



Public Service Amendment Act (No. 2) 2024

No. 76, 2024

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 76, 2024

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

[Assented to 26 August 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Public Service Amendment Act (No. 2) 2024*.

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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	27 August 2024

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Public Service Act 1999

1 Section 7

Insert:

former Agency Head means a person who was, but is no longer, an Agency Head.

2 Paragraph 41(2)(m)

Repeal the paragraph, substitute:

- (m) to inquire into and determine, in accordance with section 41A, whether an Agency Head, or a former Agency Head, has breached the Code of Conduct;

3 Section 41A (at the end of the heading)

Add “or former Agency Head”.

4 Subsection 41A(1)

Omit “an alleged breach of the Code of Conduct by an Agency Head”, substitute “and determine whether an Agency Head, or a former Agency Head, has breached the Code of Conduct”.

5 After subsection 41A(1)

Insert:

Procedures for inquiry

- (1A) The Commissioner must establish written procedures for inquiring into and determining whether an Agency Head, or a former Agency Head, has breached the Code of Conduct. The procedures:
 - (a) must comply with basic procedural requirements prescribed by the regulations; and
 - (b) must have due regard to procedural fairness.
- (1B) In addition, and without affecting subsection (1A), the procedures may be different for:

- (a) different categories of Agency Heads or former Agency Heads; or
 - (b) Agency Heads, or former Agency Heads, 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.
- (1C) The Commissioner must ensure that the procedures established under subsection (1A) are made publicly available.
- (1D) Procedures established under subsection (1A) are not legislative instruments.

Report on results of inquiry

6 Subsection 41A(2)

Omit “an inquiry under subsection (1)”, substitute “an inquiry and determination under this section”.

7 Paragraphs 41A(2)(a) to (d)

After “the Agency Head is”, insert “, or the former Agency Head was,”.

8 Application provisions

Application—conduct of former Agency Head

- (1) Subject to subitems (3) and (4), the amendments of the *Public Service Act 1999* made by this Schedule apply in relation to a breach, or an alleged breach, of the Code of Conduct by a former Agency Head, whether the conduct by the former Agency Head giving rise to the breach, or alleged breach, occurred before, on or after the commencement day.

Application—inquiries

- (2) Subject to subitems (3) and (4), the amendments of the *Public Service Act 1999* made by this Schedule apply in relation to an inquiry conducted for the purposes of paragraph 41(2)(m) of the *Public Service Act 1999* that:

- (a) starts on or after the commencement day; or
- (b) was started before the commencement day, but had not been completed at that day.

Application—written procedures for inquiries

- (3) The amendments of section 41A of the *Public Service Act 1999* made by item 5 of this Schedule apply only in relation to an inquiry conducted for the purposes of paragraph 41(2)(m) of the *Public Service Act 1999* that is started on or after the commencement day.
- (4) For the purposes of subitem (3), a Code of Conduct review within the meaning of item 1 of Schedule 2 to this Act is taken to have started before the commencement day.
- (5) Nothing in subitem (3) or (4) is intended to affect any rights of an Agency Head, or former Agency Head, that arose before the commencement day, in relation to a failure to afford the Agency Head, or former Agency Head, procedural fairness in conducting an inquiry for the purposes of paragraph 41(2)(m) of the *Public Service Act 1999*.

Application—information or documents

- (6) On and after the commencement day, the following may be used or disclosed for the purposes of an inquiry conducted for the purposes of paragraph 41(2)(m) of the *Public Service Act 1999*:
 - (a) any information given, or documents produced, to an entrusted person (within the meaning of subsection 72A(1) of the *Public Service Act 1999*) before the commencement day in the course of the inquiry;
 - (b) any information or documents created by such an entrusted person before the commencement day in the course of the inquiry.

Definitions

- (7) In this item:
commencement day means the day this item commences.

Schedule 2—Validation and continuation of pre-commencement reviews

1 Validation and continuation of certain pre-commencement reviews

Scope

- (1) This item applies in relation to a review or purported review of a matter under paragraph 41(2)(k) of the Public Service Act if:
 - (a) the review or purported review began in the period between 7 July 2023 and the day before commencement; and
 - (b) the matter involved a breach, or an alleged breach, of the Code of Conduct by an Agency Head or former Agency Head.
- (2) A review or purported review mentioned in subitem (1) is a *Code of Conduct review*.

Validation of Code of Conduct reviews

- (3) If a Code of Conduct review would not, but for this subitem, be authorised by or under paragraph 41(2)(k) of the Public Service Act, it is taken to be, and to have always been, by force of this subitem, validly conducted.

Continuation of Code of Conduct reviews

- (4) On and after commencement, a Code of Conduct review is, by force of this subitem, continued as an inquiry under paragraph 41(2)(m) of the Public Service Act.
- (5) Subitem (4) applies regardless of whether the Code of Conduct review:
 - (a) was continuing immediately before commencement; or
 - (b) had concluded before commencement.
- (6) In conducting the inquiry on and after commencement, the Commissioner may use or disclose any of the following:
 - (a) information given, or documents produced, to the Commissioner by any person in the course of the Code of Conduct review;

- (b) information or documents created by the Commissioner in the course of the Code of Conduct review.

Procedural fairness

- (7) Nothing in this item is intended to affect any rights of a person, that arose before commencement, in relation to a failure to afford the person procedural fairness in relation to the Code of Conduct review.

Definitions

- (8) In this item:
Code of Conduct has the same meaning as in the Public Service Act.
commencement means the day that this item commences.
Commissioner has the same meaning as in the Public Service Act.
Public Service Act means the *Public Service Act 1999*.

References to the Commissioner

- (9) A reference in this item to the Commissioner includes:
(a) a delegate of the Commissioner; and
(b) an entrusted person (other than the Commissioner or a delegate of the Commissioner) within the meaning of subsection 72A(1) of the Public Service Act.

[Minister's second reading speech made in—
House of Representatives on 14 August 2024
Senate on 21 August 2024]

(91/24)
