





# **Public Service Amendment Act 2013**

**No. 2, 2013**

**An Act to amend the *Public Service Act 1999*, and  
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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No. 2, 2013

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## **An Act to amend the *Public Service Act 1999*, and for related purposes**

[Assented to 14 February 2013]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Public Service Amendment Act 2013*.

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 February 2013
2. Schedules 1, 2, 3 and 4	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Public Service Act 1999**

### **Part 1—Secretaries**

#### *Public Service Act 1999*

#### **1 Sections 57, 58 and 59**

Repeal the sections, substitute:

#### **57 Roles and responsibilities of Secretaries**

##### *Roles of Secretaries*

- (1) The roles of the Secretary of a Department include, but are not limited to, the following:
  - (a) principal official policy adviser to the Agency Minister;
  - (b) manager, ensuring delivery of government programs and collaboration to achieve outcomes within the Agency Minister’s portfolio and, with other Secretaries, across the whole of Government;
  - (c) leader, providing stewardship within the Department and, in partnership with the Secretaries Board, across the APS;
  - (d) any other role prescribed by the regulations.

##### *Responsibilities of Secretaries*

- (2) The responsibilities of the Secretary of a Department are as follows:
  - (a) to manage the affairs of the Department efficiently, effectively, economically and ethically;
  - (b) to advise the Agency Minister about matters relating to the Department;
  - (c) to implement measures directed at ensuring that the Department complies with the law;
  - (d) to provide leadership, strategic direction and a focus on results for the Department;

- (e) to maintain clear lines of communication within the Agency Minister's portfolio, as negotiated between the Secretary and the other Agency Heads in the portfolio;
  - (f) to engage with stakeholders, particularly in relation to the core activities of the Department;
  - (g) to manage the affairs of the Department in a way that is not inconsistent with the policies of the Commonwealth and the interests of the APS as a whole;
  - (h) to ensure that the Agency Minister's portfolio has a strong strategic policy capability that can consider complex, whole-of-government issues;
  - (i) to assist the Agency Minister to fulfil the Agency Minister's accountability obligations to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of the Department;
  - (j) such other responsibilities as are prescribed by the regulations.
- (3) Subsection (2) does not affect a Secretary's responsibilities under any other law.

Note: See, for example, the *Financial Management and Accountability Act 1997*.

## **58 Appointment**

- (1) The Secretary of a Department is to be appointed by the Governor-General, by written instrument, on the recommendation of the Prime Minister.
- Note: The Secretary of a Department is eligible for reappointment as the Secretary of that Department (see section 33AA of the *Acts Interpretation Act 1901*).
- (2) The Secretary of a Department holds office for the period specified in the instrument of appointment.
- (3) The period of a person's appointment as the Secretary of a Department must be:
- (a) 5 years; or
  - (b) if the person has requested a shorter period—that shorter period.

- (4) Subsection (3) does not apply in relation to a person who is reappointed as the Secretary of a Department. In this case, the person's appointment may be for any period not exceeding 5 years.
- (5) The Secretary of a Department holds office on a full-time basis.
- (6) Before recommending to the Governor-General that a person be appointed as the Secretary of the Prime Minister's Department, the Prime Minister must have received a report about the appointment prepared by the Commissioner.
- (7) Before recommending to the Governor-General that a person be appointed as the Secretary of a Department other than the Prime Minister's Department, the Prime Minister must have received a report about the appointment from the Secretary of the Prime Minister's Department.
- (8) The report from the Secretary of the Prime Minister's Department about the appointment of the Secretary of another Department must:
  - (a) be prepared after consultation with:
    - (i) the Commissioner; and
    - (ii) the person who is expected to be the Agency Minister of the other Department at the time the appointment is made; and
  - (b) if the Secretary of the Prime Minister's Department and the Commissioner disagree in relation to the proposed appointment—explain the substance of the disagreement.

## **59 Termination of appointment**

- (1) The Governor-General may, on the recommendation of the Prime Minister and by notice in writing, terminate the appointment of a Secretary.

Note: In *Barratt v Howard* [1999] FCA 1132, the Federal Court of Australia described the basis on which requirements of procedural fairness applied to the termination of an appointment of Secretary under section 37 of the *Public Service Act 1922*.

- (2) Before recommending to the Governor-General that the appointment of the Secretary of the Prime Minister's Department be terminated, the Prime Minister must have received a report about the proposed termination from the Commissioner.

- (3) Before recommending to the Governor-General that the appointment of the Secretary of a Department other than the Prime Minister's Department be terminated, the Prime Minister must have received a report about the proposed termination from the Secretary of the Prime Minister's Department.
- (4) The report from the Secretary of the Prime Minister's Department about the proposed termination of the appointment of the Secretary of another Department must:
  - (a) be prepared after consultation with the Commissioner; and
  - (b) if the Secretary of the Prime Minister's Department and the Commissioner disagree in relation to the proposed termination—explain the substance of the disagreement.

## **2 After section 61**

Insert:

### **61A Annual performance review**

An annual review of the performance of a Secretary must be carried out in accordance with a framework established by the Secretary of the Prime Minister's Department and the Commissioner.

## **Part 2—Secretaries Board**

### *Public Service Act 1999*

#### **3 Section 7**

Insert:

*Secretaries Board* means the Secretaries Board established by section 64.

#### **4 Part 8**

Repeal the Part, substitute:

## **Part 8—Secretaries Board**

### **64 Secretaries Board**

- (1) The Secretaries Board is established by this section.
- (2) The Secretaries Board consists of the following members:
  - (a) the Secretary of the Prime Minister's Department, as Chair;
  - (b) the Secretary of each other Department;
  - (c) the Commissioner;
  - (d) such other persons as are nominated in writing by the Secretary of the Prime Minister's Department.
- (3) The Secretaries Board has the following functions:
  - (a) to take responsibility for the stewardship of the APS and for developing and implementing strategies to improve the APS;
  - (b) to identify strategic priorities for the APS and consider issues that affect the APS;
  - (c) to set an annual work program, and direct subcommittees to develop strategies to address APS-wide issues and make recommendations to the Secretaries Board;
  - (d) to draw together advice from senior leaders in government, business and the community;
  - (e) to work collaboratively and model leadership behaviours.

- (4) The Secretaries Board may establish one or more senior leadership groups, consisting of members determined by the Secretaries Board, to assist the Secretaries Board in performing its functions.

## **Part 3—Senior Executive Service**

### *Public Service Act 1999*

#### **5 Subsection 35(2)**

Repeal the subsection, substitute:

- (2) The function of the SES is to provide APS-wide strategic leadership of the highest quality that contributes to an effective and cohesive APS.
- (3) For the purpose of carrying out the function of the SES, each SES employee:
  - (a) provides one or more of the following at a high level:
    - (i) professional or specialist expertise;
    - (ii) policy advice;
    - (iii) program or service delivery;
    - (iv) regulatory administration; and
  - (b) promotes cooperation within and between Agencies, including to deliver outcomes across Agency and portfolio boundaries; and
  - (c) by personal example and other appropriate means, promotes the APS Values, the APS Employment Principles and compliance with the Code of Conduct.

#### **6 After subsection 37(1)**

Insert:

- (1A) A notice may be given to an SES employee under subsection (1) whether or not the employee has reached the minimum retiring age under section 30.

#### **7 Paragraph 37(2)(b)**

Omit “been compulsorily retired”, substitute “retired involuntarily”.

## **Part 4—The Australian Public Service Commissioner**

### *Public Service Act 1999*

#### **8 Paragraph 3(c)**

Before “Public”, insert “Australian”.

#### **9 Section 7 (definition of *Commissioner*)**

Before “Public”, insert “Australian”.

#### **10 Section 7**

Insert:

*former APS employee* means a person who was, but is no longer, an APS employee.

#### **11 Section 7**

Insert:

*special review* means a review conducted by the Commissioner under subsection 41D(1).

#### **12 Section 7**

Insert:

*systems review* means a review conducted by the Commissioner under subsection 41C(1).

#### **13 Part 5 (heading)**

Repeal the heading, substitute:

## **Part 5—The Australian Public Service Commissioner**

#### **14 Section 40 (heading)**

Repeal the heading, substitute:

## **40 Australian Public Service Commissioner**

### **15 Subsection 40(1)**

Omit “a Public”, substitute “an Australian Public”.

### **16 Section 41**

Repeal the section, substitute:

### **41 Commissioner’s functions**

- (1) The Commissioner has the following functions:
  - (a) to strengthen the professionalism of the APS and facilitate continuous improvement in workforce management in the APS;
  - (b) to uphold high standards of integrity and conduct in the APS;
  - (c) to monitor, review and report on APS capabilities within and between Agencies to promote high standards of accountability, effectiveness and performance.
- (2) Without limiting subsection (1), the Commissioner’s functions include the following:
  - (a) to foster, and contribute to, leadership, high quality learning and development and career management in the APS;
  - (b) to lead the thinking about, provide advice on and drive reforms to workforce management policies so that the APS is ready for future demands;
  - (c) to develop, review and evaluate APS workforce management policies and practices and maintain appropriate databases;
  - (d) to foster an APS workforce that reflects the diversity of the Australian population;
  - (e) to promote the APS Values, the APS Employment Principles and the Code of Conduct;
  - (f) to evaluate the extent to which Agencies incorporate and uphold the APS Values and the APS Employment Principles;
  - (g) to partner with Secretaries in the stewardship of the APS;
  - (h) to provide advice and assistance to Agencies on public service matters;
  - (i) to work with other governments (including foreign governments) on matters relating to public sector workforce management, leadership and career management;

- (j) to review any matter relating to the APS;
- (k) to review any matter relating to the APS referred to the Commissioner by the Public Service Minister, and report on that matter to the Public Service Minister;
- (l) to evaluate the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct;
- (m) to inquire, in accordance with section 41A, into alleged breaches of the Code of Conduct by Agency Heads;
- (n) to inquire into and determine, in accordance with section 41B, whether an APS employee, or a former APS employee, has breached the Code of Conduct;
- (o) to inquire, subject to regulations made for the purposes of section 16, into whistleblower reports made to the Commissioner (or a person authorised by the Commissioner) as referred to in that section;
- (p) such other functions as are conferred on the Commissioner by this Act, the regulations or any other law;
- (q) such other functions as the Prime Minister, by legislative instrument, directs the Commissioner to perform;
- (r) to do anything incidental to or conducive to the performance of any of the Commissioner's functions.

