examining, the ARC recommended against allowing the Commonwealth Employees Redeployment and Retirement Tribunal to decide appeals from AFP officers. In making this recommendation, the ARC relied on the different nature of AFP as a 'command structured' organisation, where it would be inappropriate to have a body capable of making a determination that could overrule the Commissioner.[6] To preserve the command structure of the AFP, the ARC recommended that the body reviewing the Commissioner's decisions have the power to make recommendations, rather than determinations.[7] After considering these matters, the ARC recommended that the Promotions Appeal Board, a body that currently deals with appeals regarding promotions within the AFP, would be the most appropriate body to deal with appeals from management initiated retirement or redeployment. The ARC reached this conclusion after having regard to the Board's experience with personnel problems in the AFP and its role as a recommendatory, rather than determinative, body.[8] The ARC also recommended that the initial finding that an officer is redundant should not be reviewable as such a decision is a management function that does not, of itself, affect the rights of members of the AFP.[9]

The Joint Management Review recommended that the Commissioner be given the powers exercisable by a Secretary
of a department under the Public Service Act 1922. This would enable the Commissioner to establish and vary positions within the public service sector of the AFP and hence 'improve the capacity of the public service component of the AFP... to provide the level of required policy and administrative support to the Commissioner and to operational areas'.[10]

Outline

The present Bill implements the ARC's recommendations by repealing current sections 38 and 39 and substituting new sections 38, 38A to H, 39 and 39A. Section 16 is amended to implement the Joint Management Review recommendations concerning the Commissioner's control of Public Service staff of the AFP.

Main Provisions

Clause 5 amends section 16 of the Principal Act to give the Commissioner the same powers as a Secretary under the Public Service Act 1922 in relation to the Public Service staff employed in the AFP.

Clause 8 amends section 24 of the Principal Act to remove the need to refer to the Public Service Board when determining rank numbers in the AFP. This is a consequence of the increase in the Commissioner's powers referred to in clause 5.

Clause 14 repeals sections 38 and 39 of the Principal Act and substitutes the following:

Proposed section 38 states the grounds upon which officers may be redeployed or retired, which are the same as in the current sections 38 and 39, and defines how inefficiency, failure in the performance of duties and lack of qualifications are to be interpreted.

Proposed section 38B imposes duties on the Commissioner to declare, in writing, which officers are to be redeployed to give reasons for his decision and to serve a copy of the declaration on affected officers within 28 days.

Proposed section 38C enables the Commissioner to redeploy officers, who have received notice and waived their right of appeal, to another position of the same or lower rank. In determining what action to take, the Commissioner is to have regard to the efficient operation of the AFP, the feasibility of retraining and the educational or other qualifications of the officer.
Proposed section 38D deals with officers who, in the Commissioner's opinion, it is not reasonable or practicable to redeploy. In such cases the officer may be retired (proposed section 38H).

Proposed section 38F details the new provisions concerned with appeals. Upon an appeal from the Commissioner's decisions, the Appeals Board may recommend that the decision be confirmed or revoked. The Board is to give its reasons to all parties within 28 days.

Proposed section 38G deals with the Commissioner's role on receipt of a recommendation from the Appeal Board. The Commissioner has the power to either accept or decline the Board's recommendations.

The remainder of the Bill deals with minor administrative and formal changes to the Principal Act.

For further information, if required, contact:

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2 May 1985

References

4. ARC Report, p.3.
5. Ibid., p.13.
6. Ibid., p.13 and 18.
7. Ibid., p.18.
8. Ibid., pp.13-17.
10. Management Review of the Australian Federal Police, Report No. 1, para. 6.3.3. Also see para. 4.5.3.