Purpose

To again permit determinations and awards to be made by the Public Service Arbitrator and the Conciliation and Arbitration Commission in respect of staff matters arising under the Commonwealth Employees (Redeployment and Retirement) Act 1979, a jurisdiction removed by amendments in 1981.

Background

The Bill relates to redeployment or termination of employment under the Commonwealth Employees (Redeployment and Retirement) Act 1979. That Act applies to staff of the Australian Public Service except those on probation or engaged on fixed contracts, or with less than one year's service. It also applies to staff of "prescribed Commonwealth authorities".

The Act sought to codify arrangements for redeployment and retirement. It replaced provisions in the Public Service Act 1922 which had been infrequently employed.

Section 20 of the Public Service Act 1922 permitted transfer of excess officers to alternative positions of equal status, or to positions of lower status, or in default to early retirement. Section 67 provided for retirement on grounds of inefficiency or incapacity to discharge duties. Section 85 established a retiring age of 65 years, with voluntary early retirement at age 60.

The Commonwealth Employees (Redeployment and Retirement) Act 1979 (the CE(RR) Act) introduced an administrative procedure for redeployment of staff for prescribed reasons, including that they were excess to
requirements or physically or mentally incapable of performing duties. In surplus staff situations, consultation with staff associations is required by Determination No. 509 of 1977, which continued in effect after passage of the CE(RR) Act, and establishes minimum periods of notice etc.

The CE(RR) Act provided for redeployment, and eventual retirement following a certificate by the Permanent Head or prescribed authority that redeployment was not practicable. A Commonwealth Employees Redeployment and Retirement Appeals Tribunal was established. The Act also lowered the minimum voluntary retiring age from 60 years to 55 years. The Act came into operation on 6 February 1981.

In December 1980, Determination No. 503 of the Australian Conciliation and Arbitration Commission under the Public Service Arbitration Act 1920 imposed obligations on the Permanent Head in particular relating to consultation with staff associations regarding staff declared eligible for redeployment. The Determination imposed further obligations on the Permanent Head for medical examinations etc., where a person is to be retired on grounds of both invalidity and the Board's inability to redeploy.

The Attorney-General advised the Prime Minister that the Determination was not in accord with a law of the Commonwealth. Under section 22 of the Public Service Arbitration Act, in such circumstances the Determination prevails over the provisions of an Act relating to public service employment, unless the Parliament disallows the determination.

The Government moved to disallow the Determination and legislation was introduced to remove the Public Service Arbiter's jurisdiction to make determinations involving matters under the CE(RR) Act [see Bills Digest for Commonwealth Employees (Redeployment and Retirement) Amendment Bill 1981][1].

The present Bill would restore the Public Service Arbiter's jurisdiction by repealing the subsections inserted in 1981.

Main Provisions

The Bill replaces subsections 24(3) and 24(4) of the Commonwealth Employees (Redeployment and Retirement) Act 1979 and repeals subsections 24(5), (6) and (7).

Section 24, in its original form, provided that the CE(RR) Act overrode any other Commonwealth or Territory
(other than the Northern Territory) legislation not capable of operating concurrently, but was subject to any award made before or after the Act commenced. When the primacy of awards was restricted by 1981 amendments to prior awards, it was also provided that a later extension or restriction in the class of persons covered by a prior award would not be treated as a new award.

The Bill, to commence with Royal Assent (clause 2) ensures the primacy of awards over the CE(RR) Act whether made before or after commencement of the CE(RR) Act (new subsection 24(3)). Subsection 24(4) defines "award", to include awards etc. under the Conciliation and Arbitration Act 1904 and Public Service Arbitration Act 1920.

For further information, if required, contact:

28 October 1983

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References
