

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**MERIT PROTECTION (AUSTRALIAN GOVERNMENT
EMPLOYEES) BILL 1984**

TABLE OF PROVISIONS

PART I—PRELIMINARY

Clause

1. Short title
2. Commencement
3. Interpretation
4. Object

**PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE
AGENCY**

Division 1—Establishment and functions

5. Merit Protection and Review Agency
6. Functions of Agency

Division 2—Review Committees

Subdivision A—Preliminary

7. Interpretation
8. Agency to ensure efficiency of Review Committees

Subdivision B—Promotion Appeal Committees

9. Promotion Appeal Committees

TABLE OF PROVISIONS—*continued*

Clause

- 10. Constitution of Promotion Appeal Committees
- 11. Conduct of hearings
- 12. Member ceasing to act
- 13. Split decisions
- 14. Places of sitting of Committee
- 15. Enactment may provide for promotion appeals to be heard by Promotion Appeal Committees

Subdivision C—Disciplinary Appeal Committees

- 16. Disciplinary Appeal Committees
- 17. Constitution of Disciplinary Appeal Committees
- 18. Conduct of hearings
- 19. Member ceasing to act
- 20. Split decision
- 21. Enactment may provide for disciplinary appeals to be heard by Disciplinary Appeal Committees

Subdivision D—Redeployment and Retirement Appeal Committees

- 22. Redeployment and Retirement Appeal Committees
- 23. Constitution of Committees
- 24. Conduct of hearings
- 25. Member ceasing to act
- 26. Split decision

Subdivision E—Re-appointment Review Committees

- 27. Re-appointment Review Committees
- 28. Constitution of Re-appointment Review Committees
- 29. Member ceasing to act
- 30. Split decisions

Subdivision F—Re-integration Assessment Committees

- 31. Interpretation
- 32. Re-integration Assessment Committees
- 33. Constitution of Re-integration Assessment Committees
- 34. Member ceasing to act
- 35. Split decisions

Subdivision G—Miscellaneous

- 36. Members not subject to direction
- 37. Procedure of Review Committees

Division 3—Review of certain decisions

- 38. Interpretation
- 39. Agency may review certain decisions
- 40. Persons who may apply to Agency
- 41. Procedure of Agency in conduct of reviews
- 42. Review by Agency that may give rise to new decision
- 43. Review by Agency that may give rise to recommendation only
- 44. Agency may seek views of Public Service Board
- 45. Applications by former Commonwealth employees

Division 4—Grievances

- 46. Interpretation
- 47. Agency may inquire into certain grievances
- 48. Persons who may apply to Agency
- 49. Discretion not to investigate

TABLE OF PROVISIONS—*continued*

Clause

- 50. Employee may apply to Agency for investigation of certain grievances
- 51. Agency to inquire into grievances
- 52. Reports to Prime Minister
- 53. Special reports to the Parliament
- 54. Conduct of investigations
- 55. Applications by former Commonwealth employees

Division 5—Inquiries

- 56. Inquiries by Agency

Division 6—Provision of advice on grievances and appeals

- 57. Agency to provide, on request, advice on grievance and appeal rights

Division 7—Procedure and Powers

- 58. Procedure
- 59. Power to obtain information and documents
- 60. Power to examine witnesses
- 61. Power to enter premises
- 62. Powers of delegates

PART III—CONSTITUTION AND ORGANIZATION OF AGENCY

- 63. Constitution of Agency
- 64. Period of appointment of members
- 65. Remuneration and allowances of members
- 66. Leave of absence
- 67. Outside employment
- 68. Resignation
- 69. Acting Director
- 70. Acting member
- 71. Meetings of Agency
- 72. Disclosure of interests of member in relation to reviews and inquiries
- 73. Disclosure of interests of members in relation to other matters
- 74. Retirement
- 75. Suspension and removal of member
- 76. Superannuation
- 77. Staff
- 78. Delegation by Agency
- 79. Delegation by Director

PART IV—MISCELLANEOUS

- 80. Agency not be sued
- 81. Offences
- 82. Protection from civil actions
- 83. Annual Report
- 84. Officers to observe secrecy
- 85. Regulations

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1984

(Minister Assisting the Prime Minister for Public Service Matters)

A BILL

FOR

An Act to provide for the establishment of a Merit Protection and Review Agency and to define its functions and powers, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Merit Protection (Australian Government Employees) Act 1984*.

Commencement

- 2. (1)** Sections 1, 2 and 3 shall come into operation on the day on which this Act receives the Royal Assent.

- 10 **(2)** The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“Agency” means the Merit Protection and Review Agency;

“authorized person” means—

- (a) a person appointed by the Agency to be an authorized person for the purposes of this Act; or
- (b) a person included in a class of persons appointed by the Agency to be authorized persons for the purposes of this Act;

“Chief Officer” has the same meaning as in the *Public Service Act 1922*;

“Commonwealth authority” means—

- (a) a body corporate incorporated, whether before or after the commencement of this section, for a public purpose by an Act, by regulations made under an Act or by or under a law of a Territory (other than the Northern Territory), being a body employing staff on its own behalf;
- (b) an authority or body, not being a body corporate, established, whether before or after the commencement of this section, for a public purpose by, or in accordance with the provisions of, an Act, regulations made under an Act or law of a Territory (other than the Northern Territory), being an authority or body employing staff on its own behalf;
- (c) a company or other body corporate incorporated, whether before or after the commencement of this section, under a law of the Commonwealth, of a State or of a Territory, being a company or other body corporate in which the Commonwealth has a controlling interest; or
- (d) an authority or body established, whether before or after the commencement of this section and whether by, or in accordance with the provisions of, an Act, regulations made under an Act or a law of a Territory or otherwise, and whether a body corporate or not, being an authority or body that is financed in whole or in substantial part, either directly or indirectly, by money provided by the Commonwealth and employs staff on its own behalf;

“Commonwealth employee” means a person who is—

- (a) an officer or employee within the meaning of the *Public Service Act 1922*; or
- (b) employed by a Commonwealth authority;

“Department” has the same meaning as in the *Public Service Act 1922*;

“Director” means the Director of the Agency;

“enactment” means—

- (a) an Act;
- (b) an ordinance of the Australian Capital Territory; or

- (c) an instrument (including determinations, rules, regulations or by-laws) made under an Act or such an Ordinance;

“full-time member” means a member who is appointed on a full-time basis;

“industrial award” has the same meaning as in the *Public Service Act 1922*;

5 “member” means a member of the Agency and includes the Director;

“officer” has the same meaning as in the *Public Service Act 1922*;

“part-time member” means a member who is appointed on a part-time basis;

0 “Public Service Board” means the Board of Commissioners appointed in pursuance of the *Public Service Act 1922*;

“Secretary” has the same meaning as in the *Public Service Act 1922*;

“the Service” has the same meaning as in the *Public Service Act 1922*.

15 (2) A reference in this Act to an action taken or a decision made in relation to a Commonwealth employee in relation to his employment as a Commonwealth employee shall be read as including a reference to an action taken or a decision made in relation to the employee in relation to a matter that is incidental or ancillary to that employment.

Object

20 4. (1) The object for which the Agency is established is to ensure that actions taken and decisions made in relation to a Commonwealth employee in relation to his employment as a Commonwealth employee are taken or made in accordance with sound personnel management practices and with due regard being had to—

(a) the efficiency of the relevant authority; and

25 (b) the need to ensure good relations between the relevant authority and its employees.

(2) In sub-section (1), “relevant authority”, in relation to a Commonwealth employee, means—

30 (a) in a case where the employee is an officer or employee within the meaning of the *Public Service Act 1922*—the Service; and

(b) in a case where the employee is employed by a Commonwealth authority—the Commonwealth authority.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AGENCY

Division 1—Establishment and functions

Merit Protection and Review Agency

35 5. There is hereby established a Merit Protection and Review Agency.

Functions of Agency

6. The functions of the Agency are—

- (a) to arrange for the establishment of, and to ensure the proper and efficient operation of, Review Committees in accordance with Division 2;
- (b) to review decisions in accordance with Division 3;
- (c) to investigate actions in accordance with Division 4;
- (d) to conduct inquiries in accordance with Division 5; and
- (e) to provide advice in relation to grievances and appeals in accordance with Division 6.

