



Parliamentary Service Amendment Act 2013

No. 4, 2013

**An Act to amend the *Parliamentary 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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Parliamentary Service Amendment Act 2013

No. 4, 2013

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

[Assented to 1 March 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Parliamentary 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 column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	1 March 2013
2. Schedule 1, Parts 1 to 11	The later of: (a) the start of the 28th day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1 to the <i>Public Service Amendment Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2013 (paragraph (b) applies)
3. Schedule 1, Part 12	The day this Act receives the Royal Assent.	1 March 2013
4. Schedule 1, item 68	The day this Act receives the Royal Assent.	1 March 2013
5. Schedule 1, items 69 to 92	The later of: (a) the start of the 28th day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1 to the <i>Public Service Amendment Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2013 (paragraph (b) applies)
6. Schedule 2, Parts 1 to 12	The later of: (a) the start of the 28th day after this Act receives the Royal Assent; and	1 July 2013 (paragraph (b) applies)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	(b) immediately after the commencement of Schedule 1 to the <i>Public Service Amendment Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
7. Schedule 2, Part 13	The day this Act receives the Royal Assent.	1 March 2013

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 Parliamentary Service Act 1999

Part 1—Secretaries

1 Section 57

Repeal the section, 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 adviser to the Presiding Officer on matters relating to the Department;
 - (b) leader, providing stewardship within the Department and, in partnership with other Secretaries, across the Parliamentary Service;
 - (c) any other role prescribed by the determinations.

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 Presiding Officer 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 engage with stakeholders, particularly in relation to the core activities of the Department;
 - (f) to manage the affairs of the Department in a way that is not inconsistent with the interests of the Parliamentary Service as a whole;

- (g) to assist the Presiding Officer to fulfil the Presiding Officer'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;
 - (h) such other responsibilities as are prescribed by the determinations.
- (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*.

Part 2—Senior Executive Service

2 Subsection 35(2)

Repeal the subsection, substitute:

- (2) The function of the SES is to provide strategic leadership of the highest quality that contributes to an effective and cohesive Parliamentary Service.
- (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 Departments, including to deliver outcomes across Department boundaries; and
 - (c) by personal example and other appropriate means, promotes the Parliamentary Service Values, the Parliamentary Service Employment Principles and compliance with the Code of Conduct.

3 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.

4 Paragraph 37(2)(b)

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

Part 3—The Parliamentary Service Commissioner and Merit Protection Commissioner

5 At the end of subsection 40(1)

Add:

- ; (c) to inquire, subject to determinations 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;
- (d) such other functions as are conferred on the Commissioner by this Act, the determinations or any other law;
- (e) to do anything incidental to or conducive to the performance of any of the Commissioner’s functions.

6 Subsection 40(2)

Repeal the subsection, substitute:

- (1A) Before commencing an inquiry under paragraph 40(1)(c), the Commissioner must notify the Presiding Officers in writing of the proposed inquiry.
- (2) A report made by the Commissioner in the performance of his or her functions may include recommendations.

7 Section 41

After “paragraph 40(1)(b)”, insert “or (c)”.

8 Before subsection 70(1)

Insert:

- (1AA) The Commissioner may, in writing, delegate to a former senior official any of the Commissioner’s powers or functions under paragraph 40(1)(c).
- (1AB) The Merit Protection Commissioner may, in writing, delegate any of the Merit Protection Commissioner’s powers or functions under this Act (other than this section) to:
 - (a) an APS employee made available to the Merit Protection Commissioner by an Agency Head (within the meaning of the *Public Service Act 1999*); or

- (b) a Parliamentary Service employee made available to the Merit Protection Commissioner by the Secretary of the Department in which the employee is employed.

9 At the end of section 70

Add:

- (6) A person (the *delegate*) to whom the Merit Protection Commissioner has delegated powers or functions under subsection (1AB) is not subject to direction by any person other than the Merit Protection Commissioner in relation to the delegate's exercise of the delegated powers or functions.
- (7) A power or function that is exercised by an APS employee under a delegation under subsection (1AB) is taken, for the purposes of the Code of Conduct (within the meaning of the *Public Service Act 1999*), to have been exercised by the APS employee in connection with APS employment (within the meaning of that Act).
- (8) In this section:

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; or
- (c) a person who was, but is no longer, an SES employee within the meaning of the *Public Service Act 1999*, and who does not hold an office or appointment under an Act.

