



# **Parliamentary Service Act 1999**

**No. 145, 1999**

**An Act to provide for the establishment and management of the Australian Parliamentary Service, and for other purposes**



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# Parliamentary Service Act 1999

No. 145, 1999

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## **An Act to provide for the establishment and management of the Australian Parliamentary Service, and for other purposes**

[Assented to 11 November 1999]

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### **1 Short title**

This Act may be cited as the *Parliamentary Service Act 1999*.

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## 2 Commencement

This Act commences, or is taken to have commenced, on the same day as the *Public Service Act 1999*, immediately after the commencement of that Act.

## 3 Objects of this Act

The main objects of this Act are:

- (a) to establish a non-partisan Parliamentary Service that is efficient and effective in serving the Parliament; and
- (b) to provide a legal framework for the effective and fair employment, management and leadership of Parliamentary Service employees; and
- (c) to define the powers and responsibilities of Secretaries, the Parliamentary Service Commissioner and the Parliamentary Service Merit Protection Commissioner; and
- (d) to establish rights and obligations of Parliamentary Service employees.

## 4 This Act binds the Crown

This Act binds the Crown in right of the Commonwealth, but does not make the Crown liable to be prosecuted for an offence.

## 5 This Act extends to things outside Australia

- (1) This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).
- (2) This Act extends to all the Territories.

## 6 Engagement of employees in a Department

- (1) All people engaged on behalf of the Commonwealth as employees to perform functions in a Department must be engaged under this Act, or under the authority of another Act.



- (2) Subsection (1) does not apply to people engaged on an honorary basis.
- (3) This section does not, by implication, affect any power that a Secretary might otherwise have to engage persons as independent contractors.

## Part 2—Interpretation

### 7 Interpretation

In this Act, unless the contrary intention appears:

**acting SES employee** means a non-SES employee who is acting in a position usually occupied by an SES employee.

**APS employee** has the same meaning as in the *Public Service Act 1999*.

**AWA** has the same meaning as in the *Workplace Relations Act 1996*.

**award** has the same meaning as in the *Workplace Relations Act 1996*.

**category of Parliamentary Service employee** means one of the following categories:

- (a) ongoing Parliamentary Service employees;
- (b) Parliamentary Service employees engaged for a specified term or for the duration of a specified task;
- (c) Parliamentary Service employees engaged for duties that are irregular or intermittent.

**certified agreement** has the same meaning as in the *Workplace Relations Act 1996*.

**Classification Rules** means rules made under section 23.

**Code of Conduct** means:

- (a) the rules in section 13; and
- (b) any rules and orders made by the Senate or the House of Representatives under section 50 of the Constitution that apply to Parliamentary Service employees.

**Commissioner** means the Parliamentary Service Commissioner appointed under this Act.

**Department** means a Department of the Parliament that is established under this Act.

**determinations** means determinations under this Act other than Part 9.

**Executive Agency** has the same meaning as in the *Public Service Act 1999*.

**insolvent under administration** means a person who:

- (a) has become bankrupt; or
- (b) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) has compounded with his or her creditors; or
- (d) has assigned his or her remuneration for the benefit of his or her creditors.

**Merit Protection Commissioner** means the Parliamentary Service Merit Protection Commissioner appointed under this Act.

**minimum retiring age** means:

- (a) unless paragraph (b) applies, 55 years; or
- (b) if a higher or lower age is prescribed by the determinations—that age.

**modifications** includes additions, omissions and substitutions.

**non-ongoing Parliamentary Service employee** means a Parliamentary Service employee who is not an ongoing Parliamentary Service employee.

**non-SES employee** means a Parliamentary Service employee other than an SES employee.

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***ongoing Parliamentary Service employee*** means a person engaged as an ongoing Parliamentary Service employee, as mentioned in paragraph 22(2)(a).

***overseas*** means outside Australia and the Territories.

***Parliamentary Service*** means the Australian Parliamentary Service established by section 9.

***Parliamentary Service employee*** means a person engaged as an employee under section 22.

***Parliamentary Service employment*** means employment as a Parliamentary Service employee.

***Parliamentary Service Values*** means the values in section 10.

***Presiding Officer*** or ***Presiding Officers*** means:

- (a) where the expression is used in connection with a reference to the Department of the Senate or the Clerk of the Senate—the President of the Senate; or
- (b) where the expression is used in connection with a reference to the Department of the House of Representatives or the Clerk of that House—the Speaker of the House of Representatives; or
- (c) otherwise—the President of the Senate and the Speaker of the House of Representatives acting jointly.

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

***relevant Department***, in relation to a Secretary, means the Department of which he or she is the Secretary.

***Remuneration Tribunal*** means the Remuneration Tribunal established by the *Remuneration Tribunal Act 1973*.

***Secretary*** means the Secretary of a Department and includes the Clerk of the Senate and the Clerk of the House of Representatives.

**Secretary** of a Department means:

- (a) if the Department is the Department of the Senate—the Clerk of the Senate; or
- (b) if the Department is the Department of the House of Representatives—the Clerk of that House; or
- (c) if the Department is another Department—the Secretary of that Department.

**SES** means the Senior Executive Service established by section 35.

**SES employee** has the meaning given by section 34.

## 8 Workplace Relations Act

- (1) This Act has effect subject to the *Workplace Relations Act 1996*.
- (2) Subsection (1) is not intended to imply anything about the relationship between this Act and any Act other than the *Workplace Relations Act 1996*.

## Part 3—The Australian Parliamentary Service

### 9 Constitution of the Australian Parliamentary Service

The Australian Parliamentary Service consists of Secretaries and Parliamentary Service employees.

### 10 Parliamentary Service Values

(1) The Parliamentary Service Values are as follows:

- (a) the Parliamentary Service provides professional advice and support for the Parliament independently of the Executive Government of the Commonwealth;
  - (b) the Parliamentary Service provides non-partisan and impartial advice and services to each House of the Parliament, to committees of each House, to joint committees of both Houses and to Senators and Members of the House of Representatives;
  - (c) the Parliamentary Service has the highest ethical standards;
  - (d) the Parliamentary Service performs its functions with probity and is openly accountable for its actions to the Parliament;
  - (e) the Parliamentary Service has leadership of the highest quality;
  - (f) employment decisions in the Parliamentary Service are based on merit;
  - (g) the Parliamentary Service provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community;
  - (h) the Parliamentary Service establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace;
  - (i) the Parliamentary Service provides a fair, flexible, safe and rewarding workplace;
  - (j) the Parliamentary Service focuses on achieving results and managing performance;
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- (k) the Parliamentary Service uses Commonwealth resources properly and cost-effectively;
  - (l) the Parliamentary Service promotes equity in employment;
  - (m) the Parliamentary Service provides a reasonable opportunity to all eligible members of the community to apply for Parliamentary Service employment;
  - (n) the Parliamentary Service is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government;
  - (o) the Parliamentary Service provides a fair system of review of decisions taken in respect of Parliamentary Service employees.
- (2) For the purposes of paragraph (1)(f), a decision relating to engagement or promotion is based on merit if:
- (a) an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process; and
  - (b) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
  - (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
  - (d) the assessment is the primary consideration in making the decision.