Division 2—Review Committees

Subdivision A—Preliminary

Interpretation

7. In this Division, “Review Committee” means—

- (a) a Promotion Appeal Committee established under Subdivision B;
- (b) a Disciplinary Appeal Committee established under Subdivision C;
- (c) a Redeployment and Retirement Appeal Committee established under Subdivision D;
- (d) a Re-appointment Review Committee established under Subdivision E; or
- (e) a Re-integration Assessment Committee established under Subdivision F.

Agency to ensure efficiency of Review Committees

8. (1) The Agency shall take reasonable steps to ensure that Review Committees carry out their functions properly and efficiently.

(2) Without limiting the generality of sub-section (1), the Agency shall—

- (a) provide staff to assist Review Committees to perform their functions; and
- (b) issue guidelines, not inconsistent with this Act or the regulations, in relation to procedure to which Review Committees may have regard in performing their functions.

Subdivision B—Promotion Appeal Committees

Promotion Appeal Committees

9. The Agency shall, from time to time, arrange for the establishment, in accordance with section 10, of such Promotion Appeal Committees as appear to it to be required for the purposes of determining—

- (a) appeals made under section 50B of the *Public Service Act 1922* against the promotion of an officer; and

- (b) appeals made under regulations made for the purposes of section 51A of that Act against the selection of an officer to perform temporarily the duties of an office of a classification higher than the classification of the office held by the officer.

Constitution of Promotion Appeal Committees

10. (1) A Promotion Appeal Committee shall be constituted by—

- (a) a Chairman, who shall be a person appointed by the Agency to be a Chairman of Promotion Appeal Committees;
- (b) a person nominated by the Secretary of the Department in which the promotion or selection that is the subject of the appeal was made; and
- (c) a person nominated by the organisation that is, as provided by the regulations, the appropriate organisation or, in the absence of such a nomination, nominated in such other manner as the regulations provide.

(2) A decision of a Promotion Appeal Committee shall not be called in question by reason of a defect or an irregularity in connection with the nomination of a member of the Committee referred to in paragraph (1) (b) or (c).

Conduct of hearings

11. Upon an appeal or appeals of a kind referred to in section 9 being made to a Promotion Appeal Committee, the Committee shall make full inquiries into the claims of each party to the appeal proceedings.

Member ceasing to act

12. (1) Where a Promotion Appeal Committee has been constituted for the purposes of an appeal but, before the appeal has been finally determined by the Committee, a member or members of the Committee ceases or cease to be such a member or members or, for any other reason, ceases or cease to take part in consideration of the claims of the respective parties to the appeal proceedings or in the determination of the appeal, the Committee shall be reconstituted by the remaining member or members (if any) and another member or other members appointed or nominated in accordance with sub-section 10 (1).

(2) Where a Promotion Appeal Committee is reconstituted pursuant to sub-section (1), the Committee as reconstituted may, subject to sub-section (3), have regard to the evidence given, the arguments adduced and the reasons for any decision given during the proceedings before the Committee as previously constituted.

(3) Sub-section (2) does not apply in relation to a Promotion Appeal Committee that is reconstituted pursuant to sub-section (1) unless—

- (a) 2 of the members of the Committee as reconstituted were members of the Committee as previously constituted; or

- (b) the parties to the appeal proceedings agree that the sub-section is to apply.

(4) For the purposes of this section, the parties to particular appeal proceedings are the officer promoted or selected and the appellant or appellants.

Split decisions

13. For the purposes of the determination of an appeal or any matter arising in the course of hearing an appeal, where the members of the Promotion Appeal Committee do not concur in a decision relating to the determination of that appeal or of that matter—

- (a) if a majority of the members concur in a decision—the decision of the majority shall be deemed to be the decision of the Committee; and
- (b) in any other case—the decision of the Chairman of the Committee shall be deemed to be the decision of the Committee.

Places of sitting of Committee

14. Sittings of a Promotion Appeal Committee may be held from time to time as required at such places in Australia as are approved by the Agency.

Enactment may provide for promotion appeals to be heard by Promotion Appeal Committees

15. (1) An enactment may provide that appeals of a specified kind in relation to promotions of Commonwealth employees, not being appeals to which section 9 applies, may be made to a Promotion Appeal Committee established in accordance with this Subdivision and where an enactment so provides—

- (a) the Agency shall, from time to time, arrange for the establishment of such Promotion Appeals Committees as appear to it to be required for the purposes of hearing appeals of that kind;
- (b) in hearing an appeal of that kind a Promotion Appeal Committee has and may exercise the same powers in respect of procedure that it would have or could exercise if it were hearing an appeal to which section 9 applies; and
- (c) the enactment may make such modification to sections 10, 11, 12 and 13 and to paragraph (b) of this sub-section, in their application to appeals of that kind, as are necessary to enable a Promotion Appeal Committee to be constituted to hear appeals of that kind.

(2) In sub-section (1), “promotion” includes the selection of a Commonwealth employee to perform temporarily the duties of an office or position of a classification higher than the classification of the office or position held by the Commonwealth employee.

Subdivision C—Disciplinary Appeal Committees

Disciplinary Appeal Committees

16. The Agency shall, from time to time, arrange for the establishment, in accordance with section 17, of such Disciplinary Appeal Committees as appear to it to be required for the purposes of Divisions 6 and 6A of Part III of the *Public Service Act 1922*.

Constitution of Disciplinary Appeal Committees

17. (1) A Disciplinary Appeal Committee established for the purpose of an appeal under section 63D, 63F, 63P or 66B of the *Public Service Act 1922*, or of a request under section 63G of that Act, shall be constituted by—

- (a) a Chairman, who shall be a person appointed by the Agency to be a Chairman of a Disciplinary Appeal Committee;
- (b) a person nominated by the Chief Officer of the officer who appealed or made the request; and
- (c) a person nominated as provided by the regulations to represent officers.

(2) A person shall not be appointed as the Chairman of a Disciplinary Appeal Committee unless he is or has been a Magistrate or is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years.

(3) The person referred to in paragraph (1) (b) and the person referred to in paragraph (1) (c) shall be nominated for the purposes of a particular appeal only and a person concerned in the laying of, or in the inquiry held in respect of, a charge under section 61 of the *Public Service Act 1922*, or in the making of a direction under sub-section 63 (1) of that Act, shall not be nominated for the purpose of an appeal relating to that charge or for the purpose of an appeal against that direction or against a decision made in pursuance of that direction, as the case may be.

(4) If a Disciplinary Appeal Committee is of the opinion that an officer who had appealed to it under section 63D, 63F or 66B of the *Public Service Act 1922* had no reasonable grounds for that appeal, and that the appeal was frivolous or vexatious, it may order that the person pay such sum, not exceeding the cost of the hearing, as it specifies in the order and the sum so ordered to be paid may be recovered by deductions from the salary of the officer under section 65 of that Act.

Conduct of hearings

18. For the purposes of hearing an appeal or request a Disciplinary Appeal Committee may take evidence on oath or affirmation and, for those purposes, a member of the Committee may administer an oath or affirmation.

Member ceasing to act

19. (1) Where the hearing of an appeal or request has been commenced before a Disciplinary Appeal Committee but, before the appeal or request has

been finally determined, a member of the Committee has ceased to be such a member or, for any other reason, is unable to take any further part in the determination of the appeal or request, the 2 remaining members of the Disciplinary Appeal Committee may, with the consent of the parties, constitute the Committee for the purpose—

- (a) if the hearing has not been completed—of completing the hearing; and
- (b) if both members concur in the decision—of determining the appeal or request.

(2) If, for any reason, a Disciplinary Appeal Committee constituted in accordance with sub-section (1) by the remaining members of a Disciplinary Appeal Committee established under section 16 to hear and determine an appeal or request does not complete the hearing and determine the appeal or request, a new Disciplinary Appeal Committee constituted in accordance with sub-section 17 (1) shall hear and determine the appeal or request and, for that purpose, may have regard to the evidence given, the arguments adduced and the reasons for any decision given during the previous hearing.

Split decision

20. Except as provided by sub-section 19 (1) in relation to the determination of an appeal or request, for the purposes of determining an appeal or request or any matter arising in the course of hearing an appeal or request, where the members of the Disciplinary Appeal Committee do not concur in a decision relating to the determination of that appeal or request or of that matter—

- (a) if a majority of the members concur in a decision—the decision of the majority shall be deemed to be the decision of the Committee; and
- (b) in any other case—the decision of the Chairman of the Committee shall be deemed to be the decision of the Committee.