Part 4—Parliamentary Service Values and Employment Principles

10 Section 7 (definition of *Parliamentary Service*)

Omit “section 9”, substitute “subsection 9(1)”.

11 Section 7

Insert:

Parliamentary Service Employment Principles means the principles in section 10A.

12 Section 9 (heading)

Repeal the heading, substitute:

9 Constitution and role of the Australian Parliamentary Service

13 Section 9

Before “The Australian”, insert “(1)”.

14 At the end of section 9

Add:

- (2) The Parliamentary Service serves the Parliament by providing professional support, advice and facilities to each House of the Parliament, to parliamentary committees and to Senators and Members of the House of Representatives, independently of the Executive Government of the Commonwealth.

15 Section 10

Repeal the section, substitute:

10 Parliamentary Service Values

Committed to service

- (1) The Parliamentary Service is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Parliament.

Ethical

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

Respectful

- (3) The Parliamentary Service respects the Parliament and all people, including their rights and their heritage.

Accountable

- (4) The Parliamentary Service performs its functions with probity and is openly accountable for its actions to the Parliament and the Australian community.

Impartial

- (5) The Parliamentary Service is non-partisan and provides advice that is frank, honest, timely and based on the best available evidence.

10A Parliamentary Service Employment Principles

Parliamentary Service Employment Principles

- (1) The Parliamentary Service is a career-based 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 Parliamentary Service 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: Determinations made by the Presiding Officers may determine the scope or application of the Parliamentary Service Employment Principles (see subsections 11C(2) to (4)).

16 Section 11

Repeal the section, substitute:

11 Commissioner may give advice to Presiding Officers about Parliamentary Service Values

The Commissioner may give advice in writing to the Presiding Officers for the purpose of:

- (a) ensuring that the Parliamentary Service incorporates and upholds the Parliamentary Service Values; and
- (b) determining where necessary the scope or application of the Parliamentary Service Values.

11A Determinations by Presiding Officers about Parliamentary Service Values

- (1) The Presiding Officers may make determinations under section 71 in relation to any of the Parliamentary Service Values for the purpose of:
 - (a) ensuring that the Parliamentary Service incorporates and upholds the Parliamentary Service Values; and
 - (b) determining where necessary the scope or application of the Parliamentary Service Values.
- (2) However, the Presiding Officers must not make determinations for the purposes of subsection (1) in relation to a Parliamentary Service Value unless:
 - (a) the Commissioner has given advice to the Presiding Officers under section 11 in relation to the Parliamentary Service Value; and
 - (b) the Presiding Officers have had regard to that advice in making the determinations.
- (3) For the purposes of this Act (other than subsection (1)), the Parliamentary Service Values have effect subject to any restrictions in determinations made for the purposes of subsection (1).

Tabling of Commissioner's advice

- (4) If the Presiding Officers make determinations in relation to any of the Parliamentary Service Values in accordance with this section, the Presiding Officers must cause to be laid before each House of the Parliament a copy of the advice given by the Commissioner referred to in paragraph (2)(a).

17 Section 12

Repeal the section, substitute:

12 Secretaries must promote Parliamentary Service Values and Parliamentary Service Employment Principles

A Secretary must uphold and promote the Parliamentary Service Values and Parliamentary Service Employment Principles.

18 Sections 17 and 17A

Repeal the sections.

19 Section 18

Omit “Parliamentary Service Values”, substitute “Parliamentary Service Employment Principles”.

20 At the end of subsection 22(2)

Add:

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

21 Subsection 22(3)

Repeal the subsection.

Part 5—Code of Conduct

22 Section 7

Insert:

former Parliamentary Service employee means a person who was, but is no longer, a Parliamentary Service employee.

23 Subsections 13(1) to (4)

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

24 Subsection 13(11)

Repeal the subsection, substitute:

- (11) A Parliamentary Service employee must at all times behave in a way that upholds:
- (a) the Parliamentary Service Values and Parliamentary Service Employment Principles; and
 - (b) the integrity and good reputation of the Department in which he or she is employed and the Parliamentary Service.