Note: Neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to a direction given under paragraph (2)(q) (see sections 44 and 54 of that Act).

*Reports may include recommendations*

- (3) A report made by the Commissioner in the performance of his or her functions may include recommendations.

*Fees*

- (4) The regulations may authorise the Commissioner to charge fees (on behalf of the Commonwealth) for the performance, on request, of the Commissioner's functions.

**41A Inquiry into alleged breach of Code of Conduct by Agency Head**

- (1) The Commissioner may, for the purposes of paragraph 41(2)(m), inquire into an alleged breach of the Code of Conduct by an Agency Head.
- (2) The Commissioner must report on the results of an inquiry under subsection (1) (including, if relevant, recommendations for sanctions) to:
  - (a) if the Agency Head is a Secretary—the Prime Minister; or
  - (b) if the Agency Head is the Head of an Executive Agency—the Agency Minister; or
  - (c) if the Agency Head is the Head of a Statutory Agency that is prescribed by the regulations for the purposes of this paragraph—the Presiding Officers; or
  - (d) if the Agency Head is the Head of a Statutory Agency that is not prescribed by the regulations for the purposes of paragraph (c)—the Agency Minister.
- (3) The regulations may prescribe circumstances in which the Commissioner:
  - (a) may decline to conduct an inquiry under subsection (1); or
  - (b) may discontinue such an inquiry without making a report under subsection (2).

**41B Inquiry into alleged breach of Code of Conduct by APS employee or former APS employee**

*Request for inquiry*

- (1) The Commissioner may, for the purposes of paragraph 41(2)(n), inquire into and determine whether an APS employee, or a former APS employee, in an Agency has breached the Code of Conduct if:
  - (a) the Agency Head or the Prime Minister requests the Commissioner to do so; and
  - (b) the Commissioner considers it would be appropriate to do so.
- (2) The Prime Minister may make a request under paragraph (1)(a) in relation to an alleged breach of the Code of Conduct of which the Prime Minister has become aware as a result of, or in the course of, a systems review or a special review.

*Procedures for inquiry*

- (3) The Commissioner must establish written procedures for inquiring into and determining whether an APS employee, or a former APS employee, in an Agency has breached the Code of Conduct (including by engaging in conduct referred to in subsection 15(2A)). The procedures:
  - (a) must comply with basic procedural requirements prescribed by the regulations; and
  - (b) must have due regard to procedural fairness.
- (4) In addition, and without affecting subsection (3), the procedures may be different for:
  - (a) different categories of APS employees or former APS employees; or
  - (b) APS employees, or former APS employees, who:
    - (i) have been convicted of an offence against a Commonwealth, State or Territory law in respect of conduct that is alleged to constitute a breach of the Code of Conduct; or
    - (ii) have been found to have committed such an offence but no conviction is recorded.
- (5) The Commissioner must ensure that the procedures established under subsection (3) are made publicly available.
- (6) Procedures established under subsection (3) are not legislative instruments.

*Commissioner's powers*

- (7) For the purposes of inquiring into and determining whether an APS employee, or a former APS employee, in an Agency has breached the Code of Conduct, the Commissioner may exercise the same powers as the Agency Head may exercise in determining whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct.

*Report on results of inquiry*

- (8) The Commissioner must report on the results of an inquiry and determination under this section (including an inquiry that is

discontinued) in relation to an APS employee, or a former APS employee, in an Agency to:

- (a) the Agency Head; and
- (b) if the Prime Minister requested the inquiry—the Prime Minister.

*Recommendation of sanctions*

- (9) If:
- (a) the Commissioner finds that an APS employee in an Agency has breached the Code of Conduct; and
  - (b) the Commissioner is requested to recommend sanctions in respect of the breach by:
    - (i) the Agency Head; or
    - (ii) if the Prime Minister requested the inquiry—the Prime Minister;

the Commissioner may recommend any of the sanctions referred to in subsection 15(1).

Note: A sanction referred to in subsection 15(1) would be imposed on the APS employee by the Agency Head, not by the Commissioner.

*Discontinuation of inquiry*

- (10) The regulations may prescribe circumstances in which the Commissioner may discontinue an inquiry under this section.

#### **41C Systems reviews**

- (1) The Prime Minister may direct the Commissioner to conduct a review (a *systems review*) of any matter relating to an Agency, including:
  - (a) the management and organisational systems, structures or processes in an Agency; and
  - (b) the functional relationships between 2 or more Agencies.
- (2) An Agency Minister may request the Prime Minister to make a direction under subsection (1) that relates to an Agency.
- (3) The Secretary of a Department may request the Prime Minister to make a direction under subsection (1) that relates to the Department or any other Agency in the same portfolio as the Department.

- (4) The Commissioner must give a report on the review to:
  - (a) the Prime Minister; and
  - (b) if the review was conducted because of a request by an Agency Minister or a Secretary—the Agency Minister or the Secretary.
- (5) If a direction under subsection (1) is given in writing, the direction is not a legislative instrument.

#### **41D Special reviews**

- (1) The Prime Minister may direct the Commissioner to conduct a review (a *special review*) of:
  - (a) any matter relating to an Agency; or
  - (b) the functional relationships between 2 or more Agencies.
- (2) The Commissioner must give a report on the review to:
  - (a) the Prime Minister; and
  - (b) the Agency Minister of each Agency to which the review relates.
- (3) If a direction under subsection (1) is given in writing, the direction is not a legislative instrument.

#### **17 Paragraph 43(1)(a)**

Omit “paragraph 41(1)(a), (b) or (g)”, substitute “paragraph 41(2)(c), (f) or (l)”.

#### **18 Paragraph 43(1)(b)**

Omit “paragraph 41(1)(c) or (f)”, substitute “paragraph 41(2)(m) or (o)”.

#### **19 Paragraph 43(1)(c)**

Omit “paragraph 41(1)(d)”, substitute “paragraph 41(2)(k)”.

#### **20 At the end of subsection 43(1)**

Add:

- ; (d) an inquiry that is conducted by the Commissioner for the purposes of a special review.

#### **21 Subsection 49(2)**

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Before “Public”, insert “Australian”.

**22 Subsection 51(3)**

Before “Public”, insert “Australian”.

**23 After subsection 78(5)**

Insert:

- (5A) The Commissioner may, in writing, delegate to a former senior official any of the Commissioner’s powers or functions under section 38 or paragraph 41(2)(m), (n) or (o).

**24 Subsection 78(12)**

Insert:

*former senior official* means:

- (a) a person who held, but no longer holds, an office or appointment under an Act; or
- (b) a person who was, but is no longer, an SES employee, and who does not hold an office or appointment under an Act.

## **Part 5—Special Commissioners**

### *Public Service Act 1999*

#### **25 Section 7**

Insert:

*Special Commissioner* means a Special Commissioner appointed under section 48A.

#### **26 At the end of Part 5**

Add:

### **Division 3—Special Commissioners**

#### **48A Appointment of Special Commissioners**

- (1) The Governor-General may, by written instrument, on the recommendation of the Prime Minister, appoint one or more Special Commissioners to assist the Commissioner in conducting a specified systems review or special review, or a part of such a review.
- (2) The Prime Minister must not recommend that a person be appointed as a Special Commissioner unless the Prime Minister has consulted the Commissioner about the appointment.
- (3) A Special Commissioner may be appointed on a full-time basis or a part-time basis.
- (4) A Special Commissioner holds office for the period specified in the instrument of appointment.

#### **48B Remuneration and other terms and conditions of appointment**

##### *Remuneration and allowances*

- (1) A Special Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a Special

Commissioner is to be paid the remuneration that is prescribed by the regulations.

- (2) A Special Commissioner is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

*Leave of absence*

- (4) A full-time Special Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (5) The Prime Minister may grant a full-time Special Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Prime Minister determines.
- (6) The Prime Minister may grant leave of absence to a part-time Special Commissioner on the terms and conditions that the Prime Minister determines.

*Other terms and conditions*

- (7) A Special Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Prime Minister.

**48C Termination of appointment**

- (1) The Governor-General may, by notice in writing, on the recommendation of the Prime Minister, terminate the appointment of a Special Commissioner at any time.
- (2) The Prime Minister must not recommend that the appointment of a Special Commissioner be terminated unless the Prime Minister has consulted the Commissioner about the termination.

## Part 6—APS Values and APS Employment Principles

### *Public Service Act 1999*

#### 27 Section 7

Insert:

*APS Employment Principles* means the principles in section 10A.

#### 28 Section 10

Repeal the section, substitute:

#### 10 APS Values

##### *Committed to service*

- (1) The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

##### *Ethical*

- (2) The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

##### *Respectful*

- (3) The APS respects all people, including their rights and their heritage.

##### *Accountable*

- (4) The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

*Impartial*

- (5) The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

**10A APS Employment Principles**

*APS Employment Principles*

- (1) The APS is a career-based public service that:
  - (a) makes fair employment decisions with a fair system of review; and
  - (b) recognises that the usual basis for engagement is as an ongoing APS employee; and
  - (c) makes decisions relating to engagement and promotion that are based on merit; and
  - (d) requires effective performance from each employee; and
  - (e) provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued; and
  - (f) provides workplaces that are free from discrimination, patronage and favouritism; and
  - (g) recognises the diversity of the Australian community and fosters diversity in the workplace.

*Decisions based on merit*

- (2) For the purposes of paragraph (1)(c), a decision relating to engagement or promotion is based on merit if:
  - (a) all eligible members of the community were given a reasonable opportunity to apply to perform the relevant duties; and
  - (b) an assessment is made of the relative suitability of the candidates to perform the relevant duties, using a competitive selection process; and
  - (c) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required to perform the relevant duties; and

- (d) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the relevant duties; and
- (e) the assessment is the primary consideration in making the decision.

Note: Commissioner's Directions may determine the scope or application of the APS Employment Principles (see subsections 11A(2) and (3)).

### **29 Subsection 11(1)**

Omit "must issue directions in writing in relation to each", substitute "may issue directions in writing in relation to any".

