

1992

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

**FIRE BRIGADE (ADMINISTRATION) (AMENDMENT) BILL
1992**

EXPLANATORY MEMORANDUM

**Circulated by authority of
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AUSTRALIAN CAPITAL TERRITORY**FIRE BRIGADE (ADMINISTRATION) (AMENDMENT) BILL 1992****OUTLINE**

This Bill amends the *Fire Brigade (Administration) Act 1974* to provide for equal opportunity in appointment and promotion of staff, and to ensure that these are based on the principle of merit. The Bill also requires the establishment of an equal opportunity program to assist in preventing unlawful discrimination and to promote equal opportunity for women and people in minority groups, as well as for others, to advance their careers in the Brigade.

These amendments correspond to similar amendments being made to the establishing Acts of ACT public authorities as an integral part of the package of legislation which complements the passage of the *Discrimination Act 1991*.

The amendments are based on the equal opportunity provisions of the *Public Service Act 1922* and will therefore make the *Fire Brigade (Administration) Act* consistent with the law applying in the rest of the ACT public sector.

Financial Considerations: There are no financial considerations involved.

FORMAL CLAUSES

Clauses 1 and 3 are formal requirements. They refer to the short title of the Bill, and definition of the Principle Act.

Clause 2 provides that the amendments will commence on a day, or days, to be notified by the Minister in the *Gazette*, or no later than 6 months after the Act is notified in the *Gazette* as having been passed.

AMENDMENTS**Application of the Bill to the Commissioner's powers in relation to employment matters'**

The key provisions of the Bill apply to the exercise of the Commissioner's powers in relation to employment matters. An 'employment matter' includes selection, promotion, training and staff development, conditions of service and any other matter related to the employment of persons by the Commissioner.

Clause 4 amends section 3 of the Principle Act, by inserting definitions of the words "designated group" referred to in subsection 19A(1); "employment matter" referred to in subsection 19A(1); "equal employment opportunity program" referred to in subsection 19B(1); "relevant staff organisation" referred to in subsection 19B(1); and "unjustified discrimination" referred to in subsection 19A(1). It also establishes that promotion appeal committees are to be those set up in accordance with the *Merit Protection (Australian Government Employees) Act 1985*.

Clause 5 inserts a new division after Division I of Part III of the Principle Act, namely *Division IA - Personnel Management*.

Merit and equal opportunity principles to apply

Subsection 19A(1) is inserted, which provides that decisions in relation to employment matters shall be made without unjustified discrimination, patronage and favouritism and with regard to the equal employment opportunity program for the Brigade. 'Unjustified discrimination' as defined in section 3 of the Principal Act includes discrimination on the ground of political affiliation, social origin, and discrimination prohibited by the *Discrimination Act 1991*. Discrimination is not unjustified and is therefore permissible if:

- (a) it is not unlawful under the *Discrimination Act 1991*, is essential for the effective performance of the work required and is declared by the regulations not to be discrimination; or
- (b) it is not unlawful and is in accordance with an equal employment opportunity program for the Brigade or other program established by the regulations.

The equal employment opportunity program for the Brigade is provided for in new section 19B.

Subsection 19A (2) requires that employment decisions are to be made on the basis of merit, according to paragraph (1), and that

- (a) applicants are to have, as far as is practicable, a reasonable opportunity to apply for positions; and
- (b) assessment is to be made on the basis of merit, that is, the relative suitability for the position in question, given the nature and requirements of the job, and the relevant abilities, qualifications, experience, personal qualities and potential for development of the applicants.

Subsection 19A (3), bestows the power to make reports or recommendations to bring the above into effect.

The legislation makes it clear that practicality and reasonableness are the benchmarks for required procedures. The intention of the Bill is to exclude impractical measures or unreasonable and unaffordable advertising and selection procedures as a requirement for appointment and promotion.

Equal opportunity program:

Subsection 19B(1) requires the Commissioner to develop, after consultation with the relevant staff organisation and other appropriate persons, an equal employment opportunity program for the Brigade. The program, defined in section 3 of the Principal Act, is to put in place effective steps to eliminate unlawful discrimination against women, and those in 'designated groups': Aboriginals, Torres Strait Islanders, migrants from non-English-speaking backgrounds and their children, the physically or mentally disabled, and others as determined by the regulations. It is also to ensure that women and people in these minority groups have the same opportunities to advance their careers in the Brigade as anyone else.

The Commissioner is to periodically review the effectiveness of the equal opportunity program and consult with the relevant staff organisation and other organisations considered appropriate by the Commissioner. The 'staff organisation' is defined in section 3 of the Principal Act as the organisation within the meaning of the *Industrial Relations Act 1988* (C'th) of which employees of the Brigade are eligible for membership, and which is party to an award which covers employees of the Brigade.

Subsections 19B (2), (3), (4) and (5) require the Commissioner to establish the program as soon as practicable, at least within 12 months of the commencement of this Act, to provide details of the program to the Head of Administration and to take any necessary action to give effect to the equal employment opportunity program. The Head of Administration may issue guidelines on the provisions, development, implementation or review of the program.

Subsection 19B (6) requires the Commissioner to furnish to the Minister an annual report on the operation of the program.