25 Section 14 (heading)

Repeal the heading, substitute:

14 Secretaries and statutory office holders bound by Code of Conduct

26 Subsection 14(2)

Repeal the subsection, substitute:

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

Note: The determinations may make 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*).

27 Before subsection 15(1)

Insert:

Sanctions that may be imposed

28 Subsection 15(1)

After “subsection (3)”, insert “of this section or subsection 48A(2)”.

29 At the end of subsection 15(1)

Add:

Note: See sections 29 and 38 in relation to terminating a Parliamentary Service employee’s employment.

30 Subsections 15(3), (4) and (5)

Repeal the subsections, substitute:

Providing false or misleading information etc. in connection with engagement as a Parliamentary Service employee

(2A) A person who is, or was, a Parliamentary Service 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 48A(2)) to have, before being engaged as a Parliamentary Service employee:

- (a) knowingly provided false or misleading information to another Parliamentary Service employee, or to a person acting on behalf of the Commonwealth; or
- (b) wilfully failed to disclose to another Parliamentary Service 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 a Parliamentary Service employee.

Note: If the person is a Parliamentary Service employee at the time a finding referred to in paragraph (2A)(a), (b) or (c) is made in relation to the person, the Secretary of the Department in which the person is employed may impose sanctions on the person as permitted by subsection (1).

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

- (3) A Secretary must establish written procedures in accordance with this section for determining:
- (a) whether a Parliamentary Service employee, or a former Parliamentary Service employee, in the relevant Department 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 a Parliamentary Service employee in the relevant Department 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 directions issued by the Commissioner under subsection (6); 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 Parliamentary Service employees or former Parliamentary Service employees; or
 - (b) Parliamentary Service employees, or former Parliamentary Service 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, by legislative instrument, issue directions for the purposes of paragraph (4)(a).
- (7) A Secretary must ensure that the procedures established under subsection (3) are made publicly available.

- (8) Procedures established under subsection (3) are not legislative instruments.

31 Subsection 20(4)

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

32 After paragraph 48(1)(c)

Insert:

- (ca) to inquire into and determine, in accordance with section 48A, whether a Parliamentary Service employee, or a former Parliamentary Service employee, has breached the Code of Conduct;

33 After section 48

Insert:

**48A Inquiry into alleged breach of Code of Conduct by
Parliamentary Service employee or former Parliamentary
Service employee**

Request for inquiry

- (1) The Merit Protection Commissioner may, for the purposes of paragraph 48(1)(ca), inquire into and determine whether a Parliamentary Service employee, or a former Parliamentary Service employee, has breached the Code of Conduct if:
- (a) the Secretary of the Department in which the Parliamentary Service employee, or former Parliamentary Service employee, was employed at the time of the alleged breach 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 Parliamentary Service employee, or former Parliamentary Service 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 a Parliamentary Service employee, or a former Parliamentary Service 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 determinations; and
 - (b) must have due regard to procedural fairness.

Note: The procedures may make different provision for different classes of Parliamentary Service employees or former Parliamentary Service 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 Parliamentary Service employees or former Parliamentary Service employees; or
 - (b) Parliamentary Service employees, or former Parliamentary Service 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 a Parliamentary Service employee, or a former Parliamentary Service employee, in a Department has breached the Code of Conduct, the Merit Protection Commissioner may exercise the same powers as the Secretary of the relevant Department may

exercise in determining whether a Parliamentary Service employee, or a former Parliamentary Service employee, in the Department 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 Secretary who requested the inquiry.

Note: If the Merit Protection Commissioner finds that a Parliamentary Service employee in a Department has breached the Code of Conduct, the Secretary of the Department may impose a sanction on the Parliamentary Service employee under subsection 15(1).

Part 6—Whistleblower reports

34 Section 16 (heading)

Repeal the heading, substitute:

16 Whistleblower reports

35 Section 16 (after the heading)

Insert:

Protection for whistleblowers

36 Section 16

Before “A person”, insert “(1)”.

37 At the end of section 16

Add:

Whistleblower reports made to Secretaries etc.