### **30 At the end of subsection 11(1)**

Add:

Note: See section 42 for general provisions relating to Commissioner's Directions.

### **31 Section 12**

Repeal the section, substitute:

### **12 Agency Heads must promote APS Values and APS Employment Principles**

An Agency Head must uphold and promote the APS Values and APS Employment Principles.

### **32 Section 17**

Repeal the section.

### **33 Section 18**

Omit "APS Values", substitute "APS Employment Principles".

### **34 At the end of subsection 22(2)**

Add:

Note: The usual basis for engagement is as an ongoing APS employee (see paragraph 10A(1)(b)).

### **35 Subsection 22(3)**

Repeal the subsection.

**36 At the end of section 39**

Add:

- (3) The APS Employment Principles do not apply to giving, or carrying out, a direction referred to in subsection (2).

## **Part 7—Code of Conduct**

### ***Public Service Act 1999***

#### **37 Subsections 13(1) to (4)**

Omit “the course of”, substitute “connection with”.

#### **38 Subsection 13(11)**

Repeal the subsection, substitute:

- (11) An APS employee must at all times behave in a way that upholds:
- (a) the APS Values and APS Employment Principles; and
  - (b) the integrity and good reputation of the employee’s Agency and the APS.

#### **39 Section 14 (heading)**

Repeal the heading, substitute:

### **14 Agency Heads and statutory office holders bound by Code of Conduct**

#### **40 Subsection 14(2)**

Repeal the subsection, substitute:

- (2) Statutory office holders are bound by the Code of Conduct, subject to any regulations made under subsection (2A).
- (2A) The regulations may make provision in relation to the extent to which statutory office holders are bound by the Code of Conduct.

Note: The regulations may make different provision with respect to different statutory office holders or different classes of statutory office holders (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

#### **41 Before subsection 15(1)**

Insert:

*Sanctions that may be imposed*

**42 Subsection 15(1)**

After “subsection (3)”, insert “of this section or subsection 41B(3) or 50A(2)”.

**43 At the end of subsection 15(1)**

Add:

Note: See sections 29 and 38 in relation to terminating an APS employee’s employment.

**44 Subsections 15(3), (4) and (5)**

Repeal the subsections, substitute:

*Providing false or misleading information etc. in connection with engagement as an APS employee*

- (2A) A person who is, or was, an APS employee is taken to have breached the Code of Conduct if the person is found (under procedures established under subsection (3) of this section or subsection 41B(3) or 50A(2)) to have, before being engaged as an APS employee:
- (a) knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth; or
  - (b) wilfully failed to disclose to another APS employee, or to a person acting on behalf of the Commonwealth, information that the person knew, or ought reasonably to have known, was relevant; or
  - (c) otherwise failed to behave honestly and with integrity;
- in connection with the person’s engagement as an APS employee.

Note: If the person is an APS employee at the time a finding referred to in paragraph (2A)(a), (b) or (c) is made in relation to the person, the Agency Head of the employee’s Agency may impose sanctions on the person as permitted by subsection (1).

*Procedures for determining whether APS employee, or former APS employee, has breached the Code of Conduct etc.*

- (3) An Agency Head must establish written procedures in accordance with this section for determining:

- (a) whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct (including by engaging in conduct referred to in subsection (2A)); and
  - (b) the sanction (if any) that is to be imposed under subsection (1) on an APS employee in the Agency who is found to have breached the Code of Conduct (including by engaging in conduct referred to in subsection (2A)).
- (4) The procedures:
- (a) must comply with basic procedural requirements set out in Commissioner's Directions; and
  - (b) must have due regard to procedural fairness.
- (5) In addition, and without affecting subsection (4), the procedures may be different for:
- (a) different categories of APS employees or former APS employees; or
  - (b) APS employees, or former APS employees, who:
    - (i) have been convicted of an offence against a Commonwealth, State or Territory law in respect of conduct that is alleged to constitute a breach of the Code of Conduct; or
    - (ii) have been found to have committed such an offence but no conviction is recorded.
- (6) The Commissioner must issue directions in writing for the purposes of paragraph (4)(a).
- Note: See section 42 for general provisions relating to Commissioner's Directions.
- (7) An Agency Head must ensure that the procedures established under subsection (3) are made publicly available.
- (8) Procedures established under subsection (3) are not legislative instruments.

#### **45 Section 19**

After "under", insert "section 15 or 16 or".

#### **46 After paragraph 50(1)(c)**

Insert:

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- (ca) to inquire into and determine, in accordance with section 50A, whether an APS employee, or a former APS employee, has breached the Code of Conduct;

#### **47 After section 50**

Insert:

#### **50A Inquiry into alleged breach of Code of Conduct by APS employee or former APS employee**

##### *Request for inquiry*

- (1) The Merit Protection Commissioner may, for the purposes of paragraph 50(1)(ca), inquire into and determine whether an APS employee, or a former APS employee, has breached the Code of Conduct if:
- (a) the Agency Head requests the Merit Protection Commissioner to do so; and
  - (b) the Merit Protection Commissioner considers it would be appropriate to do so; and
  - (c) the APS employee, or former APS employee, agrees, in writing, to the Merit Protection Commissioner doing so.

Note: A finding by the Merit Protection Commissioner under this section is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

##### *Procedures for inquiry*

- (2) The Merit Protection Commissioner must establish written procedures for inquiring into and determining whether an APS employee, or a former APS employee, has breached the Code of Conduct (including by engaging in conduct referred to in subsection 15(2A)). The procedures:
- (a) must comply with basic procedural requirements prescribed by the regulations; and
  - (b) must have due regard to procedural fairness.

Note: The procedures may make different provision for different classes of APS employees or former APS employees (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (3) In addition, and without affecting subsection (2), the procedures may be different for:

- (a) different categories of APS employees or former APS employees; or
- (b) APS employees, or former APS employees, who:
  - (i) have been convicted of an offence against a Commonwealth, State or Territory law in respect of conduct that is alleged to constitute a breach of the Code of Conduct; or
  - (ii) have been found to have committed such an offence but no conviction is recorded.
- (4) The Merit Protection Commissioner must ensure that the procedures established under subsection (2) are made publicly available.
- (5) Procedures established under subsection (2) are not legislative instruments.

*Merit Protection Commissioner's powers*

- (6) For the purposes of inquiring into and determining whether an APS employee, or a former APS employee, in an Agency has breached the Code of Conduct, the Merit Protection Commissioner may exercise the same powers as the Agency Head may exercise in determining whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct.

*Report on results of inquiry*

- (7) The Merit Protection Commissioner must report on the results of an inquiry and determination under this section to the Agency Head who requested the inquiry.

Note: If the Merit Protection Commissioner finds that an APS employee in an Agency has breached the Code of Conduct, the Agency Head may impose a sanction on the APS employee under subsection 15(1).

## **Part 8—Whistleblower reports**

### *Public Service Act 1999*

#### **48 Section 16 (heading)**

Repeal the heading, substitute:

#### **16 Whistleblower reports**

#### **49 Section 16 (after the heading)**

Insert:

*Protection for whistleblowers*

#### **50 Section 16**

Before “A person”, insert “(1)”.

#### **51 Paragraph 16(b)**

Omit “Commissioner.”, substitute “Commissioner; or”.

#### **52 At the end of section 16**

Add:

*Whistleblower reports made to Agency Heads etc.*

- (2) An Agency Head must establish procedures for:
- (a) an APS employee to make a report (a ***whistleblower report***) of a breach (or an alleged breach) of the Code of Conduct to the Agency Head or to a person authorised for the purposes of this section by the Agency Head; and
  - (b) an Agency Head to deal with a whistleblower report made to the Agency Head or to a person authorised for the purposes of this section by the Agency Head.

Note: The procedures may be in a single document.

- (3) Procedures established under subsection (2) must comply with basic procedural requirements (if any) prescribed by the regulations.

- (4) Procedures established under subsection (2) are not legislative instruments.

*Whistleblower reports made to the Commissioner or Merit Protection Commissioner etc.*

- (5) The regulations may prescribe either or both of the following:
- (a) procedures for an APS employee to make a report (also a ***whistleblower report***) of a breach (or an alleged breach) of the Code of Conduct to the Commissioner or the Merit Protection Commissioner or to a person authorised for the purposes of this section by the Commissioner or the Merit Protection Commissioner;
  - (b) basic procedural requirements that the Commissioner and the Merit Protection Commissioner must comply with in dealing with a whistleblower report.

*Circumstances for declining to inquire, or discontinuing an inquiry, into a whistleblower report*

- (6) The regulations may prescribe circumstances in which the Commissioner, the Merit Protection Commissioner or an Agency Head may:
- (a) decline to conduct an inquiry into a whistleblower report; or
  - (b) discontinue an inquiry into a whistleblower report.

### **53 Paragraph 50(1)(a)**

Repeal the paragraph, substitute:

- (a) to inquire, subject to regulations made for the purposes of section 16, into whistleblower reports made to the Merit Protection Commissioner (or a person authorised by the Merit Protection Commissioner) as referred to in that section;

### **54 Subsection 50(2)**

Omit “(1)(c)”, substitute “(1)(a) or (c)”.

## **Part 9—Review of actions**

### *Public Service Act 1999*

#### **55 Paragraph 33(4)(d)**

Repeal the paragraph, substitute:

- (d) in the case of a review following an application or referral to the Merit Protection Commissioner—must provide for the review to be conducted by:
  - (i) the Merit Protection Commissioner; or
  - (ii) a person nominated by the Merit Protection Commissioner; or
  - (iii) a 3 member committee constituted in accordance with the regulations.

#### **56 Subsection 33(7) (definition of *APS action*)**

Repeal the definition, substitute:

*APS action* means:

- (a) action by a person in the capacity of an Agency Head or APS employee; or
- (b) action by the Commissioner under section 41B (including a finding that an APS employee has breached the Code of Conduct).

## **Part 10—Non-ongoing APS employees**

### *Public Service Act 1999*

#### **61 Subsection 22(4)**

Omit “limit”, substitute “prescribe”.

#### **62 Subsection 29(4)**

Repeal the subsection, substitute:

- (4) The regulations may prescribe the grounds for the termination of the employment of non-ongoing APS employees.

