

EXPLANATORY STATEMENT

Issued by the authority of the Presiding Officers

Parliamentary Service Act 1999

Parliamentary Service Determination 2013

The *Parliamentary Service Act 1999* (the Act) establishes the Parliamentary Service. Subsection 71(1) of the Act provides that the Presiding Officers may make determinations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The Act, as amended by the *Parliamentary Service Amendment Act 2013* (the Amendment Act), also contains other provisions that authorise the making of determinations¹. The Amendment Act received the Royal Assent on 1 March 2013.

The amended Act closely follows the amendments made to the *Public Service Amendment Act 2013*, in keeping with the principle established when the original Act was made that the framework of the Act would follow that established by the *Public Service Act 1999* except where differences are necessary to reflect the unique character of the parliamentary service and the obligation of parliamentary staff to serve the Parliament.

Parliamentary Service Determination 2013 (this Determination) repeals *Parliamentary Service Determination 2003/2* (Determination 2003/2) and replaces it with provisions revised to support the Amendment Act. The provisions reflect the *Public Service Regulations 1999* (as amended with effect from 1 July 2013) and the *Australian Public Service Commissioner's Directions 2013*, except where differences are necessary, as mentioned above.

Overview of the amendments

The purpose of this Determination is to give effect to provisions of the Amendment Act and to update aspects of Determination 2003/2. The Act, as referred to below, is the Act as amended with effect from 1 July 2013.

This Determination makes amendments that are consequential to the Amendment Act, including repeal of a number of provisions of Determination 2003/2 that were incorporated into the Act by the Amendment Act.

Many of the amendments concern the promotion of the integrity of the Parliamentary Service and further strengthening of its framework, including:

- amendments that articulate requirements, with respect to an individual's duties and responsibilities, for upholding the Parliamentary Service Values;
- amendments that enable the Presiding Officers to make determinations relating to the Employment Principles set out in the amended Act;
- amendments that provide for statutory office holders, as defined, to be bound by the Parliamentary Service Code of Conduct in certain circumstances. These amendments aim to align conduct requirements for Parliamentary Service employees and statutory office holders when they work together, and are not intended to limit the independence of statutory office holders;

¹ For the purposes of this Determination, these include sections 16, 65AB; subsections 14(2A), 14(3), 21(2), 22(4) and 33(1) and (2); and paragraphs 65AE(a), 48(1)(e) and 48A(2)(a).

- amendments that prescribe basic procedural requirements for Secretaries and the Parliamentary Service Merit Protection Commissioner (the Merit Protection Commissioner) in dealing with whistleblower reports, including prescribing circumstances in which an inquiry may be declined or discontinued. The amendments aim to ensure that a whistleblower has information about the protections available; that an inquiry will be conducted unless there are reasonable grounds not to do so; and that procedural fairness requirements are clear;
- amendments that provide for the determination of basic procedural requirements with which the Merit Protection Commissioner must comply when inquiring into suspected breaches of the Code of Conduct by Parliamentary Service employees or former Parliamentary Service employees. These provisions are consequential to new provisions in the Amendment Act which confer on the Merit Protection Commissioner the function of determining, in certain circumstances, whether a Parliamentary Service employee or former employee has breached the Parliamentary Service Code of Conduct;
- amendments that authorise the use and disclosure of personal information in certain circumstances. The amendments are aimed at providing clarity to parliamentary departments and employees about the circumstances in which personal information may be shared by parliamentary departments or used within a parliamentary department. Appropriate information sharing will also promote confidence in Parliamentary administration.

Other key amendments include the following:

- amendments that revise and clarify provisions for engagement and promotion (including how the principle of merit is to apply); notification of employment opportunities and employment decisions; and movements between departments and from the Australian Public Service (APS);
- amendments that simplify the arrangements for the employment of non-ongoing non-SES employees for a specified term or for the duration of a specified task, including by streamlining the grounds under which parliamentary departments can engage persons as non-ongoing employees on a specified term basis;
- amendments that introduce new provisions dealing with workplace diversity, performance management and safe workplaces;
- amendments that allow a Secretary, in certain circumstances, to direct an employee to undergo an examination by a nominated medical practitioner to assess the employee's fitness for duty and to direct the employee to give a report of the examination to the Secretary. Amendments also widen the scope of the definition of 'nominated medical practitioner' in this Determination to cover other health service providers, such as clinical psychologists, which may not be covered by the current provisions;
- amendments that improve the operational efficiency and effectiveness of Independent Selection Advisory Committees (ISACs), as well as providing ISACs with the flexibilities that are available for general Parliamentary Service recruitment, including seeking and using expert opinion (for example assessment centres and technical testing) and use of the resources of departments, including departmental staff, to assist in the assessment of candidates. The amendments maintain appropriate oversight by the Merit Protection Commissioner and continue to support the independence of these committees.
- amendments that introduce new provisions, and update existing provisions, concerning arrangements under section 33 of the Act, under which Parliamentary Service employees