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

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

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

- (5) The determinations may prescribe either or both of the following:
- (a) procedures for a Parliamentary Service 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 determinations may prescribe circumstances in which the Commissioner, the Merit Protection Commissioner or a Secretary may:
- (a) decline to conduct an inquiry into a whistleblower report; or
 - (b) discontinue an inquiry into a whistleblower report.

Application of section to the Parliamentary Librarian

- (7) This section applies to the Parliamentary Librarian as if he or she were a Parliamentary Service employee.

38 Paragraph 48(1)(a)

Repeal the paragraph, substitute:

- (a) to inquire, subject to determinations 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;

39 Subsection 48(2)

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

Part 7—Review of actions

40 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 determinations.

Part 8—Non-ongoing Parliamentary Service employees

41 Subsection 22(4)

Omit “limit”, substitute “prescribe”.

42 Subsection 29(4)

Omit “grounds or procedures applicable to the termination of the engagement”, substitute “the grounds for the termination of the employment”.

43 Subsection 29(5)

Omit “termination for”, substitute “termination of the employment of”.

Part 9—Confidentiality of information

44 After Part 7

Insert:

Part 7A—Protection of information

65AA 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 member of staff assisting the 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 40(1)(b) or (c); or
- (b) section 41; or
- (c) any other provision of this Act or the determinations prescribed by the determinations for the purposes of this paragraph.

Prohibition on disclosure or other use of protected information

(2) Except as authorised by this section or the determinations, 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 determinations.

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 determinations, 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 a Department 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 determinations.
- (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 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.

65AB 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;
- (aa) a delegate of the Merit Protection Commissioner;
- (b) a person acting under the direction or authority of the Merit Protection Commissioner;
- (c) a member of staff assisting the Merit Protection Commissioner;
- (d) a member of a committee established or appointed by the Merit Protection Commissioner under the determinations;
- (e) any other person prescribed by the determinations for the purposes of this paragraph.

prescribed entrusted person means an entrusted person of a kind prescribed by determinations 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 48(1) or (2); or
- (b) section 48A; or
- (c) any other provision of this Act or the determinations prescribed by the determinations for the purposes of this paragraph.

Prohibition on disclosure or other use of protected information

(2) Except as authorised by this section or the determinations, 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 determinations.

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 determinations, 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 a Department 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 determinations.
- (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 48(1)(a), (b), (c), (d) or (e); or
- (d) any other provision of this Act or the determinations prescribed by the determinations 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.

65AC 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) paragraph 40(1)(b) or (c); and
 - (b) section 41; and
 - (c) any other provision of this Act or the determinations prescribed by the determinations 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 Presiding Officer or a Department; or
 - (d) discloses a communication between a person performing functions or duties, or exercising powers, in a Department 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.

65AD 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 48 and 48A; and
 - (b) any other provision of this Act or the determinations prescribed by the determinations 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 Presiding Officer or a Department; or
 - (d) discloses a communication between a person performing functions or duties, or exercising powers, in a Department 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.

65AE Release of personal information

The determinations:

- (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 determinations made for the purposes of paragraph (a).

45 Section 68

Repeal the section.

Part 10—Immunity from suit

46 After section 70

Insert:

70A 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 member of staff assisting the 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:
- (e) paragraph 40(1)(b) or (c); or
 - (f) any other provision of this Act or the determinations prescribed by the determinations 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;
 - (aa) a delegate of the Merit Protection Commissioner;
 - (b) a person acting under the direction or authority of the Merit Protection Commissioner;
 - (c) a member of staff assisting the Merit Protection Commissioner;
 - (d) a member of a committee established or appointed by the Merit Protection Commissioner under the determinations;
 - (e) any other person prescribed by the determinations 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 determinations.

Part 11—Legislative instruments

47 Before section 12

Insert:

11B Commissioner may give advice to Presiding Officers about employment matters

General

- (1) The Commissioner may give advice in writing to the Presiding Officers about employment matters relating to Parliamentary Service employees, including the following:
 - (a) engagement;
 - (b) promotion;
 - (c) redeployment;
 - (d) mobility;
 - (e) training schemes;
 - (f) termination.

Parliamentary Service Employment Principles

- (2) The Commissioner may give advice in writing to the Presiding Officers for the purpose of:
 - (a) ensuring that the Parliamentary Service incorporates and upholds the Parliamentary Service Employment Principles; and
 - (b) determining where necessary the scope or application of the Parliamentary Service Employment Principles.