#### **63 Subsection 29(5)**

Omit “for a non-ongoing”, substitute “of the employment of a non-ongoing”.

## **Part 11—Machinery of government changes**

### ***Public Service Act 1999***

#### **64 Paragraph 72(1)(b)**

Omit “employees of a specified Commonwealth authority”, substitute “non-APS employees of a specified Commonwealth body or Commonwealth authority”.

#### **65 Subsection 72(3)**

Omit “an employee of a Commonwealth authority”, substitute “a non-APS employee of a Commonwealth body or Commonwealth authority”.

#### **66 At the end of subsection 72(3)**

Add:  
; or (d) a written contract of employment.

#### **67 Subsection 72(4)**

Repeal the subsection, substitute:

- (4) Subsection (3) ceases to have effect on the next occasion when there is a relevant change in the terms and conditions of employment applicable to the transferred employee or a class of employees that includes the transferred employee. For this purpose, ***relevant change*** means a change that results from:
- (a) the making, variation or termination of a modern award, an enterprise agreement, a workplace determination or a written contract of employment; or
  - (b) the variation, termination or replacement of a WR Act transitional instrument.

#### **68 Subsection 72(5)**

Omit “remuneration and other”, substitute “terms and”.

#### **69 After subsection 72(5)**

Insert:

(5A) If:

- (a) an APS employee is moved from an Agency (the *former Agency*) to another Agency (the *new Agency*) under paragraph (1)(a); and
- (b) prescribed circumstances existed in relation to the employee's employment in the former Agency before the employee moved to the new Agency;

the Commissioner may determine the measures (if any) that are to be taken in relation to those circumstances after the employee has moved to the new Agency.

## **Part 12—Confidentiality of information**

### *Public Service Act 1999*

#### **70 After Part 10**

Insert:

## **Part 10A—Protection of information**

### **72A Protection of information—Commissioner’s functions etc.**

#### *Definitions*

(1) In this section:

***entrusted person*** means any of the following:

- (a) the Commissioner;
- (b) a delegate of the Commissioner;
- (c) a person acting under the direction or authority of the Commissioner;
- (d) a Special Commissioner;
- (e) a member of staff assisting the Commissioner or a Special Commissioner.

***protected information*** means information that was obtained by an entrusted person in connection with the performance of functions or duties, or the exercise of powers, under:

- (a) paragraph 41(2)(j), (k), (m), (n) or (o); or
- (b) section 41A, 41B, 41C, 41D or 43; or
- (c) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

#### *Prohibition on disclosure or other use of protected information*

(2) Except as authorised by this section or the regulations, a person who is, or was, an entrusted person must not, directly or indirectly, make a record of, disclose or otherwise use protected information.

Note: Section 70 of the *Crimes Act 1914* creates offences in relation to the disclosure of information by Commonwealth officers.

*Authorised disclosure or other use of protected information*

- (3) An entrusted person may make a record of, disclose or otherwise use protected information for the purposes of, or in connection with, the performance of functions or duties, or the exercise of powers, under this Act or the regulations.

*Authorised disclosure of protected information by the Commissioner*

- (4) The Commissioner may disclose protected information in a report prepared for purposes connected with the performance of the functions, or the exercise of the powers, of the Commissioner under this Act or the regulations, if the Commissioner is satisfied that the disclosure is necessary for the purpose of setting out the grounds for the conclusions and recommendations contained in the report.
- (5) Subject to subsection (6), the Commissioner may disclose protected information to a person, or to the public or a section of the public, if the Commissioner is satisfied that:
- (a) the disclosure:
    - (i) is in the interests of an Agency or a person; or
    - (ii) is in the public interest; and
  - (b) the disclosure is not likely to interfere with a review or inquiry under this Act or the regulations.
- (6) The Commissioner must not disclose the name of an individual, or any other material that would enable an individual to be identified, in protected information that is disclosed under subsection (5), unless the Commissioner is satisfied that the disclosure is fair and reasonable in all the circumstances.

*Compellability of entrusted persons to give evidence*

- (7) A person who is, or was, an entrusted person is not compellable in any proceeding:
- (a) before a court (whether exercising federal jurisdiction or not); or

- (b) before a person authorised by a law of the Commonwealth or a State or Territory, or by consent of the parties, to hear, receive and examine evidence;

to disclose protected information that was obtained in connection with the performance of functions or duties, or the exercise of powers, under:

- (c) paragraph 41(2)(j), (k), (m) or (o); or
- (d) section 41A, 41C, 41D or 43; or
- (e) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

## **72B Protection of information—Merit Protection Commissioner’s functions etc.**

### *Definitions*

- (1) In this section:

***entrusted person*** means any of the following:

- (a) the Merit Protection Commissioner;
- (b) a delegate of the Merit Protection Commissioner;
- (c) a person acting under the direction or authority of the Merit Protection Commissioner;
- (d) a member of staff assisting the Merit Protection Commissioner;
- (e) a member of a committee established or appointed by the Merit Protection Commissioner under the regulations;
- (f) any other person prescribed by the regulations for the purposes of this paragraph.

***prescribed entrusted person*** means an entrusted person of a kind prescribed by regulations for the purposes of this definition.

***protected information*** means information that was obtained by an entrusted person in connection with the performance of functions or duties, or the exercise of powers, under:

- (a) subsection 50(1) or (2); or
- (b) section 50A; or
- (c) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

*Prohibition on disclosure or other use of protected information*

- (2) Except as authorised by this section or the regulations, a person who is, or was, an entrusted person must not, directly or indirectly, make a record of, disclose or otherwise use protected information.

Note: Section 70 of the *Crimes Act 1914* creates offences in relation to the disclosure of information by Commonwealth officers.

*Authorised disclosure or other use of protected information*

- (3) An entrusted person may make a record of, disclose or otherwise use protected information for the purposes of, or in connection with, the performance of functions or duties, or the exercise of powers, under this Act or the regulations.

*Authorised disclosure of protected information by the Merit Protection Commissioner*

- (4) The Merit Protection Commissioner may disclose protected information in a report prepared for purposes connected with the performance of the functions, or the exercise of the powers, of the Merit Protection Commissioner under this Act or the regulations, if the Merit Protection Commissioner is satisfied that the disclosure is necessary for the purpose of setting out the grounds for the conclusions and recommendations contained in the report.
- (5) Subject to subsection (6), the Merit Protection Commissioner may disclose protected information to a person, or to the public or a section of the public, if the Merit Protection Commissioner is satisfied that:
- (a) the disclosure:
    - (i) is in the interests of an Agency or a person; or
    - (ii) is in the public interest; and
  - (b) the disclosure is not likely to interfere with a review or inquiry under this Act or the regulations.
- (6) The Merit Protection Commissioner must not disclose the name of an individual, or any other material that would enable an individual to be identified, in protected information that is disclosed under subsection (5), unless the Merit Protection Commissioner is satisfied that the disclosure is fair and reasonable in all the circumstances.
-

*Compellability of entrusted persons to give evidence*

- (7) A person who is, or was, an entrusted person (other than a prescribed entrusted person) is not compellable in any proceeding:
- (a) before a court (whether exercising federal jurisdiction or not); or
  - (b) before a person authorised by a law of the Commonwealth or a State or Territory, or by consent of the parties, to hear, receive and examine evidence;
- to disclose protected information that was obtained in connection with the performance of functions or duties, or the exercise of powers, under:
- (c) paragraph 50(1)(a), (b), (c), (d) or (e); or
  - (d) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

Note: **Prescribed entrusted person** is defined in subsection (1) of this section.

*Competence of certain entrusted persons to give evidence*

- (8) A person who is, or was, a prescribed entrusted person is not competent, and cannot be compelled, to disclose protected information in any proceeding:
- (a) before a court (whether exercising federal jurisdiction or not); or
  - (b) before a person authorised by a law of the Commonwealth or a State or Territory, or by consent of the parties, to hear, receive and examine evidence.

Note: **Prescribed entrusted person** is defined in subsection (1) of this section.

**72C Giving information or producing documents to Commissioner not admissible in evidence etc.**

*Application*

- (1) This section applies if:
- (a) either:
    - (i) the Commissioner requests a person to give information (including an answer to a question) or produce a document to the Commissioner for purposes connected

- with the performance of functions or duties, or the exercise of powers, under a provision referred to in subsection (2); or
- (ii) a person reasonably believes that information or a document is relevant for purposes connected with the performance of functions or duties, or the exercise of powers, under a provision referred to in subsection (2); and
- (b) the person obtained the information or document lawfully; and
- (c) the person gives the information or produces the document to the Commissioner.
- (2) For the purposes of subparagraphs (1)(a)(i) and (ii), the provisions are:
- (a) paragraphs 41(2)(j), (k), (m), (n) and (o); and
- (b) sections 41A, 41B, 41C, 41D and 43; and
- (c) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

*Giving information or producing document not admissible in evidence in certain proceedings*

- (3) If, by giving the information or producing the document to the Commissioner, the person:
- (a) contravenes any other law; or
- (b) might tend to incriminate the person or make the person liable to a penalty; or
- (c) discloses legal advice given to a Minister or an Agency; or
- (d) discloses a communication between a person performing functions or duties, or exercising powers, in an Agency and another person or body, being a communication protected against disclosure by legal professional privilege; or
- (e) otherwise acts contrary to the public interest;
- the giving of the information or the production of the document is not admissible in evidence against the person in proceedings (other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act).

*Person not liable to penalty*

- (4) The person is not liable to any penalty under the provisions of any other law by reason of his or her giving the information or producing the document to the Commissioner.

*Disclosure of personal information is authorised for purposes of Privacy Act*

- (5) To the extent that the giving of the information or the production of the document to the Commissioner involves a disclosure of personal information, the disclosure is taken to be authorised by this Act for the purposes of the *Privacy Act 1988*.

*Legal professional privilege not affected*

- (6) Subsection (3) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information or document.

