Date introduced: 16 October 1985
House: Senate
Presented by: Senator Susan Ryan, Minister for Education and Minister Assisting the Prime Minister for Public Service Matters

DIGEST OF BILL

Purpose

The Bill has two major functions: first to introduce the categorisation of temporary public service employees and, secondly, to implement the Government's decision to include inefficiency and loss of essential qualifications as grounds for action under the Commonwealth Employees (Redeployment and Retirement) Act 1979.

Background

The Public Service is one of the major employers in Australia. Approximately 195,000 staff years (the normal work time by a full-time employee) were worked by persons employed by the various Departments, authorities staffed under the Public Service Act 1922 and other Budget dependent authorities in 1984-85.[1] Staff are employed in a number of ways, namely permanent full-time, as temporary employees on specific length contracts, part-time, or as casuals. As well, a number of persons are employed overseas on conditions negotiated according to the local labour market.

Under the provisions of the Commonwealth Employees (Redeployment and Retirement) Act 1979, the Commonwealth is empowered to redeploy, or, where this is not possible, to compulsorily retire surplus employees. Although members of the Senior Executive Service may be retired on the grounds of inefficiency, this does not apply to lower level public servants. The area had previously been examined in 1982 when a regulation was made to allow retirement or redeployment on the grounds of inefficiency or loss of essential qualifications. However, a review of management
initiated retirement was announced before the regulation came into force and the Government has since announced its intention to effect such changes by legislation rather than regulation.[2]

These measures form part of an on-going program to improve the efficiency of the Public Service and follow a number of reports on the Public Service, including the Coombs Royal Commission on Australian Government Administration, delivered in 1976, and the 1983 Report of the Reid Committee of Review.

Outline

Amendments to the Public Service Act 1922 are contained in Part II of the Bill (clauses 3 to 30). The major reform, i.e. the introduction of categories for temporary employees, is implemented by clause 21. Part III of the Bill (clauses 31 to 34) amends the Commonwealth Employees (Redeployment and Retirement) Act 1979 (CE(RR) Act) to introduce inefficiency and loss of essential qualifications as reasons for redeployment or retirement. The Bill also contains minor amendments to a number of other Public Service Acts.

Main Provisions

For a detailed explanation of the clauses of the Bill, refer to the Explanatory Memorandum.

Amendments to the Public Service Act 1922 (the Principal Act)

Clauses 8 and 9 of the Bill remove inconsistencies between the Principal Act and the Naval Defence Act 1910 and the Supply and Development Act 1939 to make it clear that the equal employment and industrial democracy regulations extend to those Acts.

The definition of promotion is clarified by clause 12 which amends section 33AAA of the Principal Act to make it clear that transfers cannot be viewed as promotions.

The categorisation of employee is introduced by clause 21 which repeals sections 82 and 82A of the Principal Act and inserts new sections 82 and 82AA to 82AH. Proposed section 82AA states that there are to be four categories of temporary employees, i.e. continuing, short-term, fixed-term and overseas employees.
Continuing employees are dealt with in proposed sections 82AB and 82AC. The former provision will allow the Public Service Board (the Board) to declare particular classes of temporary employees as continuing employees. Such a declaration is to have effect for a maximum of three years. Proposed section 82AC deals with the employment of continuing employees and will allow Secretaries of Departments to engage continuing employees when they are satisfied that such a person has the necessary abilities. It also provides that employment may continue though the declaration of that class as continuing employees has lapsed.

Proposed section 82AD deals with short-term employees and will enable Secretaries to employ short-term employees if the Secretary is satisfied that assistance is required and cannot be provided by a continuing employee. Short-term employees are to be engaged for 3 months, or, with the Board's approval, for a period up to 12 months. On the expiration of that term, the person's employment is either to be terminated or a recommendation is to be made to the Board to extend the employment. The Board is to continue the employment if it satisfied that it would not be appropriate for the work to be employed by permanent or continuing employees. The proposed section also provides that where a person has been employed for a period of one year and the person's employment is continued, that person is to be considered a continuing employee.

The employment of fixed-term employees is to be regulated by proposed section 82AE. Secretaries may, with the Board's approval, employ people as fixed-term employees where:

- the person is required for a project that has a fixed duration; the duties require ability that is not available in the Public Service, and the person's services are unlikely to be required after the project is completed; or

- where the person could be employed as a continuing employee but prefers to be employed on a fixed term basis; or

- where persons have been selected for appointment to the Public Service but are not Australian citizens, those persons may be employed as a fixed-term employee until they are granted Australian citizenship.
Employment is generally to be for a maximum of 5 years though the Secretary may extend that period for a period not exceeding 5 years. Employment will cease on the expiration of the period.

Proposed section 82AF deals with overseas employees and will allow Secretaries to engage people overseas once satisfied of their ability.

Proposed section 82AH will allow Secretaries to terminate an employee's employment at any time subject to certain restrictions. The restrictions are listed in the proposed section.

Proposed section 82AG will make it clear that persons may still be employed under work experience schemes.

Clause 23 will allow the Board to direct a Department, which has received functions previously performed by an abolished Department, to employ a previous employee of the abolished Department on the same employment conditions.

Amendments to the CE(RR) Act

Clause 33 will insert inefficiency and loss of essential qualifications as grounds for redeployment or retirement in section 7 of the CE(RR) Act. A new sub-section 7(2) will define inefficiency and new sub-section 7(6) will define essential qualifications.

Clause 34 will require the Secretary to have regard to an employee's past or prospective duties, the nature of those duties and the period until voluntary retirement before retiring an employee.

The other major amendment contained in the Bill will make it clear that Commonwealth long service leave provisions do not apply to Departments and authorities of the Northern Territory government (clause 36 which amends section 4 of the Long Service Leave (Commonwealth Employees) Act 1976).

For further information, if required, contact the Economics and Commerce Group.

5 November 1985

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References

1. 1985-86 Budget Paper No. 6, p.196.