11C Determinations by Presiding Officers about employment matters

Determinations about general employment matters

- (1) The Presiding Officers may make determinations under section 71 about employment matters relating to Parliamentary Service employees, including the matters referred to in subsection 11B(1).

Determinations about Parliamentary Service Employment Principles

- (2) The Presiding Officers may make determinations under section 71 in relation to any of the Parliamentary Service Employment Principles for the purpose of:
 - (a) ensuring that the Parliamentary Service incorporates and upholds the Parliamentary Service Employment Principles; and
 - (b) determining where necessary the scope or application of the Parliamentary Service Employment Principles.
- (3) However, the Presiding Officers must not make determinations for the purposes of subsection (2) in relation to a Parliamentary Service Employment Principle unless:
 - (a) the Commissioner has given advice to the Presiding Officers under subsection 11B(2) in relation to the Parliamentary Service Employment Principle; and
 - (b) the Presiding Officers have had regard to that advice in making the determinations.
- (4) For the purposes of this Act (other than subsection (2) of this section), the Parliamentary Service Employment Principles have effect subject to any restrictions in determinations made for the purposes of that subsection.

Tabling of Commissioner's advice about Parliamentary Service Employment Principles

- (5) If the Presiding Officers make determinations in relation to any of the Parliamentary Service Employment Principles in accordance with this section, the Presiding Officers must cause to be laid before each House of the Parliament a copy of the advice given by the Commissioner referred to in paragraph (3)(a).

48 Subsection 20(3)

Omit "Parliamentary Service".

49 Subsections 20(5) and (6)

Repeal the subsections, substitute:

- (5) A direction issued under this section 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).

50 Subsection 23(1)

Omit “by notice in the *Gazette*”, substitute “by legislative instrument”.

51 At the end of subsection 23(1)

Add:

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).

52 Subsection 24(3)

Omit “notice in the *Gazette*”, substitute “legislative instrument”.

53 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).

54 Section 36

Repeal the section.

55 Paragraph 38(a)

Omit “Commissioner’s guidelines under section 36”, substitute “determinations made for the purposes of subsection 11C(1)”.

Part 12—Acting appointments

56 At the end of subsection 38F(1)

Add:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

57 Subsection 38F(3)

Repeal the subsection.

58 At the end of subsection 46(1)

Add:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

59 Subsection 46(3)

Repeal the subsection.

60 At the end of subsection 53(1)

Add:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

61 Subsection 53(3)

Repeal the subsection.

62 Subsection 64(1)

Omit “(1)”.

63 At the end of subsection 64(1)

Add:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

64 Subsection 64(2)

Repeal the subsection.

65 Subsection 64XF(1)

Omit “(1)”.

66 At the end of subsection 64XF(1)

Add:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

67 Subsection 64XF(2)

Repeal the subsection.

Part 13—Miscellaneous amendments

68 Section 7 (definition of *Parliamentary Service employee*)

Repeal the definition, substitute:

Parliamentary Service employee means:

- (a) a person engaged as an employee under section 22; or
- (b) a person determined under paragraph 72(1)(b) of the *Public Service Act 1999* to have become engaged as a Parliamentary Service employee in a Department.

69 Subsection 23(4)

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

- (4) A Secretary may reduce the classification of a Parliamentary Service employee, without the employee's consent, only in the following circumstances:

70 Subsection 23(5)

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

71 Section 24 (heading)

Repeal the heading, substitute:

24 Terms and conditions of employment

72 Subsection 24(1)

Omit “remuneration and other”.

73 Subsection 24(3)

Omit “remuneration and other”.

74 Subsection 29(1) (note)

Omit “Note:”, substitute “Note 1:”.

75 At the end of subsection 29(1)

Add:

Note 2: Determinations made by the Presiding Officers under subsection 11C(1) may set out procedures to be followed in terminating the employment of a Parliamentary Service employee.