**72D Giving information or producing documents to Merit Protection Commissioner not admissible in evidence etc.**

*Application*

- (1) This section applies if:
- (a) either:
    - (i) the Merit Protection Commissioner requests a person to give information (including an answer to a question) or produce a document to the Merit Protection Commissioner for purposes connected with the performance of functions or duties, or the exercise of powers, under a provision referred to in subsection (2); or
    - (ii) a person reasonably believes that information or a document is relevant for purposes connected with the performance of functions or duties, or the exercise of powers, under a provision referred to in subsection (2); and
  - (b) the person obtained the information or document lawfully; and

- (c) the person gives the information or produces the document to the Merit Protection Commissioner.
- (2) For the purposes of subparagraphs (1)(a)(i) and (ii), the provisions are:
  - (a) sections 50 and 50A; and
  - (b) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

*Giving information or producing document not admissible in evidence in certain proceedings*

- (3) If, by giving the information or producing the document to the Merit Protection Commissioner, the person:
  - (a) contravenes any other law; or
  - (b) might tend to incriminate the person or make the person liable to a penalty; or
  - (c) discloses legal advice given to a Minister or an Agency; or
  - (d) discloses a communication between a person performing functions or duties, or exercising powers, in an Agency and another person or body, being a communication protected against disclosure by legal professional privilege; or
  - (e) otherwise acts contrary to the public interest;the giving of the information or the production of the document is not admissible in evidence against the person in proceedings (other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act).

*Person not liable to penalty*

- (4) The person is not liable to any penalty under the provisions of any other law by reason of his or her giving the information or producing the document to the Merit Protection Commissioner.

*Disclosure of personal information is authorised for purposes of Privacy Act*

- (5) To the extent that the giving of the information or the production of the document to the Merit Protection Commissioner involves a disclosure of personal information, the disclosure is taken to be authorised by this Act for the purposes of the *Privacy Act 1988*.

*Legal professional privilege not affected*

- (6) Subsection (3) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information or document.

**72E Release of personal information**

The regulations:

- (a) may authorise the use or disclosure, in specific circumstances, of personal information (within the meaning of the *Privacy Act 1988*); and
- (b) may impose restrictions on the collection, storage, access, further use or further disclosure of personal information used or disclosed under regulations made for the purposes of paragraph (a).

Note: The *Freedom of Information Act 1982* and the *Privacy Act 1988* have rules about the use and disclosure of personal information.

**71 Section 76**

Repeal the section.

## Part 13—Immunity from suit

### *Public Service Act 1999*

#### **72 After section 78**

Insert:

#### **78A Immunity from civil proceedings**

##### *Commissioner's functions*

- (1) No civil action, suit or proceeding lies against the following persons:

- (a) the Commissioner;
- (b) a delegate of the Commissioner;
- (c) a person acting under the direction or authority of the Commissioner;
- (d) a Special Commissioner;
- (e) a member of staff assisting the Commissioner or a Special Commissioner;

in relation to anything done, or omitted to be done, in good faith by the person in connection with the performance or purported performance of functions or duties, or the exercise or purported exercise of powers, conferred by:

- (f) paragraph 41(2)(j), (k), (m), (n) or (o); or
- (g) section 41A, 41B, 41C or 41D; or
- (h) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

##### *Merit Protection Commissioner's functions*

- (2) No civil action, suit or proceeding lies against the following persons:

- (a) the Merit Protection Commissioner;
- (b) a delegate of the Merit Protection Commissioner;
- (c) a person acting under the direction or authority of the Merit Protection Commissioner;

- (d) a member of staff assisting the Merit Protection Commissioner;
- (e) a member of a committee established or appointed by the Merit Protection Commissioner under the regulations;
- (f) any other person prescribed by the regulations for the purposes of this paragraph;

in relation to anything done, or omitted to be done, in good faith by the person in connection with the performance or purported performance of functions or duties, or the exercise or purported exercise of powers, conferred by this Act or the regulations.

## Part 14—Legislative instruments

### *Public Service Act 1999*

#### **73 Section 7 (definition of *Commissioner's Directions*)**

Omit “15 or 36”, substitute “11A or 15”.

#### **74 After section 11**

Insert:

#### **11A Commissioner's Directions about employment matters**

##### *General*

- (1) The Commissioner may issue directions in writing about employment matters relating to APS employees, including the following:
- (a) engagement;
  - (b) promotion;
  - (c) redeployment;
  - (d) mobility;
  - (e) training schemes;
  - (f) termination.

Note: See section 42 for general provisions relating to Commissioner's Directions.

##### *Directions about APS Employment Principles*

- (2) The Commissioner may issue directions in writing in relation to any of the APS Employment Principles for the purpose of:
- (a) ensuring that the APS incorporates and upholds the APS Employment Principles; and
  - (b) determining where necessary the scope or application of the APS Employment Principles.

Note: See section 42 for general provisions relating to Commissioner's Directions.

- (3) For the purposes of this Act (other than subsection (2)), the APS Employment Principles have effect subject to any restrictions in directions issued under subsection (2).

*Directions of no effect to the extent of inconsistency with Prime Minister's direction*

- (4) A direction issued under this section has no effect to the extent that it is inconsistent with a direction issued by the Prime Minister under section 21.

### **75 Subsection 21(2)**

Repeal the subsection, substitute:

- (2) A direction issued under subsection (1) is a legislative instrument.

Note: Neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the direction (see sections 44 and 54 of that Act).

### **76 Subsection 23(1)**

Repeal the subsection, substitute:

- (1) The Commissioner may, by legislative instrument, make rules about classifications of APS employees.

Note: Neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the Classification Rules (see sections 44 and 54 of that Act).

### **77 Paragraph 23(4)(b)**

Repeal the paragraph, substitute:

- (b) in the case of an SES employee—in accordance with Commissioner's Directions issued under subsection 11A(1);

### **78 Subsection 24(3)**

Omit "notice in the *Gazette*", substitute "legislative instrument".

### **79 At the end of subsection 24(3)**

Add:

Note: Neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the determination (see sections 44 and 54 of that Act).

**80 Subsection 26(2)**

Omit “the regulations”, substitute “Commissioner’s Directions issued under subsection 11A(1)”.

**81 Paragraph 32(1)(a)**

Omit “prescribed by the regulations”, substitute “specified in Commissioner’s Directions issued under subsection 11A(1)”.

**82 Subsection 32(2)**

Omit “the regulations” (first occurring), substitute “Commissioner’s Directions issued under subsection 11A(1)”.

**83 Subsection 32(2)**

Omit “prescribed by the regulations”, substitute “provided by those Directions”.

**84 Section 36**

Repeal the section.

**85 Paragraph 38(a)**

Omit “under section 36”, substitute “made under subsection 11A(1)”.

**86 Subsections 42(3) and (4)**

Repeal the subsections, substitute:

- (3) Commissioner’s Directions may apply, adopt or incorporate (with or without modifications) any matter contained in the Classification Rules or a direction issued by the Prime Minister under section 21, either:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.
- (4) Commissioner’s Directions are legislative instruments.

## **Part 15—Miscellaneous amendments**

### *Public Service Act 1999*

#### **87 Subsection 6(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to persons engaged on an honorary basis.

#### **88 Subsection 23(4)**

Omit all the words before paragraph (a), substitute:

- (4) An Agency Head may reduce the classification of an APS employee, without the employee's consent, only in the following circumstances:

#### **89 Subsection 23(5)**

After "industrial instrument", insert ", determination under this Act or written contract of employment".

#### **90 Section 24 (heading)**

Repeal the heading, substitute:

### **24 Terms and conditions of employment**

#### **91 Subsection 24(1)**

Omit "remuneration and other".

#### **92 Subsection 24(3)**

Omit "remuneration and other".

#### **93 Subsection 29(1) (note)**

Omit "Note:", substitute "Note 1:".

#### **94 At the end of subsection 29(1)**

Add:

Note 2: Commissioner's Directions issued under subsection 11A(1) may set out procedures to be followed in terminating the employment of an APS employee.

**95 At the end of section 40**

Add:

- (4) The Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Commissioner's functions.

**96 At the end of section 49**

Add:

- (3) The Merit Protection Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Merit Protection Commissioner's functions.

**97 Subsection 51(3)**

Omit "44(2)", substitute "44(1)".

**98 Subsection 73(4)**

Omit "of more than \$100,000", substitute "exceeding the amount prescribed by the regulations".

**99 Subsection 79(2)**

Repeal the subsection, substitute:

- (2) The regulations may prescribe penalties of not more than 50 penalty units for offences against the regulations.

## **Schedule 2—Repeal**

### *Public Employment (Consequential and Transitional) Amendment Act 1999*

#### **1 The whole of the Act**

Repeal the Act.

## Schedule 3—Amendment of other Acts

### *Australian Federal Police Act 1979*

#### **1 Subsection 40F(2)**

Before “Public Service Commissioner”, insert “Australian”.

#### **2 Subsection 68A(6) (definition of *transfer time*)**

Before “Public Service Commissioner”, insert “Australian”.

### *Australian Law Reform Commission Act 1996*

#### **3 Subsection 26(2A) (note)**

After “under”, insert “section 15 or 16 or”.

### *Family Law Act 1975*

#### **4 Subsection 37B(4)**

Repeal the subsection, substitute:

- (4) Subject to subsection (4A), action must not be taken in relation to the Principal Registrar, a Registrar or a Deputy Registrar (or a former Principal Registrar, Registrar or Deputy Registrar):
- (a) by an Agency Head under section 15 of the *Public Service Act 1999*; or
  - (b) by the Australian Public Service Commissioner under section 41B of that Act; or
  - (c) by the Merit Protection Commissioner under section 50A of that Act;

unless the Chief Judge has requested the Agency Head, the Australian Public Service Commissioner or the Merit Protection Commissioner to take such action.

Note: Sections 15, 41B and 50A of the *Public Service Act 1999* make provision for dealing with an alleged breach of the Code of Conduct (within the meaning of that Act) by an APS employee or a former APS employee.

- (4A) Subsection (4) does not apply if the Prime Minister has requested the Australian Public Service Commissioner to take action under section 41B of the *Public Service Act 1999* in relation to the Principal Registrar, a Registrar or a Deputy Registrar (or a former Principal Registrar, Registrar or Deputy Registrar).

### ***Ombudsman Act 1976***

#### **5 Subsection 6(9)**

Before “Public Service Commissioner” (wherever occurring), insert “Australian”.

#### **6 Paragraphs 6(10)(a), (b) and (c)**

Before “Public Service Commissioner”, insert “Australian”.