## **11 Commissioner must give advice to Presiding Officers about Parliamentary Service Values**

- (1) The Commissioner must give advice to the Presiding Officers:
- (a) to help them to ensure that the Parliamentary Service incorporates and upholds the Parliamentary Service Values; and
  - (b) to help them to determine where necessary the scope or application of each Parliamentary Service Value.
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- (2) The Presiding Officers must issue written determinations under section 71 in relation to each of the Parliamentary Service Values, having regard to the advice received from the Commissioner under subsection (1).
- (3) The Presiding Officers must cause to be laid before each House of the Parliament a copy of the advice received from the Commissioner under subsection (1).

### **12 Secretaries must promote Parliamentary Service Values**

A Secretary must uphold and promote the Parliamentary Service Values.

### **13 The Parliamentary Service Code of Conduct**

- (1) A Parliamentary Service employee must behave honestly and with integrity in the course of Parliamentary Service employment.
- (2) A Parliamentary Service employee must act with care and diligence in the course of Parliamentary Service employment.
- (3) A Parliamentary Service employee, when acting in the course of Parliamentary Service employment, must treat everyone with respect and courtesy, and without harassment.
- (4) A Parliamentary Service employee, when acting in the course of Parliamentary Service employment, must comply with all applicable Australian laws. For this purpose, *Australian law* means:
  - (a) any Act (including this Act), or any instrument having effect under an Act; or
  - (b) any law of a State or Territory, including any instrument having effect under such a law.
- (5) A Parliamentary Service employee must comply with any lawful and reasonable direction given by someone in the Department in which he or she is employed who has authority to give the direction.



- (6) A Parliamentary Service employee must maintain appropriate confidentiality about dealings that the employee has with either House of the Parliament, with any committee of either House, with any joint committee of both Houses, with any Senator or Member of the House of Representatives or with the staff of any Senator or Member.
- (7) A Parliamentary Service employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with Parliamentary Service employment.
- (8) A Parliamentary Service employee must use the resources of the Commonwealth in a proper manner.
- (9) A Parliamentary Service employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's Parliamentary Service employment.
- (10) A Parliamentary Service employee must not make improper use of:
  - (a) inside information; or
  - (b) the employee's duties, status, power or authority;in order to gain, or seek to gain, a benefit or advantage for the employee or for anyone else.
- (11) A Parliamentary Service employee must at all times behave in a way that upholds the Parliamentary Service Values and the integrity and good reputation of the Parliamentary Service.
- (12) A Parliamentary Service employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
- (13) A Parliamentary Service employee must comply with any other conduct requirement that is made by either House of the Parliament or by determinations.

## **14 Secretaries bound by Code of Conduct**

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## Section 15

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- (1) Secretaries are bound by the Code of Conduct in the same way as Parliamentary Service employees.
- (2) Statutory office holders are bound by the Code of Conduct in the same way as Parliamentary Service employees.
- (3) In this section:

*statutory office holder* means a person who holds any office or appointment under this Act, being an office or appointment that is prescribed by the determinations for the purposes of this definition.

### 15 Breaches of the Code of Conduct

- (1) A Secretary may impose the following sanctions on a Parliamentary Service employee in the relevant Department who is found (under procedures established under subsection (3)) to have breached the Code of Conduct:
  - (a) termination of employment;
  - (b) reduction in classification;
  - (c) re-assignment of duties;
  - (d) reduction in salary;
  - (e) deductions from salary, by way of fine;
  - (f) a reprimand.
- (2) The determinations may prescribe limitations on the power of a Secretary to impose sanctions under subsection (1).
- (3) A Secretary must establish procedures for determining whether a Parliamentary Service employee in the relevant Department has breached the Code of Conduct. The procedures:
  - (a) must comply with basic procedural requirements set out in Commissioner's Directions; and
  - (b) must have due regard to procedural fairness; and
  - (c) may be different for different categories of Parliamentary Service employees.

- (4) The Commissioner must issue directions in writing for the purposes of subsection (3).
- (5) A Secretary must take reasonable steps to ensure that every Parliamentary Service employee in the relevant Department has ready access to the documents that set out the procedures referred to in subsection (3).

## **16 Protection for whistleblowers**

A person performing functions in or for a Department must not victimise, or discriminate against, a Parliamentary Service employee because the employee has reported breaches (or alleged breaches) of the Code of Conduct to:

- (a) the Commissioner or a person authorised for the purposes of this section by the Commissioner; or
- (b) the Merit Protection Commissioner or a person authorised for the purposes of this section by the Merit Protection Commissioner; or
- (c) a Secretary or a person authorised for the purposes of this section by a Secretary.

## **17 Prohibition on patronage and favouritism**

A person exercising powers under this Act or the determinations:

- (a) in relation to the engagement of Parliamentary Service employees; or
  - (b) otherwise in relation to Parliamentary Service employees;
- must do so without patronage or favouritism.

## **18 Promotion of employment equity**

A Secretary must establish a workplace diversity program to help in giving effect to the Parliamentary Service Values.

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**19 Restrictions on directions to Clerks**

The Clerk of either House of the Parliament is not subject to direction by a Presiding Officer in relation to any advice sought from, or given by, the Clerk with respect to that House or any of its committees or members.

## **Part 4—Parliamentary Service employees**

### **Division 1—Parliamentary Service employees generally**

#### **20 General directions to Secretaries**

- (1) General directions may be given in writing under this section to Secretaries in relation to the management and leadership of Parliamentary Service employees.
- (2) Any such directions are to be given:
  - (a) in relation to the Clerk of the Senate—by the President of the Senate; or
  - (b) in relation to the Clerk of the House of Representatives—by the Speaker of the House of Representatives; or
  - (c) in relation to any other Secretary—by the President of the Senate and the Speaker of the House of Representatives acting jointly.
- (3) A direction can only be given if the Parliamentary Service Commissioner has been consulted by the President of the Senate, the Speaker of the House of Representatives, or the President of the Senate and the Speaker of the House of Representatives, as the case may be, in relation to the proposed direction.
- (4) A direction cannot be given to a Secretary in relation to the exercise of powers by the Secretary under this Part in relation to particular individuals.
- (5) A direction issued under subsection (1) must be:
  - (a) published in the *Gazette* within 14 days; and
  - (b) laid before the appropriate House as soon as practicable; after the direction is issued.
- (6) In this section, *appropriate House* means:

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- (a) in relation to a direction given to the Clerk of the Senate—the Senate; or
- (b) in relation to a direction given to the Clerk of the House of Representatives—the House of Representatives; or
- (c) in relation to a direction given to any other Secretary—the Senate and the House of Representatives.

**21 Employer powers etc. of Secretary**

- (1) A Secretary, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of Parliamentary Service employees in the relevant Department.
- (2) Without limiting subsection (1), a Secretary has, in respect of Parliamentary Service employees in the relevant Department, the rights, duties and powers that are prescribed by the determinations.

**22 Engagement of Parliamentary Service employees**

- (1) A Secretary, on behalf of the Commonwealth, may engage people as employees for the purposes of the relevant Department.
- (2) The engagement of a Parliamentary Service employee (including an engagement under section 26) must be:
  - (a) as an ongoing Parliamentary Service employee; or
  - (b) for a specified term or for the duration of a specified task; or
  - (c) for duties that are irregular or intermittent.
- (3) The usual basis for engagement is as an ongoing Parliamentary Service employee.
- (4) The determinations may limit the circumstances in which persons may be engaged as mentioned in paragraph (2)(b) or (c).
- (5) An engagement for a specified term may be extended, subject to any limitations prescribed by the determinations.