Enactment may provide for disciplinary appeals to be heard by Disciplinary Appeal Committees

21. An enactment may provide that appeals of a specified kind in relation to disciplinary action in relation to Commonwealth employees, not being appeals to which section 16 applies, may be made to a Disciplinary Appeal Committee established in accordance with this Subdivision and where an enactment so provides—

- (a) the Agency shall, from time to time, arrange for the establishment of such Disciplinary Appeal Committees as appear to it to be required for the purpose of hearing appeals of that kind;
- (b) in hearing an appeal of that kind a Disciplinary Appeal Committee has and may exercise the same powers in relation to procedure that it would have or could exercise if it were hearing an appeal to which section 16 applies; and
- (c) the enactment may make such modification to sections 17, 18, 19 and 20 and to paragraph (b) of this section, in their application to appeals

of that kind, as are necessary to enable a Disciplinary Appeal Committee to be constituted to hear appeals of that kind.

Subdivision D—Redeployment and Retirement Appeal Committees

Redeployment and Retirement Appeal Committees

5 **22.** The Agency shall, from time to time, arrange for the establishment, in accordance with section 23, of such Redeployment and Retirement Appeal Committees as appear to it to be required for the purposes of—

- (a) appeals under section 15 of the *Commonwealth Employees (Redeployment and Retirement) Act 1979*; and
- 0 (b) appeals under Division 8B of Part III of the *Public Service Act 1922*.

Constitution of Committees

5 **23. (1)** A Redeployment and Retirement Appeal Committee established for the purposes of an appeal under section 15 of the *Commonwealth Employees (Redeployment and Retirement) Act 1979* shall be constituted by—

- (a) a Chairman, who shall be a person appointed by the Agency to be a Chairman of a Redeployment and Retirement Appeal Committee;
- (b) a person nominated as provided in the regulations to represent—
 - 0 (i) in the case of an appeal against the making of a redeployment declaration—the Department or Commonwealth authority concerned; or
 - (ii) in any other case—the Public Service Board; and
- (c) a person nominated as provided in the regulations to represent employees.

5 **(2)** A Redeployment and Retirement Appeal Committee established for the purposes of an appeal under Division 8B of Part III of the *Public Service Act 1922* shall be constituted by—

- (a) a Chairman, who shall be a person appointed by the Agency to be a Chairman of a Redeployment and Retirement Appeal Committee;
- 0 (b) a person nominated by the Public Service Board; and
- (c) a person nominated as provided in the regulations to represent Senior Executive Service officers.

5 **(3)** In this section “Commonwealth authority”, “employee” and “redemption declaration” have the same meanings as in the *Commonwealth Employees (Redeployment and Retirement) Act 1979* and “Senior Executive Service officer” has the same meaning as in the *Public Service Act 1922*.

Conduct of hearings

0 **24.** For the purpose of hearing and determining an appeal of the kind referred to in section 22, a Redeployment and Retirement Appeal Committee may take evidence on oath or affirmation and, for those purposes, a member of the Committee may administer an oath or affirmation.

Member ceasing to act

25. (1) Where the hearing of an appeal has been commenced before a Redeployment and Retirement Appeal Committee but, before the appeal has been finally determined, a member of the Committee has ceased to be such a member or, for any other reason, is unable to take any further part in the determination of the appeal, the 2 remaining members of the Committee may, with the consent of the parties, constitute the Committee for the purpose—

- (a) if the hearing has not been completed—of completing the hearing; and
- (b) if both members concur in the decision—of determining the appeal.

(2) If, for any reason, a Committee constituted in accordance with sub-section (1) by the remaining members of the Committee established under section 22 to hear and determine an appeal does not complete the hearing and determine the appeal, a new Committee constituted in accordance with sub-section 23 (1) or (2), as the case requires, shall hear and determine the appeal and, for that purpose, may have regard to the evidence given, the arguments adduced and the reasons for any decision given during the previous hearing.

Split decision

26. Except as provided by sub-section 25 (1) in relation to the determination of an appeal, for the purposes of determining an appeal or any matter arising in the course of hearing an appeal, where the members of the Redeployment and Retirement Appeal Committee do not concur in a decision relating to the determination of that appeal or of that matter—

- (a) if a majority of the members concur in a decision—the decision of the majority shall be deemed to be the decision of the Committee; and
- (b) in any other case—the decision of the Chairman of the Committee shall be deemed to be the decision of the Committee.

Subdivision E—Re-appointment Review Committees

Re-appointment Review Committees

27. The Agency shall, from time to time, arrange for the establishment, in accordance with section 28, of such Re-appointment Review Committees as appear to it to be required for the purposes of Division 3 of Part IV of the *Public Service Act 1922*.

Constitution of Re-appointment Review Committees

28. (1) A Re-appointment Review Committee shall consist of—

- (a) a Chairman, who shall be a person appointed by the Agency to be a Chairman of a Re-appointment Review Committee;
- (b) a person nominated by the Public Service Board; and
- (c) a person nominated by the organization that is, as provided by the regulations, the appropriate organization or, in the absence of such a

nomination, nominated in such other manner as the regulations provide.

(2) Where a Re-appointment Review Committee is established to inquire into an application by an applicant whose employment has been, or, in the opinion of the Public Service Board, may have been, terminated on the ground of his misconduct, or into an application made under section 87P of the *Public Service Act 1922*, a person shall not be appointed as Chairman of the Committee unless he is or has been a Magistrate or is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years.

Member ceasing to act

29. (1) Where a Re-appointment Review Committee has been constituted for the purposes of inquiring into an application but, before the application has been finally determined by the Committee, a member or members of the Committee ceases or cease to be such a member or members or, for any other reason, ceases or cease to take part in the determination of the application, the Committee shall be reconstituted by the remaining member or members (if any) and another member or other members appointed or nominated in accordance with sub-section 28 (1).

(2) Where a Re-appointment Review Committee is reconstituted pursuant to sub-section (1), the Committee as reconstituted may, subject to sub-section (3), have regard to the evidence given, the arguments adduced and the reasons for any decision given during the proceedings before the Committee as previously constituted.

(3) Sub-section (2) does not apply in relation to a Re-appointment Review Committee that is reconstituted pursuant to sub-section (1) unless—

- (a) 2 of the members of the Committee as reconstituted were members of the Committee as previously constituted; or
- (b) the parties to the appeal proceedings agree that the sub-section is to apply.

Split decisions

30. For the purposes of the determination of an application or any matter arising in the course of hearing an application, where the members of the Re-appointment Review Committee do not concur in a decision relating to the determination of that application or of that matter—

- (a) if a majority of the members concur in a decision—the decision of the majority shall be deemed to be the decision of the Committee; and
- (b) in any other case—the decision of the Chairman of the Committee shall be deemed to be the decision of the Committee.

Subdivision F—Re-integration Assessment Committees

Interpretation

31. In this Part—

“application” means an application under sub-section 17 (2) or 24 (2) of the relevant Act;

“relevant Act” means the *Members of Parliament (Staff) Act 1984*.

Re-integration Assessment Committees

32. The Agency shall, from time to time, arrange for the establishment, in accordance with section 33, of such Re-integration Assessment Committees as appear to it to be required for the purposes of Parts III and IV of the relevant Act.

Constitution of Re-integration Assessment Committees

33. A Re-integration Assessment Committee shall consist of—

- (a) a Chairman, who shall be a person appointed by the Agency to be a Chairman of a Re-integration Assessment Committee;
- (b) a person nominated by the Public Service Board; and
- (c) a person nominated by the organization that is, as provided by the regulations, the appropriate organization or, in the absence of such a nomination, nominated in such other manner as the regulations provide.

Member ceasing to act

34. (1) Where a Re-integration Assessment Committee has been constituted for the purposes of an inquiry into an application made by an officer but, before the application has been finally determined by the Committee, a member or members of the Committee ceases or cease to be such a member or members or, for any other reason, ceases or cease to take part in the determination of the application, the Committee shall be reconstituted by the remaining member or members (if any) and another member or other members appointed or nominated in accordance with section 33.

(2) Where a Re-integration Assessment Committee is reconstituted pursuant to sub-section (1), the Committee as reconstituted may, subject to sub-section (3), have regard to the evidence given, the arguments adduced and the reasons for any decision given during the inquiry by the Committee as previously constituted.

(3) Sub-section (2) does not apply in relation to a Re-integration Assessment Committee that is reconstituted pursuant to sub-section (1) unless—

- (a) 2 of the members of the Committee as reconstituted were members of the Committee as previously constituted; or
- (b) the officer agrees that the sub-section is to apply.