are able to seek independent review of a broad range of employment related actions. These amendments aim to clarify existing provisions and provide for review rights for former employees. Further amendments provide for the Merit Protection Commissioner to conduct a review of a determination by the Commissioner of a breach of the Code of Conduct by a former Parliamentary Service employee; and

- amendments to the operation of Promotion Review Committees (PRCs) intended to reduce the adversarial nature of promotion reviews and support appropriate privacy for an employee who is a party to a review.

Overall, these amendments promote effective management of the Parliamentary Service, and are designed to enable this Determination to be more easily understood by parliamentary departments and Parliamentary Service employees.

Regulation Impact Statement

No regulation impact statement is required for the measures contained in this Determination.
Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights has been completed for this Determination, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that this Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Human rights implications

This Determination engages the following human rights.

Right to freedom of expression

The right to freedom of opinion and expression is contained in articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR).

Whistleblower inquiries

Section 16 of the Act provides for Parliamentary Service employees to make whistleblower reports—i.e. reports of breaches or alleged breaches of the Code of Conduct—and prohibits discrimination against or victimisation of whistleblowers. New provisions in this Determination give effect to the right of Parliamentary Service employees to make whistleblower reports by setting out basic procedural requirements with which Secretaries and the Merit Protection Commissioner must comply in dealing with whistleblower reports—for example, to provide the whistleblower with information about the protections available to them under the Act, to inquire into the report unless there are good reasons not to do so, and to uphold procedural fairness obligations.

The relevant provisions in this Determination include the presumption that a whistleblower report will be inquired into unless the decision maker reasonably believes that there are grounds on which to decline or discontinue inquiry (for example, if the report is frivolous, vexatious, misconceived, or lacking in substance; if the report would be dealt with more appropriately by different means, such as under another Commonwealth law), and a requirement to consider, having regard to all the circumstances, whether to give the person about whom a whistleblower report has been made an opportunity to be heard in relation to the report. In most cases this opportunity would be provided as a matter of course; however,

circumstances have arisen in which informing an employee that an allegation has been made against them has not been appropriate. The new provisions allow discretion to manage situations appropriately where the public interest would not merit the provision of the opportunity to be heard. Situations of this kind might arise, for example, where the safety or wellbeing of a Parliamentary Service employee may be adversely affected in a significant way and their interests are not otherwise likely to be prejudicially affected.

In the event that, as a result of a whistleblowing inquiry, a parliamentary department makes a decision to undertake an inquiry into the alleged misconduct of an employee under procedures established under section 15(3) of the Act, the employee must be afforded procedural fairness.

Code of Conduct investigations

New section 48A of the Act confers on the Merit Protection Commissioner the function of inquiring into, and making determinations in relation to, alleged breaches of the Code of Conduct by Parliamentary Service employees and former Parliamentary Service employees. Such determinations must be made, under written procedures established by the Secretary or the Merit Protection Commissioner, as appropriate. These provisions provide for the determinations to prescribe basic procedural requirements with which such written procedures must comply, and provide that the procedures must have due regard to procedural fairness. This Determination inserts new clause 114, which sets out prescribed requirements for procedures for inquiries conducted by the Merit Protection Commissioner. The procedures prescribed by clause 114 are required to reflect and promote the central requirements of procedural fairness.

Overall, this Determination engages and promotes the right to freedom of opinion and expression.

Right to privacy and reputation

The right to privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. Several components of this Determination engage the right to privacy.

Notification of employment decisions

Part 3 of this Determination provides, among other things, for notification in the Public Service *Gazette* of certain employment decisions. Subclause 39(4) of this Determination provides that such a notification must include the employee's name, unless the Secretary decides that the name should not be included because of the person's work-related or personal circumstances (for example, if the person has a legal protection order). This provision has the effect of promoting Parliamentary Service employees' right to privacy.