- (6) The engagement of a Parliamentary Service employee may be made subject to conditions notified to the employee, including conditions dealing with any of the following matters:
  - (a) probation;
  - (b) citizenship;
  - (c) formal qualifications;
  - (d) security and character clearances;
  - (e) health clearances.
- (7) Subsection (6) does not, by implication, limit the conditions that may be applied to the engagement of a Parliamentary Service employee.
- (8) A Secretary must not engage, as a Parliamentary Service employee, a person who is not an Australian citizen, unless the Secretary considers it appropriate to do so.

## **23 Classification Rules**

- (1) The Presiding Officers, after consulting the Commissioner, may, by notice in the *Gazette*, make rules about classifications of Parliamentary Service employees.
- (2) The Classification Rules may apply, adopt or incorporate, with or without modification, any of the provisions of an award, as in force at a particular time or as in force from time to time.
- (3) Secretaries must comply with the Classification Rules.
- (4) A Secretary cannot reduce the classification of a Parliamentary Service employee without the employee's consent, except in the following cases:
  - (a) as a sanction under section 15;
  - (b) on the ground that the employee is excess to the requirements of the relevant Department at the higher classification;

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- (c) on the ground that the employee lacks, or has lost, an essential qualification for performing duties at the higher classification;
  - (d) on the ground of non-performance, or unsatisfactory performance, of duties at the higher classification;
  - (e) on the ground that the employee is unable to perform duties at the higher classification because of physical or mental incapacity;
  - (f) in other circumstances prescribed by the determinations.
- (5) If a relevant award, certified agreement or AWA contains procedures to be followed when reducing the classification, then a reduction is of no effect unless those procedures are followed.

**24 Remuneration and other conditions**

- (1) A Secretary may from time to time determine in writing the remuneration and other terms and conditions of employment applying to a Parliamentary Service employee or employees in the relevant Department. A determination is of no effect to the extent that it would reduce the benefit to an employee of an individual term or condition applicable to the employee under an award, certified agreement or AWA.

Note: Other Commonwealth laws deal with matters such as superannuation, compensation, long-service leave and maternity leave.

- (2) A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of an award or certified agreement, as in force at a particular time or as in force from time to time.
- (3) The Presiding Officers may, by notice in the *Gazette*, determine the remuneration and other terms and conditions of employment applying to Parliamentary Service employees, if the Presiding Officers are of the opinion that it is desirable to do so because of exceptional circumstances.



- (4) A determination under subsection (3) overrides any determination under subsection (1), to the extent of any inconsistency.

## **25 Assignment of duties**

A Secretary may from time to time determine the duties of a Parliamentary Service employee in the relevant Department, and the place or places at which the duties are to be performed.

## **26 Mobility between Parliamentary Service and Public Service**

- (1) A Parliamentary Service employee is eligible for engagement in any position, or at any classification or level, as an employee of a Department of State or of an Executive Agency under the *Public Service Act 1999* on the same terms and conditions, but subject to the same restrictions (for example, a restriction limiting an engagement to a person who has particular qualifications) if any, as would apply to an APS employee seeking to be employed in the position or at the classification or level.
- (2) An APS employee is eligible for engagement in any position or at any classification or level as an employee of a Department on the same terms and conditions, but subject to the same restrictions (for example, the restriction limiting an engagement to a person who has particular qualifications) if any, as would apply to a Parliamentary Service employee seeking to be employed in the position or at the classification or level.
- (3) A person who moves from:
- (a) employment in the Parliamentary Service to employment in the Australian Public Service; or
  - (b) employment in the Australian Public Service to employment in the Parliamentary Service;
- retains his or her existing or accruing rights in respect of matters relating to his or her employment to the same extent as if he or she were moving from employment in one Department of State to employment in another Department of State.
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**27 Compulsory moves between Parliamentary Departments and between the Parliamentary Service and the Australian Public Service**

- (1) The Commissioner may:
  - (a) with the agreement of the Presiding Officers, move an excess Parliamentary Service employee to another Parliamentary Department; or
  - (b) with the agreement of the Public Service Commissioner, move a transitional excess Parliamentary Service employee to an APS Agency.
- (2) For the purposes of this section:
  - (a) a Parliamentary Service employee is an *excess Parliamentary Service employee* if, and only if, the Secretary has notified the Commissioner in writing that the employee is excess to the requirements of the Parliamentary Department; and
  - (b) a Parliamentary Service employee is a *transitional excess Parliamentary Service employee* if, and only if, the employee was covered by the *Public Service Act 1922* at the time immediately before this Act commenced and the Secretary has notified the Commissioner in writing that the employee is excess to the requirements of the Parliamentary Service.

**28 Suspension**

The determinations may make provision in relation to the suspension from duties of Parliamentary Service employees, with or without remuneration.

**29 Termination of employment**

- (1) A Secretary may at any time, by notice in writing, terminate the employment of a Parliamentary Service employee in the relevant Department.

Note: The *Workplace Relations Act 1996* has rules and entitlements that apply to termination of employment.

- (2) For an ongoing Parliamentary Service employee, the notice must specify the ground or grounds that are relied on for the termination.
- (3) For an ongoing Parliamentary Service employee, the following are the only grounds for termination:
  - (a) the employee is excess to the requirements of the relevant Department;
  - (b) the employee lacks, or has lost, an essential qualification for performing his or her duties;
  - (c) non-performance, or unsatisfactory performance, of duties;
  - (d) inability to perform duties because of physical or mental incapacity;
  - (e) failure to satisfactorily complete an entry-level training course;
  - (f) failure to meet a condition imposed under subsection 22(6);
  - (g) breach of the Code of Conduct;
  - (h) any other ground prescribed by the determinations.
- (4) The determinations may prescribe grounds or procedures applicable to the termination of the engagement of non-ongoing Parliamentary Service employees.
- (5) Subsection (4) does not, by implication, limit the grounds for termination for a non-ongoing Parliamentary Service employee.

### **30 Retirement**

A Parliamentary Service employee who has reached the minimum retiring age is entitled to retire at any time by notice in writing to the Secretary of the Department in which the employee is employed.

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**31 Forfeiture of additional remuneration**

- (1) If a Parliamentary Service employee receives any non-Commonwealth remuneration for performing duties as a Parliamentary Service employee, the Secretary of the Department in which the employee is employed may give a notice in writing to the employee in relation to the whole, or a specified part, of the remuneration.
- (2) The amount notified by the Secretary:
  - (a) is taken to have been received by the employee on behalf of the Commonwealth; and
  - (b) may be recovered by the Commonwealth from the employee as a debt in a court of competent jurisdiction.
- (3) If a Secretary receives any non-Commonwealth remuneration for performing duties as a Secretary, then the Presiding Officer may give a notice in writing to the Secretary in relation to the whole, or a specified part, of the remuneration.
- (4) The amount notified by the Presiding Officer:
  - (a) is taken to have been received by the Secretary on behalf of the Commonwealth; and
  - (b) may be recovered by the Commonwealth from the Secretary as a debt in a court of competent jurisdiction.
- (5) In this section:

***non-Commonwealth remuneration*** means any remuneration from a person other than the Commonwealth.

**32 Right of return for election candidates**

- (1) This section applies to a person if:
    - (a) the person resigned as a Parliamentary Service employee in order to contest an election prescribed by the determinations; and
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- (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 a Parliamentary Service employee, in accordance with the determinations and within the time limits prescribed by the determinations.