76 After subsection 31(2)

Insert:

- (2A) If the Parliamentary Librarian receives any non-Commonwealth remuneration for performing duties as the Parliamentary Librarian, the Secretary of the joint Department may give a notice in writing to the Parliamentary Librarian in relation to the whole, or a specified part, of the remuneration.
- (2B) The amount notified by the Secretary:
- (a) is taken to have been received by the Parliamentary Librarian on behalf of the Commonwealth; and
 - (b) may be recovered by the Commonwealth from the Parliamentary Librarian as a debt in a court of competent jurisdiction.

77 Section 38E (heading)

Repeal the heading, substitute:

38E Terms and conditions of appointment

78 Subsection 38E(1)

Omit “remuneration and other conditions of employment”, substitute “terms and conditions of appointment”.

79 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.

80 Paragraphs 41(a) and (b)

Omit “, 34”.

81 Section 44 (heading)

Repeal the heading, substitute:

44 Terms and conditions of appointment

82 Subsection 44(1)

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

83 Paragraphs 48(2)(a) and (b)

Omit “, 34”.

84 After subsection 48(3)

Insert:

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

85 Section 51 (heading)

Repeal the heading, substitute:

51 Terms and conditions of appointment

86 Subsection 51(1)

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

87 Section 63 (heading)

Repeal the heading, substitute:

63 Terms and conditions of appointment

88 Subsection 63(1)

Omit “remuneration and other conditions of employment”, substitute “terms and conditions of appointment”.

89 Subsection 66(4)

Omit “of more than \$100,000”, substitute “exceeding the amount prescribed by regulations made for the purposes of subsection 73(4) of the *Public Service Act 1999*”.

90 Subsection 71(1)

After “may”, insert “, by legislative instrument,”.

91 Subsection 71(2)

Repeal the subsection, substitute:

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

92 Subsection 71(6)

Repeal the subsection.

Schedule 2—Application, saving and transitional provisions

Part 1—Preliminary

1 Definitions

In this Schedule:

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

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

old Code of Conduct means the Code of Conduct in the old Parliamentary Service Act (including any conduct requirement made by either House of the Parliament, and any determinations in force, for the purposes of subsection 13(13) of the old Parliamentary Service Act).

old Parliamentary Service Act means the *Parliamentary 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 5 and 6 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 Roles and responsibilities of Secretaries

To avoid doubt, section 57 of the new Parliamentary Service Act applies to a Secretary who was a Secretary at the commencement time.

Part 3—Senior Executive Service

4 Function of the SES

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

Part 4—Parliamentary Service Values and Employment Principles

5 Saving—workplace diversity programs

- (1) This item applies to a workplace diversity program that was in effect under section 18 of the old Parliamentary Service Act.
- (2) Despite the amendment of that section made by item 19 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 Parliamentary Service Act, to the extent that the program assists in giving effect to the Parliamentary Service Employment Principles.

Part 5—Code of Conduct

6 Application—amendment of Code of Conduct

The amendments of section 13 of the *Parliamentary Service Act 1999* made by items 23 and 24 of Schedule 1 to this Act apply in relation to conduct that occurs after the commencement time.

7 Application—procedures etc. for dealing with alleged breaches of Code of Conduct

Subject to item 9, the amendments of section 15 of the *Parliamentary Service Act 1999* made by items 27 to 30 of Schedule 1 to this Act apply in relation to an alleged breach of the Code of Conduct by a person who:

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

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

8 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 Parliamentary 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 Parliamentary Service Act.
- (2) Commissioner's Directions in force for the purposes of subsection 15(3) of the old Parliamentary Service Act continue in effect at and after the commencement time as if they were directions issued by the Commissioner under subsection 15(6) of the new Parliamentary Service Act for the purposes of paragraph 15(4)(a) of that Act.

9 Investigation in progress by Secretary into alleged breach of Code of Conduct

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

- (b) a Secretary had decided to begin an investigation to determine whether a Parliamentary Service employee in the relevant Department had breached the Code of Conduct, but had not begun the investigation.
- (2) Subject to subitem (3), the old Parliamentary Service Act (and the determinations, procedures and other conduct requirements 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 Parliamentary Service employee is found to have breached the Code of Conduct, the Secretary must determine the sanction (if any) to be imposed on the Parliamentary Service employee in accordance with the procedures established under paragraph 15(3)(b) of the new Parliamentary 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.