Medical examinations

Clauses 43 and 44 of this Determination allow a Secretary to direct an employee to attend a medical examination, either to satisfy a condition of the employee's engagement or to assess the employee's fitness for continued employment. New subclauses 43(2) and 44(5) made by this Determination make clear that the person conducting the medical examination may give a report of the examination to the Secretary, without seeking or confirming the agreement of the employee. The new provisions address a shortcoming in the current provisions.

Although the new provisions will result in personal information being disclosed to the parliamentary department without an employee's specific agreement—and thus engage and limit the right to privacy under Article 17—the limitations are not arbitrary, are for a legitimate objective, and are reasonable in the particular circumstances. Where a Secretary

directs an employee to attend a medical examination for a valid reason, it is necessary for the Secretary to receive a report of the examination in order to make an informed assessment of the employee's fitness for engagement or continued employment.

It is expected that the power to direct employees to attend a medical assessment will be exercised responsibly, in good faith, and in a way that is consistent with the Parliamentary Service Values, Employment Principles, and Code of Conduct, the requirements of which include, among other things, that:

- the Parliamentary Service demonstrates leadership, is trustworthy, and acts with integrity, in all that it does (section 10(2) of the Act as amended);
- the Parliamentary Service respects all people, including their rights and their heritage (s. 10(3));
- the Parliamentary Service provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplace are valued (s.10A(1)(e));
- a Parliamentary Service employee, when acting in connection with Parliamentary Service employment, must treat everyone with respect and courtesy, and without harassment (s.13(3)).

The power to refer employees for a fitness for duty assessment is a significant one, and it exists for good reasons. It provides departments with a flexible tool that allows them to manage genuine cases of illness, including mental illness, with compassion for both the individual employee and their colleagues. In some circumstances it may be difficult for departments to meet their duty of care to employees without recourse to such steps; in fact, they might become liable for damages if they did not. In coming to a decision as to whether to refer an employee for a medical assessment, a manager must weigh several concerns, including those of the employee, and the requirement under the *Work Health and Safety Act 2011* to ensure that their 'acts or omissions do not adversely affect the health and safety of other persons', which includes those in the direct team and the wider work environment.

Section 33 of the Act provides a check on this decision-making power by providing that Parliamentary Service employees have rights of review about matters affecting them in their employment, including in these circumstances.

Review of Actions

This Determination inserts new clauses 116 to 123 to extend to former Parliamentary Service employees a right to review of a determination that they had breached the Parliamentary Service Code of Conduct, in circumstances where that determination was made after they had ceased Parliamentary Service employment. This Determination includes provisions requiring the review to be conducted in private.

This Determination inserts new clause 84 to clarify that the parties to a review of a promotion decision are not entitled to statements submitted by other parties under clause 84. The change protects the privacy of personal information.

Use and disclosure of personal information

Section 65AE of the Act provides inter alia for the determinations to authorise the use and disclosure of personal information in specific circumstances. Clause 3.7.3 of Determination 2003/2 provided that a Secretary may disclose personal information where the disclosure is necessary in a range of employment-related circumstances. Clause 147 of this Determination provides for disclosure or use of personal information where the disclosure is necessary for,

or relevant to, the performance of the Secretary's employer powers and gives greater clarity for parliamentary departments about the circumstances in which employee information may legitimately be disclosed and used. While the parliamentary departments are not covered by the *Privacy Act 1988*, they follow it in principle.

This approach is consistent with several existing sources of authority that permit the disclosure and use of employee information in parliamentary departments in a wide range of circumstances. For example, the common law duty of loyalty and fidelity owed by an employee to their employer implies an obligation on employees in some circumstances to report to the employer on matters of importance that could impact adversely on an employer's obligations, and under the general law, an employer has the power to inform itself of any information held by it which is relevant to the exercise of any employer related powers.

Clause 147 of this Determination may have the effect of limiting the right to privacy in some circumstances. The limitations are not arbitrary, are for a legitimate objective, and are reasonable in the particular circumstances.

There are some circumstances where employee information needs to be disclosed or used to maintain public confidence in Parliamentary administration and the integrity of the Parliamentary Service; for example, to promote and uphold the Parliamentary Service Values, Employment Principles and Code of Conduct by, for example, passing information between parliamentary departments to support proper Code of Conduct inquiries.