### **33 Review of actions**

- (1) A Parliamentary Service employee is entitled to review, in accordance with the determinations, of any Parliamentary Service action that relates to his or her Parliamentary Service employment. However, a Parliamentary Service employee is not entitled to review under this section of Parliamentary Service action that consists of the termination of the employee's employment.
- (2) The determinations may prescribe exceptions to the entitlement.
- Note: For example, the determinations might provide that there is no entitlement to review if the application for review is frivolous or vexatious.
- (3) Without limiting subsection (1), determinations made for the purposes of that subsection may provide for the powers available to the Merit Protection Commissioner, or any other person or body, when conducting a review under the determinations.
- (4) Determinations for the purposes of subsection (1):
- (a) may provide for an initial review to be conducted within the relevant Department; and
  - (b) may provide that applications for review of particular kinds of Parliamentary Service action are to be made directly to the Merit Protection Commissioner; and
  - (c) must provide for an application for review to be referred to the Merit Protection Commissioner if the applicant is not

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satisfied with the outcome of an initial review within the relevant Department; and

- (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 a person nominated by the Merit Protection Commissioner or by a 3 member committee constituted in accordance with the determinations.
- (5) A person or body that has conducted a review under this section may make recommendations in a report on the review but does not have power to make any binding decision as a result of the review, except as provided by the determinations.
- (6) If the Merit Protection Commissioner is not satisfied with the response to recommendations contained in a report on a review under this section, the Merit Protection Commissioner may give a report on the matter to the Secretary of the relevant Department and to the Presiding Officers, for presentation to the Parliament.
- (7) In this section:

**action** includes a refusal or failure to act.

**Parliamentary Service action** means action by a person in the capacity of a Secretary or Parliamentary Service employee.

**relevant Department**, in relation to Parliamentary Service action, means the Department in which the person who did the action was at the time of the action.

## **Division 2—The Senior Executive Service**

### **34 SES employees**

SES employees are those Parliamentary Service employees who are classified as SES employees under the Classification Rules.

### **35 Constitution and role of SES**

- (1) The Senior Executive Service consists of the SES employees.
- (2) The function of the SES is to provide a group of Parliamentary Service employees each of whom, within his or her Department:
  - (a) provides one or more of the following at a high level:
    - (i) professional expertise;
    - (ii) policy advice;
    - (iii) management; and
  - (b) promotes co-operation with other Departments; and
  - (c) by personal example and other appropriate means, promotes the Parliamentary Service Values and compliance with the Code of Conduct.

### **36 Commissioner’s guidelines on SES matters**

The Commissioner must issue guidelines in writing about employment matters relating to SES employees, including engagement, promotion, redeployment, mobility and termination.

### **37 Incentive to retire**

- (1) A Secretary may give a notice in writing to an SES employee in the relevant Department stating that the employee will become entitled to a payment of a specified amount if the employee retires within a period specified in the notice.
  - (2) If the employee retires within the specified period, by notice in writing to the Secretary:
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- (a) the employee is entitled to be paid the specified amount; and
- (b) the employee is taken, for all purposes, to have been compulsorily retired from the Parliamentary Service.

**38 Commissioner's certificate required for termination of SES employment**

A Secretary cannot terminate the employment of an SES employee unless the Commissioner has issued a certificate stating that:

- (a) all relevant requirements of Commissioner's guidelines under section 36 have been satisfied in respect of the proposed termination; and
- (b) the Commissioner is of the opinion that the termination is in the public interest.



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## **Part 5—The Parliamentary Service Commissioner**

### **Division 1—Commissioner's functions etc.**

#### **39 Parliamentary Service Commissioner**

There is to be a Parliamentary Service Commissioner.

#### **40 Commissioner's functions**

- (1) The Commissioner's functions include the following functions:
  - (a) to give advice to the Presiding Officers on the management policies and practices of the Parliamentary Service;
  - (b) if requested by the Presiding Officers, to inquire into and report on matters relating to the Parliamentary Service that are specified in the request.
- (2) A report by the Commissioner under paragraph (1)(b) may include recommendations.
- (3) The Commissioner is not subject to direction by or on behalf of the Executive Government of the Commonwealth in the performance of his or her functions.

#### **41 Commissioner's inquiry powers**

The following provisions apply in relation to an inquiry that is conducted by the Commissioner under paragraph 40(1)(b) (with references to the Auditor-General being replaced by references to the Commissioner):

- (a) sections 32, 33, 34 and 35 of the *Auditor-General Act 1997*;
- (b) any other provisions of the *Auditor-General Act 1997*, or of regulations under that Act, that are relevant to the operation of section 32, 33, 34 or 35 of that Act.

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**42 Annual report**

- (1) After the end of each financial year, the Commissioner must give a report to the Presiding Officers, for presentation to the Parliament, on the activities of the Commissioner during the year.
- (2) The report must be prepared in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.

## **Division 2—Commissioner's appointment, conditions etc.**

### **43 Appointment of Commissioner**

- (1) The Commissioner is to be appointed by the Presiding Officers for a period of up to 5 years specified in the instrument of appointment.
- (2) A person may hold both the office of Commissioner and the office of Public Service Commissioner.

### **44 Remuneration and other conditions of appointment**

- (1) Subject to subsection (4), the remuneration and other conditions of appointment of the Commissioner are as determined in writing by the Presiding Officers.
- (2) For each determination, the Presiding Officers must seek the advice of the Remuneration Tribunal and take that advice into account.
- (3) Each determination must be:
  - (a) published in the *Gazette* within 14 days; and
  - (b) laid before each House of the Parliament as soon as practicable;after the determination is made.
- (4) If the same person holds both the office of Commissioner and the office of Public Service Commissioner, the person is not to be paid any remuneration in respect of the office of Commissioner.

### **45 Removal from office**

- (1) The Presiding Officers may remove the Commissioner from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Presiding Officers praying
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for the removal of the Commissioner on the ground of misbehaviour or physical or mental incapacity.

- (2) The Presiding Officers must remove the Commissioner from office if the Commissioner becomes an insolvent under administration.

**46 Acting Commissioner**

- (1) The Presiding Officers may appoint a person to act as Commissioner:
- (a) if there is a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) A person may act in both the office of Commissioner and the office of Public Service Commissioner.
- (3) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **Part 6—The Parliamentary Service Merit Protection Commissioner**

### **Division 1—Merit Protection Commissioner's functions etc.**

#### **47 Parliamentary Service Merit Protection Commissioner**

There is to be a Parliamentary Service Merit Protection Commissioner.