10 Finding by Secretary of breach of Code of Conduct but no sanction imposed

- (1) This item applies if, before the commencement time, a Secretary had found that a Parliamentary Service employee in the relevant Department had breached the Code of Conduct, but no sanction had been imposed.
- (2) The Secretary must determine the sanction (if any) to be imposed on the Parliamentary Service employee in accordance with the procedures established under paragraph 15(3)(b) of the new Parliamentary 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.

11 Allegation of breach of Code of Conduct by Parliamentary Service employee before commencement time

- (1) This item applies if, before the commencement time, an allegation had been made that a Parliamentary Service employee in a Department had breached the Code of Conduct, but the Secretary of that Department had not decided whether to begin an investigation to determine whether the Parliamentary Service employee had breached the Code of Conduct.
- (2) This item also applies if:
 - (a) after the commencement time, an allegation is made that:

- (i) a Parliamentary Service employee has breached the Code of Conduct; or
 - (ii) a person who became a former Parliamentary Service 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 Parliamentary Service Act (and the determinations 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.

12 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 48(1)(b) of the old Parliamentary 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 48(1)(b) of the old Parliamentary Service Act, but had not begun the inquiry.
- (2) The old Parliamentary Service Act (and the determinations and other conduct requirements in force for the purposes of that Act) continue to apply at and after the commencement time in relation to the inquiry.

13 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 Parliamentary Service Act (and the determinations 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.

14 Inquiries by Merit Protection Commissioner into alleged breaches of Code of Conduct by Parliamentary Service employees or former Parliamentary Service employees

- (1) Paragraph 48(1)(ca) and section 48A of the new Parliamentary Service Act (and the determinations 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 a Parliamentary Service employee at the commencement time; or
 - (b) becomes a Parliamentary Service employee, or a former Parliamentary Service employee, after that time;whether the breach is alleged to have occurred before or after that time.
- (2) Paragraph 48(1)(ca) and section 48A of the new Parliamentary Service Act (and the determinations and procedures in force for the purposes of those provisions) apply in relation to a breach of the Code of Conduct by a Parliamentary Service employee, or a former Parliamentary Service 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 6—Whistleblower reports

15 Inquiries in progress into whistleblower reports

- (1) This item applies if, before the commencement time, the Commissioner, the Merit Protection Commissioner or a Secretary, or a person authorised by the Commissioner, the Merit Protection Commissioner or a Secretary, 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 Parliamentary Service Act.
- (2) The old Parliamentary Service Act (and the determinations, procedures and other conduct requirements 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.

16 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 Parliamentary Service Act, but an inquiry into the report had not begun.
- (2) The new Parliamentary Service Act (and the determinations 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 Parliamentary Service Act; and
 - (b) a reference to the Code of Conduct in the new Parliamentary Service Act (or the determinations and procedures in force for the purposes of that Act) were a reference to the old Code of Conduct.

Note: See section 16, paragraphs 40(1)(c) and 48(1)(a) and subsection 40(1A) of the new Parliamentary Service Act in relation to whistleblower reports.

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

- (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 Parliamentary Service Act; and
 - (b) the breach (or alleged breach) occurred before the commencement time.
- (2) The new Parliamentary Service Act (and the determinations 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 determinations and procedures in force for the purposes of that Act) were a reference to the old Code of Conduct.

Note: See section 16, paragraphs 40(1)(c) and 48(1)(a) and subsection 40(1A) of the new Parliamentary Service Act in relation to whistleblower reports.

Part 7—Review of actions

18 Saving—determinations providing for review of Parliamentary Service action

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

Part 8—Non-ongoing Parliamentary Service employees

19 Saving—circumstances for engagement of non-ongoing Parliamentary Service 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 Parliamentary 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 41 of Schedule 1 to this Act, subsection 22(4) of the old Parliamentary Service Act (and the determinations in force for the purposes of that subsection) continue to apply, at and after the commencement time, in relation to the person's engagement.

20 Termination of employment of non-ongoing Parliamentary Service employee in progress before commencement time

- (1) This item applies if:
 - (a) before the commencement time, a Secretary had terminated the employment of a non-ongoing Parliamentary Service employee in the relevant Department under subsection 29(1) of the old Parliamentary Service Act; and
 - (b) the termination was to take effect after the commencement time.
- (2) Despite the amendment made by item 42 of Schedule 1 to this Act, the old Parliamentary Service Act (and the determinations in force for the purposes of that Act) continue to apply, at and after the commencement time, in relation to the termination.