To support departments in applying this provision appropriately, the Parliamentary Service Commissioner proposes to issue guidance, after consultation with the Australian Information Commissioner, in accordance with subclause 147(6).

Right to work and rights in work

The right to work and rights in work are contained in Articles 6(1), 7, and 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Amendment Act includes an Employment Principle that provides that the Parliamentary Service is a career-based service which makes fair employment decisions with a fair system of review.

Part 8 of this Determination contains the procedures for the operation of Independent Selection Advisory Committees (ISACs). An ISAC is an independent committee established by the Merit Protection Commissioner at the request of a Secretary to make recommendations about the suitability of candidates in a staff recruitment exercise. The provisions of Part 8 provide an ISAC with the flexibility to use modern recruitment methods, and help to ensure that the independence of an ISAC is maintained for the benefit of parliamentary departments and Parliamentary Service employees.

Part 9 of this Determination contains the procedures for review of actions in the Parliamentary Service. Updated provisions in Part 9 aim to improve the operational efficiency and effectiveness of the review of action framework, and to assist Parliamentary Service employees to understand better their review rights.

Section 33 of the Act provides that a Parliamentary Service employee is entitled to review of any Parliamentary Service action that relates to his or her Parliamentary Service employment, subject to exceptions prescribed in this Determination. The right to review is supported by one of the Employment Principles in section 10A of the Act as amended, which provides that the Parliamentary Service is a career-based service that makes fair employment decisions with a fair system of review.

Parts 9 and 11 of this Determination contain the procedures for review of actions in the Parliamentary Service. These provisions seek to improve the operational efficiency and effectiveness of the review of actions framework, including in relation to promotion review. Under section 15 of the Act, Secretaries are required to establish written procedures to determine whether a Parliamentary Service employee or a former APS employee, has breached the Code of Conduct, and the sanction (if any) that is to be imposed after such a determination has been made.

Section 15(4) of the Act requires that those procedures comply with basic procedural requirements set out in this Determination, and have due regard to procedural fairness.

A Direction issued by the Parliamentary Service Commissioner sets out these prescribed requirements for procedures for parliamentary department inquiries into alleged breaches of the Code of Conduct. These procedural requirements promote Parliamentary Service employees' rights in work by providing that a determination may not be made in relation to an alleged breach of the Code of Conduct by a Parliamentary Service employee, or a former Parliamentary Service employee, unless reasonable steps have been taken to:

- notify the employee, or former employee, of the details of the suspected breach,
- give the employee, or former employee, a reasonable opportunity to make a statement in relation to the alleged breach, and
- notify the employee of the sanctions that may be imposed in the event that it is determined that the employee, or former employee, has breached the Code.

A sanction may not be imposed on an employee consequent on any determination of a breach of the Code of Conduct:

- unless reasonable steps have been taken to inform the employee of the determination, the sanction(s) being contemplated,
- unless reasonable steps have been taken to inform the employee of the factors under consideration in determining any sanction(s) to be imposed, and
- before the employee is given a reasonable opportunity to make a statement in relation to the sanction or sanctions under consideration.

Further, a Secretary is required to take reasonable steps to ensure that any person authorised to make a determination that there has been a breach of the Code of Conduct, or to determine what sanction (if any) will be imposed, is, and appears to be, independent and unbiased.

The procedures prescribed by this Determination reflect and promote the central requirements of procedural fairness, and promote Parliamentary Service employees' rights in work. Where a Code of Conduct inquiry may operate to limit a Parliamentary Service employee's rights in work, this limitation is not arbitrary, and is for a legitimate purpose—namely, to correct individuals' behaviour, to reinforce the expected standards of conduct for Parliamentary Service employees, and, thereby, to maintain public confidence in parliamentary administration. Where an employee who has been determined to have breached the Code of Conduct does not agree with this finding, or with any consequent sanction that has been imposed, he or she may seek review by the Merit Protection Commissioner of the determination or sanction decision, in accordance with s.33 of the Act. This right of review also engages the right to a fair hearing under Article 14(1) of the ICCPR.

Part 6 of this Determination sets out the responsibilities of Secretaries and employees in fostering a safe workplace that complies with all applicable work health and safety legislation.

This Determination requires Secretaries to put in place measures in their departments to ensure compliance with such legislation, and to require employees, in the context of their duties and responsibilities, to take proper steps to support those measures. These provisions are consistent with Article 7 of the ICESCR, which requires the provision of safe and healthy working conditions.