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

- (1) The Merit Protection Commissioner's functions include the following functions:
  - (a) to inquire into reports made to the Merit Protection Commissioner (or to a person authorised by the Merit Protection Commissioner) as mentioned in section 16;
  - (b) to inquire into alleged breaches of the Code of Conduct by the Commissioner and report to the Presiding Officers on the results of such inquiries (including, where relevant, recommendations for sanctions);
  - (c) to inquire into a Parliamentary Service action, at the request of the Presiding Officers, and to report to the Presiding Officers on the results of the inquiry;
  - (d) such functions as are prescribed by determinations made for the purposes of section 33;
  - (e) such other functions as are prescribed by the determinations.
- (2) The following provisions apply in relation to an inquiry under paragraph (1)(c) (with references to the Auditor-General being replaced by references to the Merit Protection Commissioner):
  - (a) sections 32, 33, 34 and 35 of the *Auditor-General Act 1997*;

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- (b) any other provisions of the *Auditor-General Act 1997*, or of regulations under that Act, that are relevant to the operation of section 32, 33, 34 or 35 of that Act.
- (3) The determinations may authorise the Merit Protection Commissioner to charge fees (on behalf of the Commonwealth) for the performance of functions prescribed under paragraph (1)(e).
- (4) In this section:

*action* includes a refusal or failure to act.

*Parliamentary Service action* means an action in relation to the employment of a Parliamentary Service employee, being an action by another Parliamentary Service employee or by a Secretary.

**49 Annual report**

- (1) After the end of each financial year, the Merit Protection Commissioner must give a report to the Parliamentary Service Commissioner on the activities of the Merit Protection Commissioner during the year.
- (2) The report must be prepared in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.
- (3) The Merit Protection Commissioner's report is to be included in the Parliamentary Service Commissioner's report under section 42.

**Division 2—Merit Protection Commissioner's appointment, conditions etc.**

**50 Appointment of Merit Protection Commissioner**

- (1) The Merit Protection Commissioner is to be appointed by the Presiding Officers for a period of up to 5 years specified in the instrument of appointment.

- (2) A person may hold both the office of Merit Protection Commissioner and the office of Public Service Merit Protection Commissioner.

## **51 Remuneration and other conditions of appointment**

- (1) Subject to subsection (4), the remuneration and other conditions of appointment of the Merit Protection Commissioner are as determined in writing by the Presiding Officers.
- (2) For each determination, the Presiding Officers must seek the advice of the Remuneration Tribunal and take that advice into account.
- (3) Each determination must be:
  - (a) published in the *Gazette* within 14 days; and
  - (b) laid before each House of the Parliament as soon as practicable;after the determination is made.
- (4) If the same person holds both the office of Merit Protection Commissioner and the office of Public Service Merit Protection Commissioner, the person is not to be paid any remuneration in respect of the office of Merit Protection Commissioner.

## **52 Removal from office**

- (1) The Presiding Officers may remove the Merit Protection Commissioner from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Presiding Officers praying for the removal of the Commissioner on the ground of misbehaviour or physical or mental incapacity.
- (2) The Presiding Officers must remove the Merit Protection Commissioner from office if the Merit Protection Commissioner becomes an insolvent under administration.

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**53 Acting Merit Protection Commissioner**

- (1) The Presiding Officers may appoint a person to act as Merit Protection Commissioner:
  - (a) if there is a vacancy in the office of Merit Protection Commissioner, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Merit Protection Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) A person may act in both the office of Merit Protection Commissioner and the office of Public Service Merit Protection Commissioner.
- (3) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.



## **Part 7—Departments and Secretaries**

### **54 Departments**

- (1) The following Departments of the Parliament are established by this subsection:
  - (a) the Department of the Senate;
  - (b) the Department of the House of Representatives.
- (2) Such other Departments of the Parliament as are required may be established by resolutions passed by each House of the Parliament.
- (3) For the purposes of this Act, a Department consists of the Secretary of the Department, together with the Parliamentary Service employees assisting the Secretary.
- (4) A Department of the Parliament established under subsection (2) may be abolished by resolutions passed by each House of the Parliament.

### **55 Offices of Clerk of the Senate and Clerk of the House of Representatives**

On the commencement of this Act, offices of Clerk of the Senate and Clerk of the House of Representatives are established by this section.

### **56 Office of Secretary of a Department**

- (1) This section applies to a Department other than the Department of the Senate and the Department of the House of Representatives.
  - (2) On the establishment of a Department, an office of Secretary of that Department is established by this subsection.
  - (3) On the abolition of a Department, the office of Secretary of that Department is abolished by this subsection.
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- (4) The name of the office of Secretary of a Department is “Secretary of the [*name of Department*]”.

**57 Responsibility for managing Department**

- (1) The Secretary of a Department, under the Presiding Officers, is responsible for managing the Department and must advise the Presiding Officers in matters relating to the Department.
- (2) The Secretary of a Department must assist the Presiding Officers to fulfil the Presiding Officers’ accountability obligations to the Parliament and provide factual information, as required by the Parliament, in relation to the operation and administration of the Department.

**58 Appointment of Clerk of the Senate and Clerk of the House of Representatives**

- (1) The Clerk of the Senate is to be appointed by the President of the Senate after the President has consulted members of the Senate about the proposed appointment.
- (2) The Clerk of the House of Representatives is to be appointed by the Speaker of the House of Representatives after the Speaker has consulted members of that House about the proposed appointment.
- (3) An appointment of a person as the Clerk of the Senate or the Clerk of the House of Representatives is to be for a period of 10 years. The person is not eligible for reappointment.
- (4) A person is not to be appointed as the Clerk of the Senate or the Clerk of the House of Representatives unless the Presiding Officer making the appointment is satisfied that the person has extensive knowledge of, and experience in, relevant Parliamentary law, procedure and practice.
- (5) If the Clerk of the Senate or the Clerk of the House of Representatives has reached the minimum retiring age, he or she is

entitled to retire at any time by notice in writing to the Presiding Officer.

- (6) An appointment is not affected by any defect or irregularity in or in connection with the appointment.

### **59 Appointment of Secretary of a Department**

- (1) The Secretary of a Department established under subsection 54(2) is to be appointed by the Presiding Officers for a period of 5 years.
- (2) The Presiding Officers cannot make an appointment unless they have received a report about the vacancy from the Commissioner.
- (3) An appointment is not affected by any defect or irregularity in or in connection with the appointment.

### **60 Termination of appointment of Clerk of the Senate or Clerk of the House of Representatives**

- (1) The Senate may, by resolution passed pursuant to a motion of which notice was given at least 6 sitting days before the day on which the resolution is passed, terminate the appointment of the Clerk of the Senate.
- (2) The House of Representatives may, by resolution passed pursuant to a motion of which notice was given at least 6 sitting days before the day on which the resolution is passed, terminate the appointment of the Clerk of that House.
- (3) A resolution terminating the appointment of the Clerk of the Senate or the Clerk of the House of Representatives must state the ground on which the appointment is terminated, which must be one of the following:
- (a) the Clerk has been guilty of misbehaviour;
  - (b) the Clerk is incapable, because of physical or mental incapacity, of performing his or her duties;
  - (c) the Clerk has become an insolvent under administration.
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**61 Termination of appointment of Secretary of a Department**

- (1) The Presiding Officers may, by notice in writing, terminate an appointment of a Secretary of a Department (other than an appointment of the Clerk of the Senate or the Clerk of the House of Representatives) at any time.

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) The Presiding Officers cannot terminate an appointment unless they have received a report about the proposed termination from the Commissioner.