### ***Parliamentary Service Act 1999***

#### **7 Section 7**

Insert:

*Australian Public Service Commissioner* means the Australian Public Service Commissioner appointed under the *Public Service Act 1999*.

#### **9 Section 7 (definition of *Public Service Commissioner*)**

Repeal the definition.

#### **12 Paragraph 27(1)(b)**

Before “Public Service Commissioner”, insert “Australian”.

#### **13 Subsections 43(2), 44(4) and 46(2)**

Before “Public Service Commissioner”, insert “Australian”.

### ***Privacy Act 1988***

#### **14 Subsection 50(2)**

Before “Public Service Commissioner” (wherever occurring), insert “Australian”.

**15 Paragraph 50(3)(b)**

Before “Public Service Commissioner”, insert “Australian”.

***Remuneration Tribunal Act 1973***

**16 Subsection 3(1)**

Insert:

*Australian Public Service Commissioner* means the Australian Public Service Commissioner appointed under the *Public Service Act 1999*.

**17 Subsection 3(1) (definition of *Public Service Commissioner*)**

Repeal the definition.

**18 Subsection 14(3)**

Before “Public Service Commissioner”, insert “Australian”.

***Superannuation Act 1976***

**19 Paragraph 58(3)(f)**

Repeal the paragraph.

***Superannuation Act 1990***

**20 Subparagraph 6(1)(h)(i)**

After “1999”, insert “, as in force immediately before its repeal”.

## **Schedule 4—Application, saving and transitional provisions**

### **Part 1—Preliminary**

#### **1 Definitions**

In this Schedule:

*commencement time* means the time when Schedule 1 to this Act commences.

*new Public Service Act* means the *Public Service Act 1999* as in force after the commencement time.

*old Code of Conduct* means the Code of Conduct in the old Public Service Act (including any regulations in force for the purposes of subsection 13(13) of the old Public Service Act).

*old Public Service Act* means the *Public Service Act 1999* as in force immediately before the commencement time.

#### **2 Alleged breaches of the Code of Conduct that occur before and after commencement time**

For the purposes of Parts 4, 6 and 7 of this Schedule, if a breach of the Code of Conduct is alleged to have occurred between 2 dates, one before and one after the commencement time, the breach is alleged to have occurred before the commencement time.

## **Part 2—Secretaries**

### **3 Saving—existing appointments of Secretaries**

- (1) This item applies to a person who, immediately before the commencement time, held office as the Secretary of a Department because of an appointment under subsection 58(1) of the old Public Service Act.
- (2) The person continues to hold office as the Secretary of the Department as if the person had, at the commencement time, been appointed as the Secretary of the Department by the Governor-General, on the recommendation of the Prime Minister, under subsection 58(1) of the new Public Service Act.
- (3) The person continues to hold office as the Secretary of the Department:
  - (a) for the balance of the period of the person's appointment that remained immediately before the commencement time; and
  - (b) on the same terms and conditions as applied to the person immediately before the commencement time.
- (4) Subsections 58(3) and (6) to (8) of the new Public Service Act do not apply to the person.
- (5) To avoid doubt, section 57 of the new Public Service Act applies to the person.

### **4 Appointments of Secretaries proposed before commencement time**

- (1) If:
  - (a) before the commencement time, the Prime Minister had received a report about a vacancy in the office of the Secretary of the Prime Minister's Department under subsection 58(2) of the old Public Service Act; and
  - (b) immediately before the commencement time, no appointment to fill that vacancy had been made under subsection 58(1) of the old Public Service Act;

then, after the commencement time, the report is taken to have been received by the Prime Minister under subsection 58(6) of the new Public Service Act.

(2) If:

- (a) before the commencement time, the Prime Minister had received a report about a vacancy in the office of the Secretary of a Department other than the Prime Minister's Department under subsection 58(3) of the old Public Service Act; and
- (b) immediately before the commencement time, no appointment to fill that vacancy had been made under subsection 58(1) of the old Public Service Act;

then, after the commencement time:

- (c) the report is taken to have been received by the Prime Minister under subsection 58(7) of the new Public Service Act; and
- (d) subsection 58(8) of the new Public Service Act is taken to have been complied with in relation to the report.

## **5 Terminations of appointments of Secretaries proposed before commencement time**

(1) If:

- (a) before the commencement time, the Prime Minister had given notice in writing terminating the appointment of a Secretary under subsection 59(1) of the old Public Service Act; and
- (b) the termination was to take effect after the commencement time;

then the termination takes effect in accordance with the notice as if subsection 59(1) of the old Public Service Act had not been repealed.

(2) If:

- (a) before the commencement time, the Prime Minister had received a report about the proposed termination of the appointment of the Secretary of the Prime Minister's Department under subsection 59(2) of the old Public Service Act; and
- (b) the appointment had not been terminated before that time;

then, after that time, the report is taken to have been received by the Prime Minister under subsection 59(2) of the new Public Service Act.

(3) If:

(a) before the commencement time, the Prime Minister had received a report about the proposed termination of the appointment of a Secretary of a Department other than the Prime Minister's Department under subsection 59(3) of the old Public Service Act; and

(b) the appointment had not been terminated before that time;

then, after that time:

(c) the report is taken to have been received by the Prime Minister under subsection 59(3) of the new Public Service Act; and

(d) subsection 59(4) of the new Public Service Act is taken to have been complied with in relation to the report.

## **Part 3—Senior Executive Service**

### **7 Function of the SES**

To avoid doubt, subsection 35(3) of the new Public Service Act applies to an SES employee who was an SES employee at the commencement time.

## **Part 4—The Australian Public Service Commissioner**

### **8 Public Service Commissioner becomes Australian Public Service Commissioner at commencement time**

- (1) The person who held office as the Public Service Commissioner under the old Public Service Act immediately before the commencement time is taken, at the commencement time, to have been appointed as the Australian Public Service Commissioner under section 45 of the new Public Service Act.
- (2) The person holds office as the Australian Public Service Commissioner:
  - (a) for the balance of the person's term of appointment that remained immediately before the commencement time; and
  - (b) on the same terms and conditions as applied to the person immediately before the commencement time.
- (3) Any act or thing done by, or in relation to, the Public Service Commissioner before the commencement time is to be treated, at and after that time, as if it were an act or thing done by, or in relation to, the Australian Public Service Commissioner.
- (4) A reference to the Public Service Commissioner in an instrument in force immediately before the commencement time is taken, at and after that time, to be a reference to the Australian Public Service Commissioner.

### **9 Inquiries in progress for the purposes of Commissioner's evaluation functions**

- (1) This item applies if, before the commencement time, the Commissioner had begun, but had not completed, an inquiry for the purpose of paragraph 41(1)(a), (b) or (g) of the old Public Service Act.
- (2) If the inquiry had not been notified by the Commissioner in the *Gazette* under paragraph 43(1)(a) of the old Public Service Act, the Commissioner may continue the inquiry after the commencement time as if:
  - (a) it were an inquiry for the purpose of the corresponding provision of the new Public Service Act; and

- (b) it had not been notified by the Commissioner in the *Gazette* under paragraph 43(1)(a) of the new Public Service Act.
- (3) If the inquiry had been notified by the Commissioner in the *Gazette* under paragraph 43(1)(a) of the old Public Service Act, the Commissioner may continue the inquiry after the commencement time as if:
- (a) it were an inquiry for the purpose of the corresponding provision of the new Public Service Act; and
  - (b) it had been notified by the Commissioner in the *Gazette* under paragraph 43(1)(a) of the new Public Service Act.
- Note: The inquiry is a special inquiry for the purpose of section 43 of the new Public Service Act.
- (4) For the purpose of continuing the inquiry after the commencement time, the Commissioner may use any information obtained for the purpose of the inquiry before that time.
- (5) For the purposes of this item and item 10 of this Schedule, the provision of the new Public Service Act specified in an item of the following table is the **corresponding provision** in relation to the provision of the old Public Service Act specified in that item.

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<b>Corresponding provisions</b>		
<b>Item</b>	<b>Provision of old Public Service Act</b>	<b>Corresponding provision of new Public Service Act</b>
1	paragraph 41(1)(a)	paragraph 41(2)(f)
2	paragraph 41(1)(b)	paragraph 41(2)(l)
3	paragraph 41(1)(g)	paragraph 41(2)(c)

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## **10 Inquiries notified in *Gazette* but not begun for the purposes of Commissioner's evaluation functions**

- (1) This item applies if, before the commencement time, the Commissioner had notified in the *Gazette*, under paragraph 43(1)(a) of the old Public Service Act, an inquiry for the purpose of paragraph 41(1)(a), (b) or (g) of the old Public Service Act, but the Commissioner had not begun to conduct the inquiry.

- (2) The notification continues to have effect after the commencement time as if it were a notification in the *Gazette*, under paragraph 43(1)(a) of the new Public Service Act, of an inquiry for the purpose of the corresponding provision (within the meaning of subitem 9(5) of this Schedule) of the new Public Service Act.

**11 Matters under consideration by Commissioner at commencement time (other than matters referred by Public Service Minister)**

- (1) This item applies if, before the commencement time, the Commissioner had begun to consider a matter relating to the APS under paragraph 41(1)(d) of the old Public Service Act (other than a matter referred to the Commissioner by the Public Service Minister under that paragraph), but the Commissioner had not reported on the matter to the Public Service Minister.
- (2) The Commissioner may continue to consider the matter after the commencement time and, if the Commissioner does so, the Commissioner is taken to be conducting a review of the matter under paragraph 41(2)(j) of the new Public Service Act.
- (3) To avoid doubt, the Commissioner may, for the purpose of conducting a review of the matter after the commencement time, use any information obtained in considering the matter under paragraph 41(1)(d) of the old Public Service Act before that time.

**12 Matters under consideration by Commissioner at commencement time—matters referred by Public Service Minister**

- (1) This item applies if, before the commencement time, the Commissioner had begun to consider a matter relating to the APS referred to the Commissioner by the Public Service Minister under paragraph 41(1)(d) of the old Public Service Act, but had not reported to the Public Service Minister on the matter.
- (2) If the matter had been referred to the Commissioner under paragraph 41(1)(d) of the old Public Service Act, other than by notice in the *Gazette*, the Commissioner must consider the matter and report to the Public Service Minister as if the matter had been referred to the Commissioner under paragraph 41(2)(k) of the new Public Service Act, other than by notice in the *Gazette*.
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- (3) If the matter had been referred to the Commissioner under paragraph 41(1)(d) of the old Public Service Act by notice in the *Gazette*, the Commissioner must consider the matter and report to the Public Service Minister as if the matter had been referred to the Commissioner under paragraph 41(2)(k) of the new Public Service Act by notice in the *Gazette*.