Article 6(2) of the ICESCR provides that the party to the convention should take steps to provide guidance and training to assist with the right to work. This Determination supports this right by providing for Parliamentary Service employees (including supervisors and managers) and Secretaries to pursue and support training and development to improve capability.

The amendments promote Parliamentary Service employees' rights in work.

Rights to equality and non-discrimination

The Directions promote the right to equality and non-discrimination in Article 26 of the ICCPR and Article 2(2) of the ICESCR, which prohibit discrimination on the basis of a prohibited ground including race, colour, sex, language, and religion, and provides that all individuals have the same rights and deserve the same level of respect, while recognising that it is sometimes necessary to provide some groups in the community with additional support in order for them to enjoy their right to equality.

This Determination promotes this right by providing direction and guidance on the meaning and application of the Employment Principles set out in section 10A of the Act. The Employment Principles promote equality, non-discrimination, and work rights by stipulating, among other things, that the Parliamentary Service is a career-based public service that makes fair employment decisions with a fair system of review; makes decisions relating to engagement and promotion that are based on merit (the 'merit principle'); and provides workplaces that are free from discrimination, patronage and favouritism.

The merit principle provides, among other things, that a decision relating to engagement and promotion is based on merit if all eligible members of the community are given a reasonable opportunity to apply to perform the duties, and that the primary consideration in making a selection decision is an assessment of the work-related qualities of the candidates and the work-related qualities genuinely required to perform the duties.

Part 4 of this Determination also promotes the right to equality and non-discrimination by requiring Secretaries to put in place measures in the department directed at ensuring that the diversity of Parliamentary Service employees is recognised, fostered and made best use of within the workplace. Part 4 articulates an expectation that agencies' workplace diversity programs will include measures directed at eliminating employment-related disadvantages in the agency on the basis of being Aboriginal and/or Torres Strait Islander; or gender; or race or ethnicity; or disability; or being a member of a group that, from time to time, is identified as having an employment-related disadvantage.

Part 4 of this Determination also requires Secretaries to put in place measures that help Parliamentary Service employees to balance their work, family, and other caring responsibilities effectively.

Affirmative measures

Article 27 of the International Covenant on the Rights of Persons with Disabilities (ICRPD) prohibits discrimination on the basis of disability with regard to all forms of employment; promotes employment opportunities and career advancement for persons with disability in the labour market; and promotes the employment of persons with disability in the public sector.

Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) allows for special measures to be taken in order to redress inequitable employment outcomes and realise the right to employment.

Articles 1(4) and 2(2) of the ICERD allow parties to the convention to take special measures for the purpose of advancing the fulfilment of rights and freedoms of certain racial or ethnic groups. According to the Committee on the Elimination of Racial Discrimination in its General Recommendation No 32, special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary.

Additionally, the Committee on Economic, Social and Cultural Rights has stated in General Comment No 5 that insofar as special treatment of persons with disabilities is necessary, parties to the convention are required to take appropriate measures to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, such as Article 27 of the ICRPD, flowing from their disability.

This Determination promotes these rights.

Clauses 26 to 28 of this Determination promote the social inclusion of key disadvantaged groups in the Australian community by affirmative measures. Key disadvantaged groups covered by affirmative measures include:

- Indigenous people,
- people with intellectual disabilities, and
- people with disabilities whom disability employment service providers have assessed as being likely to be unable to compete on merit due to disability.

These measures engage the rights to equality and non-discrimination in that affirmative measures only apply to Aboriginal and Torres Strait Islanders and persons with a disability. Such differences in treatment on the basis of race or disability do not amount to discrimination if the reasons for such differentiation are reasonable and objective and if the aim is to achieve a legitimate purpose.

These measures are designed to enhance the employment prospects of a person with an intellectual disability, and a person with a severe disability, who would otherwise be unlikely to obtain employment through the standard recruitment and selection arrangements, but who have the capacity to contribute to the work of a department. The measures are also designed to assist such persons to gain skills and experience that will further their ability to participate in the workforce.

The measures are also intended to counter the underrepresentation of persons with disabilities and Indigenous people in the Parliamentary Service workforce.