**62 Suspension of Clerk of the Senate or Clerk of the House of Representatives**

- (1) If it appears to the Presiding Officer of a House of the Parliament that a ground exists on which the House could terminate the appointment of the Clerk of the House, the Presiding Officer may, by notice in writing, suspend the Clerk from office.
- (2) If the Presiding Officer of a House of the Parliament suspends the Clerk of the House from office, the Presiding Officer must cause a statement of the suspension setting out the ground of the suspension to be laid before the House not later than the first sitting day of the House after the day on which the suspension occurs.
- (3) The suspension of the Clerk ends on the first occurrence of any one of the following:
  - (a) the appointment of the Clerk is terminated under section 60;
  - (b) the House passes a resolution removing the suspension;
  - (c) the prescribed period has elapsed after the day on which a statement of the suspension is laid before the House under subsection (2).
- (4) For the purposes of paragraph (3)(c), the *prescribed period* in relation to a particular suspension is:

- (a) 5 sitting days of the House concerned; or
  - (b) if the House concerned has, before those 5 sitting days have elapsed, passed a resolution specifying a greater number of sitting days (not exceeding 10 sitting days) in relation to the suspension—that greater number of sitting days.
- (5) The suspension of a person from office as Clerk of the Senate or Clerk of the House of Representatives does not affect any entitlement of the person to be paid remuneration or allowances.

### **63 Remuneration and other conditions of appointment**

- (1) The remuneration and other conditions of employment of the Secretary of a Department are as determined by the Presiding Officers.
- (2) For each determination, the Presiding Officers must seek the advice of the Remuneration Tribunal and take that advice into account.
- (3) Each determination must be:
  - (a) published in the *Gazette* within 14 days; and
  - (b) laid before the appropriate House of the Parliament as soon as practicable;after the determination is made.
- (4) In this section, ***appropriate House*** means:
  - (a) in relation to a determination relating to the Clerk of the Senate—the Senate; or
  - (b) in relation to a determination relating to the Clerk of the House of Representatives—the House of Representatives; or
  - (c) in relation to a determination relating to any other Secretary—the Senate and the House of Representatives.

### **64 Acting Secretary**

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- (1) The Presiding Officers may appoint a person to act in the office of Secretary of a Department:
  - (a) if there is a vacancy in the office, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Secretary is suspended from office, is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**65 Annual report**

- (1) After the end of each financial year:
  - (a) the Clerk of the Senate must give a report to the President of the Senate, for presentation to the Senate, on the activities of the Department of the Senate during the year; and
  - (b) the Clerk of the House of Representatives must give a report to the Speaker of that House, for presentation to that House, on the activities of the Department of the House of Representatives during the year; and
  - (c) the Secretary of each other Department must give a report to the President of the Senate and the Speaker of the House of Representatives, for presentation to each House of the Parliament, on the activities of that Department during the year.
- (2) The report is to be prepared in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.

**Part 8—Miscellaneous****66 Payments in special circumstances**

- (1) The Presiding Officers may authorise the making of payments to a person under subsection (2) if the Presiding Officers consider it appropriate to do so because of special circumstances that relate to, or arise out of:
  - (a) the payee's employment by the Commonwealth; or
  - (b) another person's employment by the Commonwealth.
- (2) The Presiding Officers may authorise the making of any of the following payments:
  - (a) one or more payments of an amount or amounts specified in the authorisation (or worked out in accordance with the authorisation);
  - (b) periodical payments of an amount specified in the authorisation (or worked out in accordance with the authorisation), during a period specified in the authorisation (or worked out in accordance with the authorisation).
- (3) Payments may be authorised under this section even though the payments would not otherwise be authorised by law or required to meet a legal liability.
- (4) An authorisation cannot be made under this section if it would involve, or be likely to involve, a total amount of more than \$100,000.
- (5) Conditions may be attached to payments under this section. If a condition is breached, the payment may be recovered by the Commonwealth as a debt in a court of competent jurisdiction.
- (6) Payments under this section are to be made out of money appropriated by the Parliament for the purposes of this section.

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**67 Attachment of salaries to satisfy judgment debts**

- (1) The determinations:
  - (a) may provide for deductions to be made from the salary of a Secretary or a Parliamentary Service employee in order to satisfy a judgment debt; and
  - (b) may prescribe fees payable in connection with such deductions.

- (2) In this section:

*judgment debt* includes interest on a judgment debt.

**68 Release of personal information**

The determinations:

- (a) may authorise the 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, use or further disclosure of information disclosed under determinations made for the purposes of paragraph (a).

**69 Positions**

- (1) A Secretary may, in writing, create positions in the relevant Department.
- (2) A Secretary may from time to time nominate any Parliamentary Service employee in the relevant Department to occupy a position in that Department, but does not have to do so for all Parliamentary Service employees in that Department.
- (3) A provision of any Act that applies to Parliamentary Service employees who are nominated under this section to occupy a position applies in the same way to Parliamentary Service employees who are not nominated under this section to occupy a position.



## 70 Delegations

- (1) A Secretary may, in writing, delegate to a Parliamentary Service employee any of the Secretary's powers or functions under this Act (other than this section).
- (2) A Secretary may, in writing and with the prior written consent of the Commissioner, delegate to a person who is not a Parliamentary Service employee any of the Secretary's powers or functions under this Act (other than this section).
- (3) If a Parliamentary Service employee (the *first delegate*) to whom powers or functions are delegated under subsection (1) is an SES employee or acting SES employee, the first delegate may, in writing, delegate any of those powers or functions to another Parliamentary Service employee (the *second delegate*). However, if the first delegate is subject to directions in relation to the exercise of a power or function delegated under this subsection, the first delegate must give corresponding directions to the second delegate.
- (4) A power or function that is exercised or performed by a person under a delegation under subsection (3) is taken, for the purposes of this Act, to have been exercised or performed by the person who originally delegated the corresponding power or function under subsection (1).
- (5) A person exercising powers or functions under a delegation under this section must comply with any directions of the person who delegated the power or function.

## 71 Determinations

- (1) The Presiding Officers, after consulting the Commissioner, may make determinations prescribing matters:
    - (a) required or permitted by this Act (other than Part 9) to be prescribed by determinations; or
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- (b) necessary or convenient to be prescribed by determinations for carrying out or giving effect to this Act (other than Part 9).
- (2) Without limiting subsection (1), determinations may be made for, or in relation to, any of the following:
  - (a) confidentiality of information obtained by persons performing, or assisting in the performance of, functions under section 33 or paragraph 48(1)(a) or (c);
  - (b) immunity from civil action in respect of acts or omissions of persons performing, or assisting in the performance of, functions under section 33 or paragraph 48(1)(a) or (c);
  - (c) prescribing penalties for offences against the determinations by way of fines of up to 10 penalty units.
- (3) The determinations may make provision, in relation to a matter that may be prescribed by the determinations, by applying, adopting or incorporating, with or without modification, provisions of regulations in force at a particular time, or as in force from time to time, under the *Public Service Act 1999*.
- (4) Determinations made for the purposes of sections 22 and 33 must apply, adopt or incorporate to the maximum extent possible regulations made for the purposes of sections 22 and 33, respectively, of the *Public Service Act 1999*.
- (5) Subsection (4) does not, by implication, limit subsection (3).
- (6) A determination made under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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## Part 9—Transitional provisions

### 72 Interpretation

In this Part, unless the contrary intention appears:

*Agency* has the same meaning as in the *Public Service Act 1999*.

*Agency Head* has the same meaning as in the *Public Service Act 1999*.

*classification* includes a level.

*commencing time* means the time when this Act commences.