Note: An inquiry on the matter is a special inquiry for the purpose of section 43 of the new Public Service Act.

- (4) For the purpose of considering the matter and reporting to the Public Service Minister after the commencement time, the Commissioner may use any information obtained for the purpose of considering the matter before that time.

### **13 Matters referred to Commissioner by Public Service Minister before commencement time but not yet considered**

- (1) This item applies if, before the commencement time, the Public Service Minister had referred a matter relating to the APS to the Commissioner under paragraph 41(1)(d) of the old Public Service Act, but the Commissioner had not begun to consider the matter.
- (2) If the matter had been referred to the Commissioner under paragraph 41(1)(d) of the old Public Service Act, other than by notice in the *Gazette*, the Public Service Minister is taken to have referred the matter to the Commissioner at the commencement time under paragraph 41(2)(k) of the new Public Service Act, other than by notice in the *Gazette*.
- (3) If the matter had been referred to the Commissioner under paragraph 41(1)(d) of the old Public Service Act by notice in the *Gazette*, the Public Service Minister is taken to have referred the matter to the Commissioner at the commencement time under paragraph 41(2)(k) of the new Public Service Act by notice in the *Gazette*.

Note: An inquiry on the matter is a special inquiry for the purpose of section 43 of the new Public Service Act.

### **14 Inquiry in progress into alleged breach of Code of Conduct by Agency Head**

- (1) This item applies if, before the commencement time:

- (a) the Commissioner had begun an inquiry into an alleged breach of the Code of Conduct by an Agency Head for the purpose of paragraph 41(1)(f) of the old Public Service Act, but had not reported on the results of the inquiry; or
  - (b) the Commissioner had decided to conduct an inquiry into an alleged breach of the Code of Conduct by an Agency Head for the purpose of paragraph 41(1)(f) of the old Public Service Act, but had not begun the inquiry.
- (2) The Commissioner may complete the inquiry or begin the inquiry (as the case requires), and report on the results of the inquiry, in accordance with paragraph 41(2)(m) and section 41A of the new Public Service Act.

Note: The Commissioner may discontinue the inquiry without making a report in the circumstances prescribed by the regulations: see paragraph 41A(3)(b) of the new Public Service Act.

- (3) For the purposes of subitem (2), a reference to the Code of Conduct in paragraph 41(2)(m) and section 41A of the new Public Service Act (or the regulations in force for the purposes of that section) is to be read as a reference to the old Code of Conduct.
- (4) For the purpose of completing the inquiry and reporting after the commencement time, the Commissioner may use any information obtained for the purpose of the inquiry before that time.

### **15 Allegation of breach of Code of Conduct by Agency Head before commencement time**

- (1) This item applies if, before the commencement time, an allegation had been made of a breach of the Code of Conduct by an Agency Head, but the Commissioner had not decided whether to conduct an inquiry into the alleged breach.
- (2) This item also applies if:
- (a) after the commencement time, an allegation is made of a breach of the Code of Conduct by an Agency Head; and
  - (b) the breach is alleged to have occurred before the commencement time.
- (3) Paragraph 41(2)(m) and section 41A of the new Public Service Act (and the regulations in force for the purposes of that section) apply in relation

to the alleged breach as if a reference to the Code of Conduct in those provisions were a reference to the old Code of Conduct.

## **16 Saving—regulations prescribing Statutory Agencies**

Regulations in force for the purposes of paragraph 41(3)(c) of the old Public Service Act continue in force at and after the commencement time as if they were regulations in force for the purposes of paragraph 41A(2)(c) of the new Public Service Act.

## **17 Inquiries into alleged breaches of Code of Conduct by APS employees or former APS employees**

- (1) Paragraph 41(2)(n) and section 41B of the new Public Service Act (and the regulations and procedures in force for the purposes of that section) apply in relation to an alleged breach of the Code of Conduct by a person who:
  - (a) is an APS employee at the commencement time; or
  - (b) becomes an APS employee, or a former APS employee, after that time;whether the breach is alleged to have occurred before or after that time.
- (2) If the breach of the Code of Conduct is alleged to have occurred before the commencement time, paragraph 41(2)(n) and section 41B of the new Public Service Act (and the regulations and procedures in force for the purposes of that section) apply in relation to the alleged breach as if a reference to the Code of Conduct in those provisions were a reference to the old Code of Conduct.

## **Part 5—APS Values and APS Employment Principles**

### **18 Saving—workplace diversity programs**

- (1) This item applies to a workplace diversity program that was in effect under section 18 of the old Public Service Act.
- (2) Despite the amendment of that section made by item 33 of Schedule 1 to this Act, the workplace diversity program continues to have effect, at and after the commencement time, as if it had been established under section 18 of the new Public Service Act, to the extent that the program assists in giving effect to the APS Employment Principles.

## **Part 6—Code of Conduct**

### **19 Application—amendment of Code of Conduct**

The amendments of section 13 of the *Public Service Act 1999* made by items 37 and 38 of Schedule 1 to this Act apply in relation to conduct that occurs after the commencement time.

### **20 Application—procedures etc. for dealing with alleged breaches of Code of Conduct**

Subject to item 22, the amendments of section 15 of the *Public Service Act 1999* made by items 41 to 44 of Schedule 1 to this Act apply in relation to an alleged breach of the Code of Conduct by a person who:

- (a) is an APS employee at the commencement time; or
- (b) becomes an APS employee, or a former APS employee, after that time;

whether the breach is alleged to have occurred before or after that time.

### **21 Saving—procedures and directions for determining whether Code of Conduct has been breached**

- (1) Procedures in effect for the purposes of subsection 15(3) of the old Public Service Act continue in effect at and after the commencement time as if they were procedures in effect for the purposes of subsection 15(3) of the new Public Service Act.
- (2) Commissioner's Directions in force for the purposes of subsection 15(3) of the old Public Service Act continue in effect at and after the commencement time as if they were Commissioner's Directions in force for the purposes of paragraph 15(4)(a) of the new Public Service Act.

### **22 Investigation in progress by Agency Head into alleged breach of Code of Conduct**

- (1) This item applies if, before the commencement time:
  - (a) an Agency Head had begun an investigation to determine whether an APS employee in the Agency had breached the Code of Conduct, but no finding had been made; or

- (b) an Agency Head had decided to begin an investigation to determine whether an APS employee in the Agency had breached the Code of Conduct, but had not begun the investigation.
- (2) Subject to subitem (3), the old Public Service Act (and the regulations and procedures in force for the purposes of that Act) continue to apply at and after the commencement time in relation to the investigation and determination.
- (3) If the APS employee is found to have breached the Code of Conduct, the Agency Head must determine the sanction (if any) to be imposed on the APS employee in accordance with the procedures established under paragraph 15(3)(b) of the new Public Service Act. For that purpose, a reference to the Code of Conduct in those procedures is to be read as a reference to the old Code of Conduct.

### **23 Finding by Agency Head of breach of Code of Conduct but no sanction imposed**

- (1) This item applies if, before the commencement time, an Agency Head had found that an APS employee in the Agency had breached the Code of Conduct, but no sanction had been imposed.
- (2) The Agency Head must determine the sanction (if any) to be imposed on the APS employee in accordance with the procedures established under paragraph 15(3)(b) of the new Public Service Act. For that purpose, a reference to the Code of Conduct in those procedures is to be read as a reference to the old Code of Conduct.

### **24 Allegation of breach of Code of Conduct by APS employee before commencement time**

- (1) This item applies if, before the commencement time, an allegation had been made that an APS employee in an Agency had breached the Code of Conduct, but the Agency Head had not decided whether to begin an investigation to determine whether the APS employee had breached the Code of Conduct.
- (2) This item also applies if:
  - (a) after the commencement time, an allegation is made that:
    - (i) an APS employee has breached the Code of Conduct; or

- (ii) a person who became a former APS employee after the commencement time has breached the Code of Conduct; and
  - (b) the breach is alleged to have occurred before the commencement time.
- (3) The new Public Service Act (and the regulations and procedures in force for the purposes of that Act) apply in relation to the alleged breach as if a reference to the Code of Conduct in those provisions were a reference to the old Code of Conduct.

## **25 Inquiry in progress into alleged breach of Code of Conduct by Commissioner**

- (1) This item applies if, before the commencement time:
  - (a) the Merit Protection Commissioner had begun an inquiry into an alleged breach of the Code of Conduct by the Commissioner for the purpose of paragraph 50(1)(b) of the old Public Service Act, but had not reported on the results of the inquiry; or
  - (b) the Merit Protection Commissioner had decided to conduct an inquiry into an alleged breach of the Code of Conduct by the Commissioner for the purpose of paragraph 50(1)(b) of the old Public Service Act, but had not begun the inquiry.
- (2) The old Public Service Act (and the regulations in force for the purposes of that Act) continue to apply at and after the commencement time in relation to the inquiry.

## **26 Allegation of breach of Code of Conduct by Commissioner before commencement time**

- (1) This item applies if, before the commencement time, an allegation had been made of a breach of the Code of Conduct by the Commissioner, but the Merit Protection Commissioner had not decided whether to conduct an inquiry into the alleged breach.
- (2) This item also applies if:
  - (a) after the commencement time, an allegation is made of a breach of the Code of Conduct by the Commissioner; and
  - (b) the breach is alleged to have occurred before the commencement time.

- (3) The new Public Service Act (and the regulations in force for the purposes of that Act) apply in relation to the alleged breach as if a reference to the Code of Conduct in those provisions were a reference to the old Code of Conduct.