Split decisions

35. For the purposes of the determination of an application or any matter arising in the course of an inquiry, where the members of the Re-integration Assessment Committee do not concur in a decision relating to the determination of that application or of that matter—

- (a) if a majority of the members concur in a decision—the decision of the majority shall be deemed to be the decision of the Committee; and
- (b) if any other case—the decision of the Chairman of the Committee shall be deemed to be the decision of the Committee.

Subdivision G—Miscellaneous

Members not subject to direction

36. A member of a Review Committee, while acting as such, is not subject to direction by any other person or by any body or authority.

Procedure of Review Committees

37. (1) In proceedings before a Review Committee—

- (a) the procedure of the Committee is, subject to this Act and the relevant Act and to the regulations made under those Acts, within the discretion of the Committee;
- (b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matter before the Committee permits; and
- (c) the Committee is not bound by rules of evidence.

(2) In sub-section (1), “relevant Act” means—

- (a) in relation to a Promotions Appeal Committee, Disciplinary Appeal Committee or Re-appointment Review Committee—the *Public Service Act 1922*;
- (b) in relation to a Redeployment and Retirement Appeal Committee—the *Commonwealth Employees (Redeployment and Retirement) Act 1979* and the *Public Service Act 1922*; and
- (c) in relation to a Re-integration Assessment Committee—the *Members of Parliament (Staff) Act 1984*.

Division 3—Review of certain decisions

Interpretation

38. In this Division, “decision” means a decision made in relation to a Commonwealth employee in relation to his employment as a Commonwealth employee.

Agency may review certain decisions

39. (1) An enactment may provide that applications may be made to the Agency for review of decisions specified in the enactment.

(2) Where an enactment makes provision in accordance with sub-section (1), the enactment—

- (a) shall specify the person or persons to whose decisions the provision applies;
- (b) may be expressed to apply to all decisions of a person, or to a class of such decisions; and
- (c) may specify conditions subject to which applications may be made.

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(3) Where an enactment makes provision in accordance with this section for the making of applications to the Agency for the review of decisions of a person made in the exercise of a power conferred on that person, that provision of that enactment applies also in relation to decisions made in the exercise of that power—

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- (a) by any person to whom that power has been delegated;
- (b) in the case where the provision specifies the person by reference to his being the holder of a particular office or appointment—by any person for the time being acting in, or performing any of the duties of, that office or appointment; or
- (c) by any other person lawfully authorized to exercise that power.

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(4) Where an enactment makes provision in accordance with sub-section (1) for the review of a decision, the enactment shall specify either—

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- (a) that the decision may be reviewed under section 42; or
- (b) that the decision may be reviewed under section 43,

and, if the enactment does not so specify, the enactment shall be deemed to specify that the decision may be reviewed under section 43.

(5) The Agency has power to review any decision in respect of which application is made to it under any enactment.

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(6) For the purposes of an enactment that makes provision in accordance with this section for the making of applications to the Agency for review of decisions, a failure by a person to do an act or thing within the period prescribed by that enactment, or by another enactment having effect under that enactment, or by an industrial award as the period within which that person is required or permitted to do that act or thing shall be deemed to constitute the making of a decision by that person at the expiration of that period not to do that act or thing.

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(7) Where—

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- (a) a person has made a decision in respect of which an application may be made to the Agency;
- (b) the person made the decision in the performance or purported performance of the duties of an office or appointment; and
- (c) the person no longer holds or performs the duties of the office or appointment,

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this Division has effect as if the decision had been made by—

- (d) the person for the time being holding or performing the duties of that office or appointment; or
- (e) if there is not a person for the time being holding or performing the duties of that office or appointment or the office no longer exists—such person as the Director, or another member authorized by the Director, specifies.

Persons who may apply to Agency

40. Where an enactment provides that an application may be made to the Agency for a review of a decision, the application may be made by the Commonwealth employee in relation to whose employment the decision was made.

Procedure of Agency in conduct of reviews

41. Where a Commonwealth employee applies to the Agency in accordance with this Division for review of a decision made by a person, the Agency shall give the employee and that person a reasonable opportunity to put their views in relation to the decision to the Agency and shall take those views into account in considering the application for review.

Review by Agency that may give rise to new decision

42. (1) For the purpose of reviewing a decision that may be reviewed under this section, the Agency may exercise all the powers and discretions that are conferred by any relevant enactment or industrial award on the person who made the decision and shall make a decision in writing—

- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and—
 - (i) making a decision in substitution for the decision so set aside; or
 - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Agency.

(2) The Agency shall cause a copy of its decision to be given to the person applying for review and the person who made the decision under review.

(3) Subject to sub-section (4), a decision of the Agency comes into operation forthwith upon the giving of the decision.

(4) The Agency may specify in a decision that the decision is not to come into operation until a later date specified in the decision and, where a later date is so specified, the decision comes into operation on that date.

(5) A decision of a person as varied by the Agency, or a decision made by the Agency in substitution for the decision of a person, shall, for all purposes (other than the purposes of applications to the Agency for a review), be deemed to be a decision of that person and, upon the coming into operation of the decision of the Agency, unless the Agency otherwise orders, has effect, or

shall be deemed to have had effect, on and from the day on which the decision under review has or had effect.

Review by Agency that may give rise to recommendation only

43. (1) For the purpose of reviewing a decision that may be reviewed under this section, the Agency shall make a decision in writing—

- (a) affirming the decision under review; or
- (b) making a recommendation in relation to the decision under review or in relation to the matter in respect of which the decision under review was made.

(2) The Agency shall cause a copy of its decision to be given to the person applying for review and the person who made the decision under review.

(3) Where the Agency, pursuant to paragraph (1) (b), makes a recommendation in relation to the decision under review, the person who made the decision shall, having regard to that recommendation, reconsider the matter in relation to which the decision under review was made.

(4) Where, pursuant to paragraph (1) (b), the Agency recommends that—

- (a) the decision under review be varied; or
- (b) the decision under review be set aside and—
 - (i) a specified decision be made in substitution for the decision so set aside; or
 - (ii) a decision be made, in accordance with specified directions, in substitution for the decision so set aside,

the person who made the decision under review has, by virtue of this sub-section, power to take any action necessary to give effect to the recommendation of the Agency.

(5) Where the Agency, pursuant to paragraph (1) (b), makes a recommendation and action that is, in the opinion of the Agency, adequate and appropriate in the circumstances is not taken with respect to the recommendation within a reasonable time after the Agency makes the recommendation, the Agency may inform the Prime Minister accordingly in writing.

(6) Where the Agency has, in accordance with sub-section (5), furnished information to the Prime Minister in relation to a recommendation, the Agency may also forward to the President of the Senate and the Speaker of the House of Representatives, for presentation to the Senate and the House of Representatives, respectively, copies of a report prepared by it concerning the recommendation for presentation to both Houses of the Parliament.

Agency may seek views of Public Service Board

44. (1) Where a Commonwealth employee applies to the Agency in accordance with this Division for review of a decision made by a person other than the Public Service Board, the Agency may, if it thinks fit, request the

Public Service Board to give comments to the Agency in relation to the decision.

(2) Where the Agency receives comments from the Public Service Board under sub-section (1), the Agency shall inform the Commonwealth employee of the comments received.

Applications by former Commonwealth employees

45. A person who ceases to be a Commonwealth employee shall be deemed for the purposes of this Division to continue to be a Commonwealth employee in relation to decisions that were or are made in relation to the person in relation to his employment as a Commonwealth employee.

Division 4—Grievances

Interpretation

46. (1) In this Division, unless the contrary intention appears—

“action” means action taken by a Department or Commonwealth authority in relation to a Commonwealth employee in relation to his employment as a Commonwealth employee;

“officer” means—

(a) in relation to a Department—

(i) an officer or employee, within the meaning of the *Public Service Act 1922*, in the Department (including the principal officer of the Department); or

(ii) any other person (not being a Minister) authorized to exercise powers or perform functions of the Department on behalf of the Department; and

(b) in relation to a Commonwealth authority—

(i) the person who constitutes, or is acting as the person who constitutes, the authority;

(ii) a person who is, or is acting as, a member of the authority or is a deputy of such a member;

(iii) a person who is employed in the service of, or is a member of the staff of, the authority, whether or not he is employed by the authority; or

(iv) a person authorized by the authority to exercise any powers or perform any functions of the authority on behalf of the authority;

“principal officer” means—

(a) in relation to a Department—the Secretary of the Department; and

(b) in relation to a Commonwealth authority—

(i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or

- (ii) in any other case—the person who constitutes, or is acting as the person who constitutes, that authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he is present.