*continuing employee* means a person who was a continuing employee in a former Parliamentary Department for the purposes of Division 10 of Part III of the old Act immediately before the commencing time.

*continuing SES officer* means a person who was an SES officer in a former Parliamentary Department immediately before the commencing time.

*corresponding new Department*, means:

- (a) in relation to a former Parliamentary Department—the Department that corresponds to the former Parliamentary Department; or
- (b) in relation to a person who was an old Act officer or old Act employee—the Department that corresponds to the former Parliamentary Department in which the person was an old Act officer or old Act employee immediately before the commencing time.

*determinations* means determinations under this Part.

*eligible public employment* means eligible public employment within the meaning of Part IV of the old Act.

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***first-tier person*** means a person:

- (a) to whom:
  - (i) Division 2 of Part IV of the old Act applied immediately before the commencing time; or
  - (ii) the *Officers' Rights Declaration Act 1928* applied immediately before the commencing time because of section 87TA of the old Act; and
- (b) who was an officer in a former Parliamentary Department immediately before the Division referred to in subparagraph (a)(i) or the Act referred to in subparagraph (a)(ii) began to apply to him or her.

***former Parliamentary Department*** means a Parliamentary Department within the meaning of section 9B of the old Act.

***Merit Protection Act*** means the *Merit Protection (Australian Government Employees) Act 1984*.

***non-SES officer*** means a person who was an officer under the old Act, other than an SES officer.

***old Act*** means the *Public Service Act 1922*.

***old Act employee*** means an employee within the meaning of the old Act.

***old Act officer*** means an officer within the meaning of the old Act.

***pre-commencement misconduct*** means conduct of an old Act officer or old Act employee before the commencing time that was misconduct for the purposes of Subdivision C, D or E of Division 6 of Part III of the old Act.

***second-tier person*** means:

- (a) a person to whom Division 3 of Part IV of the old Act applied immediately before the commencing time; or
- (b) a person who becomes a second-tier person under subsection 77(6) of this Act.

**statutory instrument** means:

- (a) a law of the Commonwealth (other than this Act); or
- (b) a law of a Territory; or
- (c) an instrument having effect under a law referred to in paragraph (a) or (b).

**term employee** means a person who, immediately before the commencing time was:

- (a) a short-term or fixed-term employee in a former Parliamentary Department for the purposes of Division 10 of Part III of the old Act; or
- (b) a person employed in a former Parliamentary Department under section 82AG of the old Act.

**transitional determination** means a determination under subsection 9(7A) or section 82D of the old Act that was in force immediately before the commencing time, subject to any amendments that are prescribed by the determinations under this Part.

**transitional period**, in relation to a first-tier person, means the period starting at the commencing time and ending at the earliest of the following times:

- (a) the end of the period prescribed by the determinations for the purposes of this paragraph;
- (b) the time when the person ceases to be engaged in eligible public employment;
- (c) the time when the person resigns or retires as a Parliamentary Service employee;
- (d) the end of the relevant period (as defined in subsection 87D(5) of the old Act).

## **73 Operation of Part**

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- (1) This Part has effect despite anything in Parts 3 to 8.
- (2) Except where this Part expressly provides otherwise, this Act applies to a person who is taken, under this Part, to have been appointed or engaged under this Act in the same way as it applies to people actually engaged or appointed under this Act.

**74 Continuation of existing Departments**

- (1) The Department of the Senate and the Department of the House of Representatives that were in existence immediately before the commencing time continue in existence as the Departments referred to in paragraphs 54(1)(a) and (b), respectively.
- (2) The Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department that were in existence immediately before the commencing time continue in existence as Departments of the Parliament and are taken to have been established under subsection 54(2).

**75 Current heads of Parliamentary Departments to continue in office**

- (1) The person who held the office of Clerk of the Senate or the office of Clerk of the House of Representatives immediately before the commencing time is taken to have been appointed under subsection 58(1) or (2), as the case may be, to the office of the same name established by section 55, and to have been so appointed for a period of 10 years beginning at the commencing time.
  - (2) The person who held the office of Parliamentary Librarian immediately before the commencing time is taken to have been appointed under section 59 to the office of Secretary of the Department of the Parliamentary Library established by section 56, and to have been so appointed for a period of 5 years beginning at the commencing time.
  - (3) The person who held the office of Principal Parliamentary Reporter immediately before the commencing time is taken to have been
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appointed under section 59 to the office of Secretary of the Department of the Parliamentary Reporting Staff established by section 56, and to have been so appointed for a period of 5 years beginning at the commencing time.

- (4) The person who held the office of Secretary to the Joint House Department immediately before the commencing time is taken to have been appointed under section 59 to the office of Secretary of the Joint House Department established by section 56, and to have been so appointed for a period of 5 years beginning at the commencing time.

## **76 Conversion of officers and employees**

### *Continuing SES officers*

- (1) At the commencing time, a continuing SES officer becomes an SES employee:
- (a) in the corresponding new Department; and
  - (b) with a corresponding classification;
- as if he or she had been engaged as an ongoing Parliamentary Service employee under section 22.

### *Non-SES officers*

- (2) At the commencing time, a non-SES officer becomes a non-SES employee:
- (a) in the corresponding new Department; and
  - (b) with a corresponding classification;
- as if he or she had been engaged as an ongoing Parliamentary Service employee under section 22.

### *Term employees*

- (3) At the commencing time, a term employee becomes a non-SES employee:
- (a) in the corresponding new Department; and
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(b) with a corresponding classification;  
as if he or she had been engaged as a Parliamentary Service employee under section 22 for a period equal to the unexpired part of the period of the person's engagement under the old Act.

*Continuing employees*

- (4) At the commencing time, a continuing employee becomes a non-SES employee:
- (a) in the corresponding new Department; and
  - (b) with a corresponding classification;
- as if he or she had been engaged as an ongoing Parliamentary Service employee under section 22.

**77 Rights under Part IV of the old Act—first-tier persons**

- (1) During the transitional period, a first-tier person is taken to be absent from duty as a Parliamentary Service employee, on leave without pay.
  - (2) Service by a first-tier person in eligible public employment during the transitional period is counted, for the purposes of accrual of recreation leave credits and sick leave credits, as if it were service as a Parliamentary Service employee.
  - (3) A first-tier person is taken to have resigned as a Parliamentary Service employee at the end of the transitional period unless, before the end of the transitional period:
    - (a) the person has given notice in writing to the relevant Secretary stating that the person intends to resume duties as a Parliamentary Service employee on the first working day after the end of the transitional period; or
    - (b) the person has been granted leave for a period that consists of, or includes, the first working day after the end of the transitional period.
  - (4) If a person:
    - (a) gives a notice under paragraph (3)(a); and
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- (b) is absent from duty without leave on the first working day after the end of the transitional period;  
the person is taken to have resigned as a Parliamentary Service employee at the end of that first working day.
- (5) If a person would have ceased to be an officer under the old Act at a particular time because of section 87JA or 87JB of the old Act (if the old Act had not been repealed), then the person is taken to have resigned as a Parliamentary Service employee at that time.
- (6) If the transitional period for a first-tier person ends at the end of the relevant period (as defined in subsection 87D(5) of the old Act), then the person becomes a second-tier person at the end of that relevant period.