While the exceptions to the merit principle provided in these measures may limit the right under Article 6(1) of ICESCR that everyone should have the opportunity to gain their living by work which they choose or accept, this is outweighed by the competing interest of promoting diversity by affirmative measures.

Right to enjoy and benefit from culture

Under section 11 of the Act, the Presiding Officers, after receiving advice from the Parliamentary Service Commissioner, may make Directions to determine the scope and application of the APS Values set out in section 10 of the Act. The Act provides a new

Parliamentary Service Value: *Respectful: The Parliamentary Service respects all people, including their rights and their heritage.*

These provisions promote the right in Article 15 of the ICESCR to take part in cultural life, and the right conferred by Article 27 of the ICCPR on persons belonging to ethnic, religious or linguistic minorities not to be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Clause 8 of this Determination requires all Parliamentary Service employees, having regard to their duties and responsibilities, to:

- treat people with dignity, and recognise that all people have value,
- recognise the importance of human rights, and understand human rights obligations. This provision will promote the human rights under all of the treaties to which Australia is a party,
- recognise and foster diversity, and
- comply with all relevant anti-discrimination laws.

Right to take part in public affairs and elections

This Determination promotes the right to take part in public affairs and elections contained in article 25 of the ICCPR. This Determination provides that where Parliamentary Service employees have resigned to contest an election, they have the right to be re-engaged in their former parliamentary department on the same basis, performing the same or similar duties, and on the same terms and conditions, as before they resigned. These provisions promote the right to take part in public affairs and elections by ensuring security and continuity of employment should a Parliamentary Service employee contest an election unsuccessfully.

Conclusions

This Determination is compatible with human rights. It promotes and advances a number of human rights, and, to the extent that it may limit any human rights, those limitations are reasonable, necessary and proportionate.

This Determination was prepared following consultation with the Australian Public Service Commission (APSC).

Detail of this Determination is included in the [Attachment](#).

The Act specifies several conditions that need to be satisfied before exercising the power to make determinations:

- paragraph 11A(2)(b) specifies that the Presiding Officers must have regard to advice from the Commissioner before making determinations in relation to the Parliamentary Service Values (subsection 11A(4) requires this advice to be tabled if the Presiding Officers make relevant determinations);
- paragraph 11C(3)(b) specifies that the Presiding Officers must have regard to advice from the Commissioner before making determinations in relation to the Parliamentary Service Employment Principles (subsection 11C(5) requires this advice to be tabled if the Presiding Officers make relevant determinations); and
- subsection 71(1) specifies that the Presiding Officers may make determinations after consulting the Commissioner.

This Determination was made by the Presiding Officers after they had received advice from, and consulted with, the Commissioner, in accordance with the requirements mentioned above.

This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

This Determination commences on 1 July 2013.

Authority: Subsection 71(1) of the *Parliamentary Service Act 1999*

Details of *Parliamentary Service Determination 2013*

Notes on clauses

Part 1—Preliminary

Clause 1—Name of Determination

This clause provides that the title of this Determination is the *Parliamentary Service Determination 2013*.

Clause 2—Commencement

This clause provides for this Determination to commence on 1 July 2013.

Clause 3—Authority

This clause provides that this Determination is made under the *Parliamentary Service Act 1999*.

Clause 4—Dictionary

This clause provides that the Dictionary defines certain terms and notes a number of terms that are defined in the Act.

Clause 5—Repeal

This clause repeals Determination 2003/2.

Part 2—Parliamentary Service Values

Clause 6 Parliamentary Service Value 1—Committed to Service

Clause 6 sets out the requirements for upholding the Parliamentary Service Value in subsection 10(1) of the Act, having regard to the individual's duties and responsibilities. Paragraphs 6(a) to 6(k) list these requirements as follows:

- (a) engaging effectively and working actively to provide responsive, client-focussed service delivery;
- (b) ensuring that decisions and interactions with clients are objective and impartial, and in accordance with Government policy;
- (c) encouraging innovative thought and supporting innovative solutions;
- (d) supporting collaboration and teamwork, both internally (within a department), and externally;
- (e) promoting continuous improvement and managing change effectively;
- (f) contributing to a culture of achievement;
- (g) identifying and managing areas of potential risk;
- (h) supporting a unified Parliamentary Service;
- (i) pursuing and supporting training and development to improve capability;

- (j) planning time and priorities to deliver intended results;
- (k) being responsive to the Parliament and understanding the environment in which it operates.