(2) Where—

- (a) a person who is not an officer of a Department, or of a Commonwealth authority, for the purposes of this Division takes action in the exercise of a power or the performance of a function that the person is authorized to exercise or to perform, as the case may be, by reason of his holding an appointment made by, or by reason of authority given by, the Governor-General, a Minister or the Secretary of a Department; and
- (b) the person does not exercise the power or perform the function by reason of his holding, or performing the duties of, an office established by, or in accordance with the provisions of, an enactment or by reason of his being a Judge of a court of, or a magistrate of, a State or Territory,

the action shall be deemed to be taken, for the purposes of this Division, by the Department responsible for dealing with the matter in connection with which the action is taken.

(3) Notwithstanding sub-section (2), where a person is authorized to exercise a power or perform a function by reason of his holding an appointment made by, or by reason of authority given by, the Governor-General, a Minister or the Secretary of a Department otherwise than under an enactment, the regulations may provide that action taken by the person in the exercise of that power or the performance of that function shall not be deemed to be taken, for the purposes of this Division, by the Department responsible for dealing with the matter in connection with which the action is taken.

(4) For the purposes of this Division, action that is taken by an officer of a Department shall be deemed to be taken by the Department—

- (a) if the officer takes, or purports to take, the action by virtue of his being an officer of the Department, whether or not—
 - (i) the action is taken for or in connection with, or as incidental to, the performance of the functions of the Department; or
 - (ii) the taking of the action is within the duties of the officer; or
- (b) if the officer takes, or purports to take, the action in the exercise of powers or the performance of functions conferred on him by an enactment.

(5) For the purposes of this Division, action that is taken by an officer of a Commonwealth authority shall be deemed to be taken by the authority—

(a) if the officer takes, or purports to take, the action by virtue of his being an officer of the authority whether or not—

(i) the action is taken for or in connection with, or as incidental to, the performance of the functions of the authority; or

(ii) the taking of the action is within the duties of the officer; or

(b) if the officer takes, or purports to take, the action in the exercise of powers or the performance of functions conferred on him by an enactment.

(6) In this Division, unless the contrary intention appears, a reference to the taking of action includes a reference to—

(a) the making of a decision or recommendation;

(b) the formulation of a proposal; and

(c) failure or refusal to take any action, to make a decision or recommendation or to formulate a proposal.

Agency may inquire into certain grievances

47. (1) An enactment may provide that applications may be made to the Agency for the investigation, in accordance with this Division, of actions of a kind specified in the enactment.

(2) Where an enactment makes provision in accordance with sub-section (1), the enactment may specify conditions subject to which applications may be made.

(3) The Agency has power to investigate, in accordance with this Division, any action in respect of which application is made to it under any enactment.

(4) For the purposes of an enactment that makes provision in accordance with this section for the making of applications to the Agency for investigation of actions taken by a Department or Commonwealth authority, a failure by a Department or Commonwealth authority to do an act or thing within the period prescribed by that enactment, or by another enactment having effect under that enactment, or by an industrial award as the period within which the Department or Commonwealth authority is required or permitted to do that act or thing shall be deemed to constitute the making of a decision by the Department or Commonwealth authority at the expiration of that period not to do that act or thing.

Persons who may apply to Agency

48. Where an enactment provides that an application may be made to the Agency for investigation of an action, the application may be made by the Commonwealth employee in relation to whose employment the action was taken.

Discretion not to investigate

49. (1) Where a Commonwealth employee has made an application to the Agency with respect to action taken by a Department or Commonwealth authority, the Agency may, in its discretion, decide not to investigate the action or, if it has commenced to investigate the action, decide not to investigate the action further— 5

- (a) if the Agency is satisfied that the employee became aware of the action more than 12 months before the application was made to the Agency; or
- (b) if, in the opinion of the Agency— 10
 - (i) the application is frivolous or vexatious or was not made in good faith;
 - (ii) the employee has a right to apply to another person or authority in relation to the action and it is more appropriate that the action be dealt with by that person or authority rather than by the Agency; or 15
 - (iii) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances of the case.

(2) Where a Commonwealth employee has exercised, or exercises, a right to cause action to which his application relates to be reviewed by a court or by a tribunal constituted by or under an enactment, the Agency shall not investigate, or continue to investigate, as the case may be, the action unless the Agency is of the opinion that there are special reasons justifying the investigation of the action or the investigation of the action further. 20

Employee may apply to Agency for investigation of certain grievances 25

50. (1) In addition to any right that a Commonwealth employee may have to apply to the Agency under section 47, a Commonwealth employee may apply to the Agency for investigation, in accordance with this Division, of an action taken by a Department or Commonwealth authority—

- (a) on the grounds that— 30
 - (i) the action constitutes harassment of the employee for having applied to have other action (in this paragraph referred to as the “original action”) investigated (whether by the Agency under section 47 or this section or by some other person or authority); and 35
 - (ii) the original action was action in respect of which the employee—
 - (A) made an application to the Agency under section 47 or this section; or
 - (B) was entitled to make an application to the Agency under section 47 or this section; or 40
- (b) on the grounds that—
 - (i) the action is action in respect of which the employee would be entitled to make an application to the Agency under section 47

if the alleged action were first considered by some other person or authority; and

- (ii) it is not appropriate, because of the seriousness or the sensitivity of the action, for that person or authority to consider the action.

(2) Where a Commonwealth employee applies to the Agency under sub-section (1) in relation to an action, the Agency may, if it thinks fit, investigate the action.

(3) Where a Commonwealth employee applies to the Agency under sub-section (1) for investigation of an action, the Agency shall, if it decides not to investigate the action, inform the employee in writing of its decision.

Agency to inquire into grievances

51. (1) Subject to section 49, where a Commonwealth employee applies to the Agency under section 47 or 50 in relation to action taken by a Department or Commonwealth authority, the Agency shall—

- (a) inquire into the circumstances relating to the action; and
- (b) attempt to resolve the dissatisfaction of the employee with the action by such of the following means as the Agency considers appropriate:
 - (i) counselling separately the employee and relevant officers of the Department or Commonwealth authority;
 - (ii) conciliating between the employee and relevant officers of the Department or Commonwealth authority;
 - (iii) making a finding of fact under sub-section (2);
 - (iv) making a recommendation under sub-section (3).

(2) Where a Commonwealth employee applies to the Agency under section 47 or 50 in relation to action taken by a Department or Commonwealth authority and the Agency is satisfied that—

- (a) a question of fact is in dispute between the employee and the Department or Commonwealth authority; and
- (b) the making of a finding under this sub-section would promote the resolution of the dissatisfaction of the employee with the action,

the Agency may make a finding in relation to that question of fact and, where the Agency makes such a finding, it shall give a written statement setting out the terms of the finding to the employee and to the Department or Commonwealth authority.

(3) Where a Commonwealth employee applies to the Agency under section 47 or 50 in relation to action taken by a Department or Commonwealth authority and the Agency is satisfied that the making of a report to the Department or Commonwealth authority under sub-section (4) would promote the resolution of the dissatisfaction of the employee with the action, the Agency may make such a report under that sub-section.

(4) Where, after an investigation under this Division into action (in this sub-section referred to as the 'relevant action') taken by a Department or Commonwealth authority has been completed, the Agency is of the opinion, having regard to the objects referred to in sub-section 4 (1), that the relevant action was wrong and that— 5

- (a) a decision, recommendation, act or omission comprised or included in the relevant action should be referred to the appropriate authority for further consideration;
- (b) some particular action could be, and should be, taken to rectify, mitigate or alter the effects of a decision, recommendation, act or omission comprised or included in the relevant action; 10
- (c) a decision comprised or included in the relevant action should be cancelled or varied;
- (d) a rule of law, provision of an enactment or industrial award or practice on which a decision, recommendation, act or omission comprised or included in the relevant action was based should be altered; 15
- (e) reasons should have been, but were not, given for a decision comprised or included in the relevant action; or
- (f) any other thing should be done in relation to a decision, recommendation, act or omission comprised or included in the relevant action, 20

the Agency may report accordingly, in writing, to the Department or Commonwealth authority concerned.