## **78 Rights under Part IV of the old Act—second-tier persons**

- (1) A second-tier person is entitled to be engaged as a Parliamentary Service employee, in accordance with the determinations, within the time limits prescribed by the determinations.
- (2) Determinations made for the purposes of subsection (1) may prescribe exceptions to the entitlement.

## **79 Determinations under the old Act**

- (1) At the commencing time, each Secretary is taken to have made a determination (a *continued determination*) under section 24 containing the terms of each transitional determination.
- (2) A continued determination may be amended or revoked by the Secretary in the same way as if it had actually been made under section 24.
- (3) Unless sooner revoked, a continued determination (including any amendments made by a Secretary under section 24) ceases to be in force on the third anniversary of the commencing time.

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**80 Misconduct**

- (1) A Secretary may, under section 15, impose the same sanctions on a Parliamentary Service employee in the relevant Department for pre-commencement misconduct as the Secretary could have imposed on the employee for that conduct under that section if the conduct had happened after the commencing time.
- (2) Subsection (1) does not apply to conduct for which a person was charged under the old Act before the commencing time.
- (3) For the purposes of this section, the procedures referred to in section 15 apply in determining whether:
  - (a) conduct was misconduct for the purposes of Subdivision C, D or E of Division 6 of Part III of the old Act; and
  - (b) conduct would have been a breach of the Code of Conduct if the conduct had happened after the commencing time.

**81 References to Agency, Agency Head, former Parliamentary Departments and Secretaries**

- (1) In any Act other than the *Privacy Act 1988*:
    - (a) a replacement reference to an Agency includes a reference to a Department; and
    - (b) a replacement reference to an Agency Head (other than a reference to the Agency Head of a particular Agency) includes a reference to the Secretary of a Department; and
    - (c) a reference to a former Parliamentary Department is a reference to a Department; and
    - (d) a reference to a particular former Parliamentary Department is a reference to the Department that corresponds to that former Parliamentary Department; and
    - (e) a reference to the Secretary of a Department includes a reference to the Clerk of the Senate and the Clerk of the House of Representatives; and
    - (f) a reference to the Clerk of the Senate is a reference to the Clerk of the Senate holding office under this Act; and
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- (g) a reference to the Clerk of the House of Representatives is a reference to the Clerk of the House of Representatives holding office under this Act; and
  - (h) a reference to the Parliamentary Librarian is a reference to the Secretary of the Department of the Parliamentary Library holding office under this Act; and
  - (i) a reference to the Principal Parliamentary Reporter is a reference to the Secretary of the Department of the Parliamentary Reporting Staff holding office under this Act; and
  - (j) a reference to the Secretary to the Joint House Department is a reference to the Secretary of the Joint House Department holding office under this Act.
- (2) This section has effect subject to any modifications prescribed by the determinations.
  - (3) This section does not limit, by implication, section 83.
  - (4) In this section:

*replacement reference* means a reference that resulted from an amendment made by the *Public Employment (Consequential and Transitional) Amendment Act 1999* or by regulations under that Act.

## **82 References in statutory instruments to “officer” etc.**

In any statutory instrument, unless the contrary intention appears:

- (a) references in general terms to an officer include references to a Secretary or a Parliamentary Service employee; and
- (b) references to an officer of the Commonwealth include references to a Secretary or a Parliamentary Service employee; and
- (c) references to an officer or employee of a particular former Parliamentary Department include references to a

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Parliamentary Service employee in the corresponding new Department; and

- (d) references to a person occupying, holding or performing the duties of an office in a particular former Parliamentary Department include references to a Parliamentary Service employee in the corresponding new Department; and
- (e) references in general terms to an office include references to a position occupied by a Parliamentary Service employee; and
- (f) references to an office in a particular former Parliamentary Department include references to a position occupied by a Parliamentary Service employee in the corresponding new Department.

**83 Determinations**

- (1) The Presiding Officers, after consulting the Commissioner, may make determinations prescribing matters:
  - (a) required or permitted by this Part to be prescribed by determinations; or
  - (b) necessary or convenient to be prescribed by determinations for carrying out or giving effect to this Part.
- (2) Without limiting, by implication, subsection (1), determinations may be made under subsection (1), in relation to Parliamentary Service employees, with respect to any matters with respect to which regulations may be made under subsection 14(3) of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.
- (3) Determinations made for the purposes of subsection (2):
  - (a) may provide for the old Act or the Merit Protection Act to continue in force for the purposes of the determinations, even though those Acts have been repealed; and
  - (b) prevail over the old Act, this Act and the Merit Protection Act, to the extent of any inconsistency.

- (4) The determinations may:
  - (a) amend other Acts, by making amendments of a kind that are consequential on the repeal of the old Act and its replacement in relation to Parliamentary Service employees by this Act; and
  - (b) make provision of a transitional or saving nature in relation to amendments made under paragraph (a).
- (5) For the purposes of the *Amendments Incorporation Act 1905*, amendments made by determinations under paragraph (4)(a) are to be treated as if they had been made by an Act.
- (6) Determinations made under this section within one year after the commencing time may commence on a day earlier than the day on which they are made, but not earlier than the commencing time.
- (7) The determinations may make provision, in relation to a matter that may be prescribed by the determinations, by applying, adopting or incorporating, with or without modification, provisions of regulations in force at a particular time, or as in force from time to time, under the *Public Employment (Consequential and Transitional) Amendment Act 1999*.
- (8) A determination made under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **84 Certain Acts continue to apply to Departments established and people appointed or engaged under this Act**

If, immediately before the commencing time, an Act applied to former Parliamentary Departments or to people appointed or engaged under section 9 of the *Public Service Act 1922*, the first-mentioned Act applies to corresponding new Departments or to people appointed or engaged under this Act, as the case may be.

## Part 10—Schedules

### 85 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 Parliamentary Service (Consequential Amendments) Act 1997

### 1 Title

Omit “*Parliamentary Service Act 1997*”, substitute “*Parliamentary Service Act 1999*”.

### 2 Section 2

Omit “*Parliamentary Service Act 1997*”, substitute “*Parliamentary Service Act 1999*”.

### 3 Item 1 of Schedule 1

Repeal the item, substitute:

### 1 Section 3 (definition of *Parliamentary Department*)

Repeal the definition, substitute:

*Parliamentary Department* means a Department of the Parliament established under the *Parliamentary Service Act 1999*.

### 4 Item 2 of Schedule 1

Omit “*Parliamentary Service Act 1997*”, substitute “*Parliamentary Service Act 1999*”.

### 5 Item 5 of Schedule 1

Omit “*Parliamentary Service Act 1997*”, substitute “*Parliamentary Service Act 1999*”.

### 6 Item 6 of Schedule 1

Omit “*Parliamentary Service Act 1997*”, substitute “*Parliamentary Service Act 1999*”.

### 7 Item 7 of Schedule 1

**Schedule 1** Amendment of the Parliamentary Service (Consequential Amendments) Act 1997

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Omit “*Parliamentary Service Act 1997*”, substitute “*Parliamentary Service Act 1999*”.

**8 Item 9 of Schedule 1**

Omit “*Parliamentary Service Act 1997*”, substitute “*Parliamentary Service Act 1999*”.

**9 Heading before item 10 of Schedule 1**

Omit the heading, substitute:

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

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[*Minister’s second reading speech made in—  
House of Representatives on 28 June 1999  
Senate on 14 October 1999*]

(135/99)

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