Notices relating to appointments, promotions etc.

Subsections 19C(1), and (2) provide that the Commissioner may publish in the *Gazette* matters relating to appointment, promotion or acting appointment to a specified rank, considered desirable by the Commissioner or another specified person, including the manner of determining the order in which applicants are to be appointed or promoted, the academic and other qualifications required for appointment and promotion, and any other related matter the Commissioner considers desirable.

Tests, Examinations etc.

Section 19D permits the Commissioner to arrange for the taking of tests in connection with selection of applicants as members of the Brigade, for the performance of particular duties (including temporary performance of higher duties), or for promotion.

Division 2 Part III

Appointments

Clause 6 provides for a new title for Division 2: **Appointment of members.**

Clause 7 amends section 20 of the Principal Act to provide that the Commissioner may in writing appoint a person to the Brigade, and removes requirements of being a British subject, and provision for fitness and character (fitness for the job is covered by the principles of equal employment opportunity).

Clause 8 removes section 21 of the Principal Act, which requires appointment to be within a specified age limit.

Clause 9 amends section 22 of the Principal Act, to provide that appointment is subject to six months' probation, with confirmation of the appointment on satisfactory service and conduct.

Clause 10 repeals section 23 of the Principal Act, which refers to formerly required qualifications under the Regulations such as examinations and seniority. These Regulations will no longer apply.

Clause 11 repeals subsection 26(2) of the Principal Act, which refers to specified age limits in re-appointment of former members who have resigned to become candidates at elections.

Promotions

Clause 12 repeals Division 3 of Part III of the Principle Act and substitutes a new division entitled ***Division .3 - Promotions and acting appointments.***

Promotion may occur under substituted section 29 (by the Commissioner alone) or new section 29B (by the Commissioner on the advice of a Joint Selection Committee).

Section 29 provides that before promoting a member under this section, the Commissioner must publish in the *Gazette* an invitation for members to apply for promotion to the rank concerned, and the promotion must be made within 6 months of the date of publication of the invitation.

This promotion is to be provisional and without increased salary pending confirmation of the promotion. It is to be notified in the *Gazette*, and is subject to appeal under section 33. The promotion must be in writing.

Selection of Members for Promotion

Section 29A requires the Commissioner to rank applicants according to their relative efficiency and select the applicant who is the most efficient for the position. Where more than one promotion is made the Commissioner shall select the applicants concerned in the order in which they are so ranked. In determining relative efficiency the Commissioner shall have regard to the relevant abilities, qualifications, experience, personal qualities and potential for development of each applicant.

Promotion in accordance with Joint Selection Committee

Section 29B provides that the Commissioner may alternatively promote a member of the Brigade in accordance with the advice of a Joint Selection Committee. Before doing this the staff organisation must be notified, and their agreement obtained. When this is done the Commissioner must publish a notice in the *Gazette* inviting members to apply for promotion to the rank concerned and arrange for a Joint Selection Committee, convened by a person appointed by the Minister with one member appointed by the Commissioner and one by the staff organisation. A defect or irregularity in connection with the nomination of the member of the Committee will not render a promotion in accordance with the Committee's advice invalid. Any promotion is to be made within 6 months of publication of the invitation in the *Gazette*.

The promotion under this section is to be notified in the *Gazette*, is not subject to appeal, and takes effect on notification in the *Gazette*.

Procedure of the Joint Selection Committee

Section 29C provides that the Joint Selection Committee shall, in such manner as it considers necessary, rank applicants on the basis of their relative efficiency, and conduct its proceedings with as little formality and as quickly as a proper consideration of the applicants permits. The majority decision, or in any other case the advice of the convenor, is the advice of the Committee. Provision is made for the reconstitution of the Committee and its procedure in the event of a member ceasing to be available before deliberations are completed.

A member of the Committee is not subject to direction by any person or body other than a court.

Acting Appointments

Section 30 provides that the Commissioner may appoint a member to act temporarily in a higher rank.

Clause 13 repeals section 32 of the Principal Act, which has been incorporated into new subsection 29(3).

Appeals against provisional promotions - Division 5

Clause 14 amends section 33 of the Principal Act to provide that only promotions made under section 29(1) are appealable. An appeal can be made only on the ground of greater efficiency. A member may lodge an appeal, in writing, within 14 days after the day of notification of the provisional promotion in the Gazette. The appeal is to be lodged with the Merit Protection and Review Agency in Canberra. The Agency shall form an Appeal Committee and hear and determine the appeal under provisions of the *Merit Protection (Australian Government Employees) Act*. The result will be notified in the Gazette.

Clause 15 substitutes a new section 34 which provides for application of sections of the *Merit Protection (Australian Government Employees) Act 1985* to members of the Fire Brigade. These sections deal with appeals from provisional promotions, the establishment of members of the appeal committee and its procedure.

Clause 16 repeals section 82 of the Principle Act which is a transitional provision no longer having any effect.

Clause 17 removes sexist language by substituting the words 'firefighter (s)' for 'fireman' or 'firemen' respectively, wherever they occur.

Clause 18 contains transitional matters, which provide that probationary appointments and provisional promotions which have not been confirmed at the time the new legislation comes into force will remain governed by the former provisions of the Act and Regulations.