- (5) The Agency—
- (a) shall include in a report under sub-section (4) its reasons for the opinions specified in the report; and 25
 - (b) may also include in such a report any recommendations it thinks fit to make.

(6) Where the Agency makes a report under sub-section (4) in relation to action taken by a Department or Commonwealth authority in relation to a Commonwealth employee, the Agency shall give to the employee a copy of the report. 30

(7) The Agency may request the Department or Commonwealth authority to which the report is made to furnish to it, within a specified time, particulars of any action that it proposes to take with respect to the matters and recommendations included in the report. 35

(8) Where the Agency reports under sub-section (4) to a Department or Commonwealth authority, the Department or authority may furnish to the Agency such comments concerning the report as it wishes to make.

Reports to Prime Minister 40

52. (1) Where action that is, in the opinion of the Agency, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in a report to a Department or Commonwealth

authority under section 51 within a reasonable time after the Agency made the report to the Department or Commonwealth authority, the Agency may, in writing, inform the Prime Minister accordingly.

(2) Where the Agency furnishes information to the Prime Minister in accordance with sub-section (1) in relation to a report, the Agency shall furnish to the Prime Minister with the information—

(a) a copy of the report; and

(b) if the Department or Commonwealth authority to which the report was made has furnished comments concerning the report to the Agency—a copy of those comments.

(3) In considering whether to furnish information in relation to a report to the Prime Minister in accordance with sub-section (1), the Agency shall have regard to any comments furnished to it by the Department or Commonwealth authority to which the report was made.

Special reports to the Parliament

53. Where the Agency has, in accordance with sub-section 52 (1), furnished information to the Prime Minister in relation to a report concerning an investigation made by the Agency, the Agency may also forward to the President of the Senate and the Speaker of the House of Representatives, for presentation to the Senate and the House of Representatives, respectively, copies of a report prepared by it concerning the investigation for presentation to both Houses of the Parliament, being a report that sets out any comments furnished to the Agency under sub-section 51 (8) by the Department or Commonwealth authority concerned.

Conduct of investigations

54. (1) Before commencing to investigate action taken by a Department or Commonwealth authority, the Agency shall inform such officer in the Department or authority as the Agency considers appropriate that the action is to be investigated.

(2) It is not necessary for the applicant or any other person to be afforded an opportunity to appear before the Agency or any other person in connection with an investigation by the Agency under this Division.

Applications by former Commonwealth employees

55. A person who ceases to be a Commonwealth employee shall be deemed for the purposes of this Division to continue to be a Commonwealth employee in relation to actions that were or are taken in relation to the person in relation to his employment as a Commonwealth employee.

Division 5—Inquiries

Inquiries by Agency

56. (1) The Minister or the Public Service Board may request the Agency ,
in writing, to conduct an inquiry into—

- (a) a decision made, or an action taken, in relation to a Commonwealth employee in relation to his employment as a Commonwealth employee; or 5
- (b) decisions of a specified kind made, or actions of a specified kind taken, in relation to Commonwealth employees included in a specified class of Commonwealth employees in relation to their employment as Commonwealth employees. 10

(2) Where the Agency is requested under sub-section (1) to conduct an inquiry into a matter, the Agency may conduct an inquiry into that matter and, where it conducts such an inquiry, shall provide to the Minister or the Board, as the case requires, a report in writing setting out the results of the inquiry. 15

Division 6—Provision of advice on grievances and appeals

Agency to provide, on request, advice on grievance and appeal rights

57. (1) Where a Commonwealth employee requests the Agency for advice in relation to the employees' rights in relation to a decision or action, the Agency shall inform the employee of any relevant right of review the employee may have in relation to the decision or action. 20

(2) In sub-section (1)—

“action” has the same meaning as in Division 4;

“decision” has the same meaning as in Division 3;

“relevant rights of review” means a right— 25

- (a) to apply for review of a decision under Division 3;
- (b) to apply for an investigation of an action under Division 4; or
- (c) to appeal or apply to a Review Committee within the meaning of Division 2.

Division 7—Procedure and Powers 30

Procedure

58. (1) A review under Division 3, an investigation under Division 4 and an inquiry under Division 5 shall be conducted in private and, subject to this Act and the regulations, in such manner as the Agency thinks fit.

(2) Subject to this Act and the regulations, the Agency may, for the purposes of a review, investigation or inquiry referred to in sub-section (1), obtain information from such persons, and make such inquiries, as it thinks fit. 35

Power to obtain information and documents

59. (1) Where the Director has reason to believe that a person is capable of furnishing information or producing documents or other records relevant to—

- (a) a decision being reviewed by the Agency in accordance with Division 3;
- (b) an action being investigated by the Agency in accordance with Division 4; or
- (c) an inquiry being conducted by the Agency in accordance with Division 5,

the Director may, by notice in writing served on the person, require that person, at such place, and within such period or on such date and at such time, as are specified in the notice—

- (d) to furnish to the Director, by writing signed by that person or, in the case of a body corporate, by an officer of the body corporate, any such information; or
- (e) to produce to the Director such documents or other records as are specified in the notice.

(2) Where documents or other records are produced to the Director in accordance with a requirement under sub-section (1), the Director—

- (a) may take possession of, and may make copies of, or take extracts from, the documents or other records;
- (b) may retain possession of the documents or other records for such period as is necessary for the purposes of the review, investigation or inquiry to which the documents or other records relate; and
- (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents or other records if they were not in the possession of the Director to inspect at all reasonable times such of the documents or other records as that person would be so entitled to inspect.

(3) Where the Director has reason to believe that a person is able to give information relevant to—

- (a) a decision being reviewed by the Agency in accordance with Division 3;
- (b) an action being investigated by the Agency in accordance with Division 4; or
- (c) an inquiry being conducted by the Agency in accordance with Division 5,

the Director may, by notice in writing served on the person, require the person to attend before him, on such date and at such time and place as are specified in the notice, to answer questions relevant to the decision, action or inquiry, as the case may be.

(4) Where the Attorney-General furnishes to the Director a certificate certifying that the disclosure to the Director of information concerning a

specified matter (including the furnishing of information in answer to a question) or the disclosure to the Director of the contents of any documents or records would be contrary to the public interest—

- (a) by reason that it would prejudice the security, defence or international relations of the Commonwealth; 5
- (b) by reason that it would involve the disclosure of communications between a Minister and a Minister of a State or of the Northern Territory, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State or of the Northern Territory, as the case may be; 10
- (c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
- (d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council, 15

the Director is not entitled to require a person to furnish any information concerning the matter, to answer questions concerning the matter or to produce those documents or records to the Director. 15

(5) A person is not liable to any penalty under the provisions of any other enactment by reason of his furnishing information, producing a document or other record or answering a question when required to do so under this Act. 20

(6) The reference in sub-section (1) to an officer, in relation to a body corporate that is not a Commonwealth authority, includes a reference to a director, secretary, executive officer or employee of the body corporate.

Power to examine witnesses

60. The Director may administer an oath or affirmation to a person required to attend before him in pursuance of section 59 and may examine the person on oath or affirmation. 25

Power to enter premises

61. (1) For the purposes of—

- (a) a review under Division 3; 30
- (b) an investigation under Division 4; or
- (c) the conduct of an inquiry under Division 5,

an authorized person may, at any reasonable time of the day, enter any place occupied by a Department or Commonwealth authority and may carry on the review, investigation or inquiry at the place. 35

(2) Sub-section (1) does not authorize a person to enter, or carry out a review, investigation or inquiry at—

- (a) a place referred to in paragraph 80 (c) of the *Crimes Act 1914*;
- (b) a place that is a prohibited place for the purposes of the *Defence (Special Undertakings) Act 1952* by virtue of section 7 of that Act; or 40

- (c) an area of land or water or an area of land and water that is declared under section 14 of the *Defence (Special Undertakings) Act 1952* to be a restricted area for the purposes of that Act,

5 unless the Minister administering that Act, or another Minister acting for and on behalf of that Minister, has approved his entering the place or area and he complies with any conditions imposed by the Minister giving the approval in relation to his entering that place or area and the manner in which the review, investigation or inquiry is to be carried out at that place or area.