21 Procedures for termination of non-ongoing Parliamentary Service employees after commencement time

Schedule 2 Application, saving and transitional provisions
Part 8 Non-ongoing Parliamentary Service employees

- (1) The procedures prescribed in determinations (the *termination determinations*) in force for the purposes of subsection 29(4) of the old Parliamentary Service Act apply to the termination of the employment of a non-ongoing Parliamentary Service employee after the commencement time.
- (2) This item ceases to have effect on the commencement of determinations made for the purposes of subsection 11C(1) of the new Parliamentary Service Act in relation to the matter referred to in paragraph 11B(1)(f) of the new Parliamentary Service Act.

Part 9—Confidentiality of information

22 Protected information obtained at or after commencement time

- (1) Section 65AA of the new Parliamentary Service Act applies to protected information obtained at or after the commencement time.
- (2) Section 65AB of the new Parliamentary Service Act applies to protected information obtained at or after the commencement time.

23 Saving—determinations providing for protection of information obtained before commencement time

- (1) This item applies to determinations that were in force for the purposes of paragraph 71(2)(a) of the old Parliamentary Service Act.
- (2) Despite the repeal of that paragraph made by item 91 of Schedule 1 to this Act, the determinations 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.

24 Saving—determinations providing for release of personal information

Determinations in force for the purposes of section 68 of the old Parliamentary Service Act continue in force at and after the commencement time as if they were determinations in force for the purposes of section 65AE of the new Parliamentary Service Act.

Part 10—Immunity from suit

25 Immunity from civil proceedings for acts or omissions at or after commencement time

Section 70A of the new Parliamentary Service Act applies in relation to anything done, or omitted to be done, at or after the commencement time.

26 Saving—determinations providing for immunity from civil proceedings

- (1) This item applies to determinations that were in force for the purposes of paragraph 71(2)(b) of the old Parliamentary Service Act.
- (2) Despite the repeal of that paragraph made by item 91 of Schedule 1 to this Act, the determinations 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 11—Legislative instruments

27 Saving—Classification Rules

The Classification Rules in force for the purposes of subsection 23(1) of the old Parliamentary 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 Parliamentary Service Act.

Part 12—Miscellaneous

28 Reduction in classification of Parliamentary Service employee

The amendment of subsection 23(5) of the *Parliamentary Service Act 1999* made by item 70 of Schedule 1 to this Act applies in relation to a reduction in the classification of a Parliamentary Service employee that occurs at or after the commencement time.

29 Determinations of terms and conditions of employment

- (1) The amendment of subsection 24(1) of the *Parliamentary Service Act 1999* made by item 72 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 *Parliamentary Service Act 1999* made by item 73 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.

30 Determination of terms and conditions of appointment

- (1) The amendment of subsection 38E(1) of the *Parliamentary Service Act 1999* made by item 78 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 44(1) of the *Parliamentary Service Act 1999* made by item 82 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.
 - (3) The amendment of subsection 51(1) of the *Parliamentary Service Act 1999* made by item 86 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.
 - (4) The amendment of subsection 63(1) of the *Parliamentary Service Act 1999* made by item 88 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.
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31 Engagement of consultants

- (1) The amendment of section 40 of the *Parliamentary Service Act 1999* made by item 79 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 48 of the *Parliamentary Service Act 1999* made by item 84 of Schedule 1 to this Act does not affect the engagement of a consultant by the Merit Protection Commissioner before the commencement time.

32 Saving—determinations prescribing penalties for offences against the determinations

Determinations in force for the purposes of paragraph 71(2)(c) of the old *Parliamentary Service Act* continue in force at and after the commencement time as if they were determinations in force for the purposes of subsection 71(2) of the new *Parliamentary Service Act*.

Part 13—Determinations

33 Determinations may deal with transitional etc. matters

The Presiding Officers may, by legislative instrument, make determinations dealing with matters of a transitional, saving or application nature relating to amendments and repeals made by this Act.

*[Second reading speech made in—
Senate on 28 November 2012
House of Representatives on 11 February 2013]*

(214/12)