**27 Inquiries by Merit Protection Commissioner into alleged breaches of Code of Conduct by APS employees or former APS employees**

- (1) Paragraph 50(1)(ca) and section 50A of the new Public Service Act (and the regulations and procedures in force for the purposes of those provisions) apply in relation to an alleged breach of the Code of Conduct by a person who:
- (a) is an APS employee at the commencement time; or
  - (b) becomes an APS employee, or a former APS employee, after that time;
- whether the breach is alleged to have occurred before or after that time.
- (2) Paragraph 50(1)(ca) and section 50A of the new Public Service Act (and the regulations and procedures in force for the purposes of those provisions) apply in relation to a breach of the Code of Conduct by an APS employee, or a former APS employee, that is alleged to have occurred before the commencement time as if a reference to the Code of Conduct in those provisions were a reference to the old Code of Conduct.

## **Part 7—Whistleblower reports**

### **28 Inquiries in progress into whistleblower reports**

- (1) This item applies if, before the commencement time, the Commissioner, the Merit Protection Commissioner or an Agency Head, or a person authorised by the Commissioner, the Merit Protection Commissioner or an Agency Head, had begun, but had not completed, an inquiry into a report of a breach (or an alleged breach) of the Code of Conduct made as referred to in section 16 of the old Public Service Act.
- (2) The old Public Service Act (and the regulations and procedures in force for the purposes of that Act, to the extent that they are not inconsistent with that Act) continue to apply at and after the commencement time in relation to the inquiry.

### **29 Whistleblower report made or referred before commencement time but no inquiry begun before that time**

- (1) This item applies if, before the commencement time, a report of a breach (or an alleged breach) of the Code of Conduct had been made or referred to a person referred to in paragraph 16(a), (b) or (c) of the old Public Service Act, but an inquiry into the report had not begun.
- (2) The new Public Service Act (and the regulations and procedures in force for the purposes of that Act) apply in relation to the report as if:
  - (a) the report had been made to the person in accordance with section 16 of the new Public Service Act; and
  - (b) a reference to the Code of Conduct in the new Public Service Act (or the regulations and procedures in force for the purposes of that Act) were a reference to the old Code of Conduct.

Note: See section 16 and paragraphs 41(2)(o) and 50(1)(a) of the new Public Service Act in relation to whistleblower reports.

### **30 Whistleblower report made after commencement time in relation to breach (or alleged breach) occurring before that time**

**Schedule 4** Application, saving and transitional provisions  
**Part 7** Whistleblower reports

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- (1) This item applies if:
- (a) after the commencement time, a report of a breach (or an alleged breach) of the Code of Conduct is made to a person referred to in paragraph 16(1)(a), (b) or (c) of the new Public Service Act; and
  - (b) the breach (or alleged breach) occurred before the commencement time.
- (2) The new Public Service Act (and the regulations and procedures in force for the purposes of that Act) apply in relation to the report as if a reference to the Code of Conduct in that Act (or the regulations and procedures in force for the purposes of that Act) were a reference to the old Code of Conduct.

Note: See section 16 and paragraphs 41(2)(o) and 50(1)(a) of the new Public Service Act in relation to whistleblower reports.

## **Part 8—Review of actions**

### **31 Saving—regulations providing for review of APS action**

Regulations in force for the purposes of paragraph 33(4)(d) of the old Public Service Act continue in force at and after the commencement time as if they were regulations in force for the purposes of paragraph 33(4)(d) of the new Public Service Act.

## **Part 9—Non-ongoing APS employees**

### **34 Saving—circumstances for engagement of non-ongoing APS employees**

- (1) This item applies in relation to a person if:
  - (a) the person had been engaged before the commencement time as mentioned in paragraph 22(2)(b) or (c) of the old Public Service Act; and
  - (b) the engagement:
    - (i) was in effect immediately before the commencement time and was to continue in effect after that time; or
    - (ii) was to take effect after the commencement time.
- (2) Despite the amendment made by item 61 of Schedule 1 to this Act, subsection 22(4) of the old Public Service Act (and the regulations in force for the purposes of that subsection) continue to apply, at and after the commencement time, in relation to the person's engagement.

### **35 Termination of employment of non-ongoing APS employee in progress before commencement time**

- (1) This item applies if:
  - (a) before the commencement time, an Agency Head had terminated the employment of a non-ongoing APS employee in the Agency under subsection 29(1) of the old Public Service Act; and
  - (b) the termination was to take effect after the commencement time.
- (2) Despite the amendment made by item 62 of Schedule 1 to this Act, the old Public Service Act (and the regulations in force for the purposes of that Act) continue to apply, at and after the commencement time, in relation to the termination.

### **36 Procedures for termination of non-ongoing APS employees after commencement time**

- (1) The procedures prescribed in regulations (the *termination regulations*) in force for the purposes of subsection 29(4) of the old Public Service

Act apply to the termination of the employment of a non-ongoing APS employee after the commencement time.

- (3) This item ceases to have effect on the commencement of Commissioner's Directions issued for the purposes of paragraph 11A(1)(f) of the new Public Service Act.

## **Part 10—Machinery of government changes**

### **37 Determinations that APS employees become non-APS employees of Commonwealth authority**

- (1) This item applies if:
  - (a) before the commencement time, the Commissioner had determined, under paragraph 72(1)(b) of the old Public Service Act, that an APS employee ceases to be an APS employee and becomes an employee of a specified Commonwealth authority; and
  - (b) the determination was to take effect after the commencement time.
- (2) The determination is taken, after the commencement time, to be a determination under paragraph 72(1)(b) of the new Public Service Act that the APS employee ceases to be an APS employee and becomes a non-APS employee of the Commonwealth authority.

## **Part 11—Confidentiality of information**

### **38 Protected information obtained at or after commencement time**

- (1) Section 72A of the new Public Service Act applies to protected information obtained at or after the commencement time.
- (2) Section 72B of the new Public Service Act applies to protected information obtained at or after the commencement time.

### **39 Saving—regulations providing for protection of information obtained before commencement time**

- (1) This item applies to regulations that were in force for the purposes of paragraph 79(2)(a) of the old Public Service Act.
- (2) Despite the repeal of that paragraph made by item 99 of Schedule 1 to this Act, the regulations continue to apply, at and after the commencement time, to the extent that they provide for confidentiality of information obtained, before the commencement time, by persons performing, or assisting in the performance of, functions referred to in that paragraph before its repeal.

### **40 Saving—regulations providing for release of personal information**

Regulations in force for the purposes of section 76 of the old Public Service Act continue in force at and after the commencement time as if they were regulations in force for the purposes of section 72E of the new Public Service Act.

## **Part 12—Immunity from suit**

### **41 Immunity from civil proceedings for acts or omissions at or after commencement time**

Section 78A of the new Public Service Act applies in relation to anything done, or omitted to be done, at or after the commencement time.

### **42 Saving—regulations providing for immunity from civil proceedings**

- (1) This item applies to regulations that were in force for the purposes of paragraph 79(2)(b) of the old Public Service Act.
- (2) Despite the repeal of that paragraph made by item 99 of Schedule 1 to this Act, the regulations continue to apply, at and after the commencement time, to the extent that they provide for immunity from civil action in respect of acts or omissions, before the commencement time, of persons performing, or assisting in the performance of, functions referred to in that paragraph before its repeal.

## **Part 13—Legislative instruments**

### **43 Saving—Classification Rules**

The Classification Rules in force for the purposes of subsection 23(1) of the old Public Service Act continue in force at and after the commencement time as if they were Classification Rules in force for the purposes of subsection 23(1) of the new Public Service Act.

### **44 Saving—agreements for APS employees to move between Agencies**

The amendment of subsection 26(2) of the *Public Service Act 1999* made by item 80 of Schedule 1 to this Act does not affect the continuity of an agreement made under subsection 26(1) of that Act.

### **45 Saving—right of return for election candidates**

- (1) This item applies to a person (and section 32 of the new Public Service Act does not apply to the person) if:
  - (a) before the commencement time, the person resigned as an APS employee in order to contest an election prescribed by regulations in force for the purposes of paragraph 32(1)(a) of the old Public Service Act; and
  - (b) the resignation took effect not earlier than 6 months before the closing date for nominations; and
  - (c) the person was a candidate in the election but failed to be elected.
- (2) The person is entitled to be again engaged as an APS employee, in accordance with regulations in force for the purposes of subsection 32(2) of the old Public Service Act and within the time limits prescribed by those regulations.

### **46 Saving—Commissioner’s Directions on SES matters**

**Schedule 4** Application, saving and transitional provisions  
**Part 13** Legislative instruments

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Despite the repeal of section 36 of the old Public Service Act by item 84 of Schedule 1 to this Act, Commissioner's Directions in force for the purposes of that section continue in force at and after the commencement time as if they were Commissioner's Directions about employment matters relating to SES employees issued for the purposes of paragraphs 11A(1)(a), (b), (c), (d) and (f) of the new Public Service Act.

## **Part 14—Miscellaneous**

### **47 Reduction in classification of APS employee**

The amendment of subsection 23(5) of the *Public Service Act 1999* made by item 89 of Schedule 1 to this Act applies in relation to a reduction in the classification of an APS employee that occurs at or after the commencement time.

### **48 Determinations of terms and conditions of employment**

- (1) The amendment of subsection 24(1) of the *Public Service Act 1999* made by item 91 of Schedule 1 to this Act does not affect the continuity of a determination that was in force under that subsection immediately before the commencement time.
- (2) The amendment of subsection 24(3) of the *Public Service Act 1999* made by item 92 of Schedule 1 to this Act does not affect the continuity of a determination that was in force under that subsection immediately before the commencement time.

### **49 Engagement of consultants**

- (1) The amendment of section 40 of the *Public Service Act 1999* made by item 95 of Schedule 1 to this Act does not affect the engagement of a consultant by the Commissioner before the commencement time.
- (2) The amendment of section 49 of the *Public Service Act 1999* made by item 96 of Schedule 1 to this Act does not affect the engagement of a consultant by the Merit Protection Commissioner before the commencement time.

### **50 Saving—regulations prescribing penalties for offences against the regulations**

Regulations in force for the purposes of paragraph 79(2)(c) of the old *Public Service Act* continue in force at and after the commencement time as if they were regulations in force for the purposes of subsection 79(2) of the new *Public Service Act*.

## **Part 15—Regulations**

### **51 Regulations may deal with transitional etc. matters**

The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments and repeals made by this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 1 March 2012  
Senate on 22 August 2012]*