10 (3) Where the Attorney-General is satisfied that the carrying out of a review, investigation or inquiry at a place might prejudice the security or defence of the Commonwealth, the Attorney-General may, by notice in writing delivered to the Director, declare the place to be a place to which this sub-section applies and, while the declaration is in force, sub-section (1) does not authorize a person to enter, or carry out a review, investigation or inquiry
15 at, the place unless a Minister specified in the declaration, or another Minister acting for and on behalf of that Minister, has approved his entering the place and he complies with any conditions imposed by the Minister giving the approval in relation to his entering the place and the manner in which the review, investigation or inquiry is to be carried out at that place.

20 (4) For the purposes of a review, investigation or inquiry under this Act, an authorized person is entitled to inspect any documents relevant to the review, investigation or inquiry kept at premises entered by him under this section, other than documents in respect of which the Attorney-General has furnished a certificate under sub-section 59 (4), at a reasonable time of the day arranged
25 with the principal officer of the Department or Commonwealth authority concerned.

(5) Sub-section (4) shall not be taken to restrict the operation of section 59.

30 (6) A reference in this section to an authorized person includes a reference to the Director.

Powers of delegates

62. Where the Agency delegates to a person its powers and functions in relation to—

- (a) a review under Division 3;
35 (b) an investigation under Division 4; or
(c) an inquiry under Division 5,

sections 59, 60 and 81 apply in relation to the review, investigation or inquiry, as the case may be, as if references in those sections to the Director were a reference to that person.

PART III—CONSTITUTION AND ORGANIZATION OF AGENCY

Constitution of Agency

63. (1) The Agency shall consist of the following members, namely:

- (a) the Director; and
- (b) not less than 2, and not more than 4, other members. 5

(2) The Director and the other members shall be appointed by the Governor-General.

(3) The Director shall be appointed on a full-time basis.

(4) Subject to sub-section (5), a member (other than the Director) may be appointed on either a full-time or a part-time basis. 10

(5) Not more than 2 members (other than the Director) may be appointed on a full-time basis.

(6) One full-time member (who may be the Director) shall be selected after consultation between the Minister or his representative and the Australian Council of Trade Unions. 15

(7) The Director and the other members hold office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister by writing.

(8) The performance of the functions, and the exercise of the powers, of the Agency are not affected by reason only of there being a vacancy or vacancies in the membership of the Agency. 20

(9) The reference in sub-section (6) to a representative of the Minister shall be read as a reference to a person appointed by the Minister, in writing, to be his representative for the purposes of that sub-section.

Period of appointment of members 25

64. (1) Subject to this Part—

- (a) the Director holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment, but is eligible for re-appointment; and
- (b) a member (other than the Director) holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment. 30

(2) A person who has attained the age of 65 years shall not be appointed as a member and a person shall not be appointed as a member for a period that extends beyond the day on which he will attain the age of 65 years. 35

Remuneration and allowances of members

65. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of the remuneration by the

Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

5 (3) Sub-sections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

66. The Minister may—

- 10 (a) grant leave of absence to a full-time member on such terms and conditions as to remuneration or otherwise as the Minister determines in writing; and
- (b) grant to a part-time member leave of absence from a meeting or meetings of the Agency.

Outside employment

15 67. Except with the consent of the Minister, a full-time member shall not engage in paid employment outside the duties of his office.

Resignation

68. A member may resign his office by writing signed by him and delivered to the Governor-General.

Acting Director

20 69. (1) The Minister may appoint a member (other than the Director) or another person—

- (a) to act as Director during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
- 25 (b) to act as Director during any period, or during all periods, when the Director is absent from duty or from Australia or is for any reason, unable to perform the duties of his office.

(2) An appointment to act as Director may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

30 (3) A person appointed under sub-section (1) to act during a vacancy in the office of Director shall not continue so to act for more than 12 months.

(4) Where a person is acting as Director otherwise than by reason of a vacancy in the office of Director and the office becomes vacant while the person is so acting, then, subject to sub-section (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurs expires, whichever first occurs.

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(5) While a person is acting as Director, he has and may exercise all the powers, and shall perform all the duties, of the Director.

(6) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Director; and

(b) terminate such an appointment at any time.

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(7) A person appointed to act as Director may resign his appointment by writing signed by him and delivered to the Minister.

(8) The validity of anything done by or in relation to a person purporting to act as Director shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

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Acting member

70. (1) The Minister may appoint a person—

(a) to act as a member, on a full-time or part-time basis, during a vacancy in the office of a member, whether or not an appointment has previously been made to the office;

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(b) where a member has been appointed on a full-time basis—to act as a member, on a full-time or part-time basis, during any period, or during all periods, when the member is absent from duty or from Australia or is, for any reason, unable to perform the duties of his office; or

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(c) where a member has been appointed on a part-time basis—to act as a member, on a part-time basis, during any period, or during all periods, when the member is absent from Australia or is, for any reason, unable to perform the duties of his office.

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(2) An appointment to act as a member may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) A person appointed under sub-section (1) to act during a vacancy in the office of a member shall not continue so to act for more than 12 months.

(4) Where a person is acting as a member otherwise than by reason of a vacancy in the office of a member and the office becomes vacant while the person is so acting, then, subject to sub-section (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurs expires, whichever first occurs.

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(5) While a person is acting as a member, he has and may exercise all the powers, and shall perform all the duties, of a member.

(6) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as a member; and

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(b) terminate such an appointment at any time.

(7) A person appointed to act as a member may resign his appointment by writing signed by him and delivered to the Minister.

5 (8) The validity of anything done by or in relation to a person purporting to act as a member shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

(9) In this section, 'member' does not include the Director.

Meetings of Agency

10 71. (1) The Agency shall hold such meetings as are necessary for the efficient performance of its functions.

(2) The Director may, at any time, convene a meeting of the Agency.

(3) The Director shall preside at all meetings of the Agency at which he is present.

15 (4) Where the Director is not present at a meeting of the Agency, the members present shall appoint one of their number to preside at the meeting.

(5) At a meeting of the Agency, not less than one-half of the members constitute a quorum.

20 (6) Questions arising at a meeting of the Agency shall be determined by a majority of the votes of the members present and voting.

(7) The person presiding at a meeting of the Agency has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) A reference in this section to the Director is, if there is an acting Director, a reference to the acting Director.

25 (9) A reference in this section to a member includes, unless the contrary intention appears, a reference to an acting Director who is not a member and to an acting member.

Disclosure of interests of member in relation to reviews and inquiries

72. (1) Where—

30 (a) the Agency is reviewing, or is to review, a decision in accordance with Division 3 or is conducting, or is to conduct, an inquiry in accordance with Division 5; and

(b) a member has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his functions in relation to the matter,

35 the member—

(c) shall disclose the interest to the parties to the proceeding; and

(d) except with the consent of all the parties to the proceeding, shall not take part in the proceeding.

(2) Where the Minister becomes aware that—

(a) the Agency is reviewing, or is to review, a decision in accordance with Division 3 or is conducting, or is to conduct, an inquiry in accordance with Division 5; and

(b) a member has, in relation to the matter, such an interest as is mentioned in sub-section(1), 5

then—

(c) if the Minister considers that the member should not take part, or should not continue to take part, in the proceeding—he shall give a direction to the member accordingly; or 10

(d) in any other case—he shall cause the interest of the member to be disclosed to the parties to the proceeding.

(3) In this section—

(a) a reference to a proceeding shall be read as a reference to a proceeding by way of a review by the Agency of a decision in accordance with Division 3 or an inquiry by the Agency in accordance with Division 5; 15

(b) a reference to a party to a proceeding, being a review of a decision by the Agency in accordance with Division 3, shall be read as a reference to the Commonwealth employee applying for review of the decision and the person who made the decision; and 20

(c) a reference to a party to a proceeding, being an inquiry by the Agency in accordance with Division 5, shall be read as a reference to a person or organization recognized by the Agency as a party to the inquiry.

Disclosure of interests of members in relation to other matters

73. (1) A member who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Agency (not being a matter to which section 72 applies) shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Agency. 25

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Agency and the member shall not, unless the Minister or the Agency otherwise determines— 30

(a) be present during any deliberation of the Agency with respect to that matter; or

(b) take part in any decision of the Agency with respect to that matter. 35

(3) For the purpose of the making of a determination by the Agency under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

(a) be present during any deliberation of the Agency for the purpose of making the determination; or 40

(b) take part in the making by the Agency of the determination.

Retirement

74. The Governor-General may, with the consent of a member, retire the member on the ground of physical or mental incapacity.

Suspension and removal of member

5 75. (1) The Governor-General may remove a member from office on an address praying for his removal on the ground of misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

10 (2) The Governor-General may suspend a member from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Governor-General suspends a member from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

15 (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that a member should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the member from office.

20 (5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House had not passed such a resolution, the suspension terminates.

(6) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

25 (7) If—

(a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) a full-time member—

30 (i) engages, except with the approval of the Minister, in paid employment outside the duties of his office; or

(ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or 28 days in any 12 months;

35 (c) a part-time member is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Agency; or

(d) a member fails, without reasonable excuse, to comply with his obligations under section 72 or 73,

the Governor-General shall terminate the appointment of the member.

40 (8) A member shall not be removed or suspended from office except as provided by this section.

Superannuation

76. For the purposes of the *Superannuation Act 1976*, the removal under section 75 of this Act of a member from office following his suspension from office on the ground of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

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Staff

77. (1) The staff required for the purposes of this Act shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Director has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Public Service.

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(3) For the purposes of section 26 of the *Public Service Act 1922*, the Director shall be deemed to be a Secretary.

Delegation by Agency

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78. (1) The Agency may, by resolution, either generally or as otherwise provided by the resolution, delegate to a person any of its powers or functions under this Act, other than this power of delegation.

(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Agency.

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(3) A delegation of a power or function under this section—

(a) may be revoked by a resolution of the Agency (whether or not constituted by the persons constituting the Agency at the time when the power or function was delegated);

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(b) does not prevent the exercise of the power or the performance of the function by the Agency; and

(c) continues in force notwithstanding a change in the membership of the Agency.

(4) Without limiting the generality of sub-section (1), the reference in that sub-section to a function of the Agency includes a reference to the function of the Agency—

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(a) to review a decision under Division 3;

(b) to investigate an action under Division 4; or

(c) to conduct an inquiry under Division 5.

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(5) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this section as if the Agency were a person.

Delegation by Director

79. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Act, other than this power of delegation.

5 **(2)** A power so delegated, when exercised, by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Director.

(3) A delegation under this section does not prevent the exercise of a power by the Director.

10 **(4)** Without limiting the generality of sub-section (1), the reference in that sub-section to a power of the Director includes a reference to the power of the Director under section 60.

PART IV—MISCELLANEOUS

Agency not to be sued

15 **80.** The Agency, a member or a person acting under the direction or authority of the Agency or a member is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise or purported exercise of any power or authority conferred by this Act.

Offences

20 **81. (1)** A person shall not refuse or fail, without reasonable excuse—

 (a) to attend before the Director;

 (b) to be sworn or make an affirmation; or

 (c) to answer a question or produce a document or record,

when so required in pursuance of this Act.

25 Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) A person shall not furnish information or make a statement to the Agency, a member or an authorized officer that is, to the knowledge of the person, false or misleading in a material particular.

 Penalty: \$2,000 or imprisonment for 1 year, or both.

30 **(3)** A person shall not—

 (a) obstruct or hinder the Agency or member or acting member in the performance of the functions of the Agency; or

 (b) disrupt a hearing of the Agency,

 Penalty: \$1,000 or imprisonment for 6 months, or both.

35 **(4)** An offence against sub-section (1), (2) or (3) is punishable on summary conviction.

Protection from civil actions

82. (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person by reason of—

- (a) the making of an application to the Agency under this Act; or
- (b) the making of a statement to, or the furnishing of a document or information to, an officer for the purposes of this Act. 5

(2) In sub-section (1), “officer” means—

- (a) a member;
- (b) a person who is a member of the staff referred to in sub-section 77 (1); or 10
- (c) a person, not being a person referred to in paragraph (b), to whom the Agency has delegated any of its powers or functions under section 78, to whom the Director has delegated any of his powers under section 79 or who is an authorized person.

Annual Report 15

83. (1) The Agency shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of the operations of the Agency during that year.

(2) The Minister shall cause a copy of a report furnished to him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he receives the report. 20

(3) Without limiting the generality of sub-section (1), a report by the Agency of its operations during a year shall include particulars of the kinds of decision that, as at 30 June in that year, were decisions in relation to which applications could be made to the Agency under Division 3 of Part II. 25

Officers to observe secrecy

84. (1) In this section, “officer” means—

- (a) a member;
- (b) a person who is a member of the staff referred to in sub-section 77 (1); or 30
- (c) a person, not being a person referred to in paragraph (b), to whom the Agency has delegated any of its powers or functions under section 78, to whom the Director has delegated any of his powers under section 79 or who is an authorized person.

(2) Subject to this section, an officer shall not, directly or indirectly, and either while he is, or after he ceases to be, an officer, make a record of, or divulge or communicate to any person, any information acquired by him by reason of his being an officer, being information that was disclosed or obtained under the provisions of this Act. 35

Penalty: \$1,000 or imprisonment for 6 months, or both. 40

(3) Sub-section (2) does not prevent an officer—

(a) from making a record of, or divulging or communicating to any person, information acquired by him in the performance of his duties as an officer for purposes connected with the exercise of the powers and with the performance of the functions of the Agency under this Act; or

(b) from divulging or communicating information to a person—

(i) if the information was furnished by an officer of a Department or Commonwealth authority in the performance of his duties as such an officer—with the consent of the principal officer of the Department or authority or of the responsible Minister; or

(ii) if the information was furnished by a person otherwise than as set out in sub-paragraph (i)—with the consent of the person who furnished the information.

(4) Sub-section (2) does not prevent the Agency from disclosing, in a report made under this Act, such matters as, in its opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.

(5) A person who is or has been an officer is not compellable, in any proceedings before a court (whether exercising federal jurisdiction or not) or before a person authorized by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear, receive or examine evidence, to disclose any information acquired by him by reason of his being or having been an officer, being information that was disclosed or obtained under the provisions of this Act.

Regulations

85. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of the matters that may be prescribed under sub-section (1), regulations may be made under that sub-section prescribing—

(a) the procedure of the Agency;

(b) the manner in which, and the time within which, applications may be made to the Agency under section 50;

(c) the procedure and duties of Promotion Appeal Committees;

(d) the procedure of Disciplinary Appeal Committees including, without limiting the generality of the foregoing—

(i) the procedure for summoning witnesses and requiring the production of documents; and

(ii) the procedure for the service of documents upon persons;

- (e) the circumstances in which, and the procedure by which, the evidence of a person appealing to a Disciplinary Appeal Committee or of a witness concerned in that appeal may be taken by a person (other than a member of that Committee) who is authorized to take that evidence;
- (f) matters in relation to costs in appeals made to Disciplinary Appeal Committees and the assessment of those costs; 5
- (g) penalties, not exceeding a fine of \$500, for a failure of a person to attend, or to answer questions, before, or to produce documents to, a Disciplinary Appeal Committee, in obedience to a summons issued by that Committee or by a member of that Committee; 10
- (h) matters in relation to the procedure of Redeployment and Retirement Appeal Committees, including, without limiting the generality of the foregoing—
 - (i) the manner by which, and the circumstances in which, 2 or more appeals may be consolidated and heard together; 15
 - (ii) the manner in which employees (within the meaning of the *Commonwealth Employees (Redeployment and Retirement) Act 1979*) may be joined as parties to an appeal under sub-section 15 (5) of that Act;
 - (iii) the procedure for summoning witnesses and requiring the production of documents; and 20
 - (iv) the procedure for the service of documents upon persons;
- (j) the circumstances in which, and the procedure by which, the evidence of a Commonwealth employee appealing to a Redeployment and Retirement Appeal Committee, or of a witness concerned in an appeal to a Redeployment and Retirement Appeal Committee, may be taken by a member of the Committee, or a person other than a member of the Committee, who is authorized by the Committee to take that evidence; 25
- (k) the application of the provisions of this Act, subject to such modifications and adaptations (if any) as are prescribed, to and in relation to— 30
 - (i) members of the Australian Federal Police;
 - (ii) persons appointed as officers or engaged as employees under the *Commonwealth Teaching Service Act 1972*;
 - (iii) persons who hold offices or appointments (not being offices or appointments in the Defence Force) under regulations made under the *Naval Defence Act 1910*; 35
 - (v) persons who are employed under section 10 of the *Supply and Development Act 1939*;
 - (vi) persons employed as officers of the Australian Security Intelligence Organization; or 40
 - (vii) officers appointed in pursuance of section 10 of the *Trade Commissioners Act 1933*.

(2) In sub-section (1), “modification” includes the addition or omission of a provision or the substitution of a provision for another provision. 45