Clause 7 Parliamentary Service Value 2—Ethical

Clause 7 sets the requirements for upholding the Parliamentary Service Value in subsection 10(2) of the Act, having regard to the individual's duties and responsibilities. Paragraphs 7(a) to 7(i) list these requirements as follows:

- (a) acting in a way that models and promotes the highest standard of ethical behaviour;
- (b) following through on commitments made;
- (c) having the courage to address difficult issues;
- (d) complying with all relevant laws, appropriate professional standards, and the Parliamentary Service Code of Conduct;
- (e) acting in a way that is right and proper, as well as technically and legally correct or preferable;
- (f) reporting and addressing misconduct and other unacceptable behaviour by Parliamentary Service employees in a fair, timely and effective way;
- (g) supporting the strategic objectives of the Department;
- (h) providing leadership in supporting the Parliament;
- (i) supporting systems that give Parliamentary Service employees appropriate opportunities to develop and demonstrate leadership qualities.

Clause 8 Parliamentary Service Value 3—Respectful

Clause 8 sets the requirements for upholding the Parliamentary Service Value in subsection 10(3) of the Act, having regard to the individual's duties and responsibilities. Paragraphs 8(a) to 8(f) list these requirements as follows:

- (a) treating all people with dignity and recognising that all people have value;
- (b) dealing with all people honestly and with integrity.
- (c) recognising the importance of human rights and understanding Australia's human rights obligations;
- (d) recognising and fostering diversity;
- (e) collaborating and being open to ideas in policy development, implementation, program management and regulation.
- (f) complying with all relevant anti-discrimination laws.

Clause 9 Parliamentary Service Value 4—Accountable

Clause 9 sets the requirements for upholding the Parliamentary Service Value in subsection 10(4) of the Act, having regard to the individual's duties and responsibilities. Paragraphs 9(a) to 9(g) list these requirements as follows:

- (a) being answerable to the Presiding Officers for the exercise of delegated authority and to the Parliament;
- (b) being open to scrutiny and being transparent in decision making;

- (c) being able to demonstrate that actions and decisions have been made with appropriate consideration;
- (d) being able to explain actions and decisions to the people affected by them;
- (e) being accountable for actions and decisions through statutory and administrative reporting systems;
- (f) being able to demonstrate clearly that resources have been used efficiently, effectively, economically and ethically;
- (g) being answerable for individual performance through performance management systems.

Clause 10 Parliamentary Service Value 5—Impartial

Clause 10 sets the requirements for upholding the Parliamentary Service Value in subsection 10(5) of the Act, having regard to the individual's duties and responsibilities. Paragraphs 10(a) to 10(g) list these requirements as follows:

- (a) providing the same standard of high quality professional support to the Parliament, irrespective of which political party is in power and of personal political beliefs;
- (b) ensuring that the individual's actions do not provide grounds for a reasonable person to question the ability of the individual to serve the Parliament;
- (c) ensuring that management and staffing decisions are made on a basis that is independent of the political party system, free from political bias and not influenced by the individual's political beliefs;
- (d) understanding the needs of the Parliament and providing it with the best objective, non-partisan advice based on the best evidence available;
- (e) providing advice that is relevant and comprehensive, is not affected by fear of consequences, and does not withhold important facts or bad news;
- (f) providing advice that takes account of the context in which policy needs to be implemented, the broader policy needs of the Parliament and, where appropriate, implications for the longer term.
- (g) implementing policies in a way that is free from bias, and in accordance with the law.

Part 3—Parliamentary Service employment

Division 1—Preliminary

Clause 11 Definitions

Clause 11 defines *broadband* by reference to the Classification Rules.

Clause 12 Meaning of ‘vacancy’

Clause 12 defines ‘vacancy’. For Part 3 of this Determination, a vacancy exists in a Department when a decision has been made that a specified group of duties need to be performed, and it is appropriate to consider engaging a person or promoting a Parliamentary Service employee to perform the duties.

Clause 13 Meaning of ‘similar vacancy’

Clause 13 defines ‘similar vacancy’. For Part 3 of this Determination, a ‘vacancy’ is similar to a vacancy notified in accordance with clause 20 if it and the notified vacancy are in the same Department; are for the same category of employment (ongoing or non-ongoing); and relate to the performance of similar duties in a similar location.

Clause 14 Meaning of ‘work-related qualities’

Clause 14 defines the meaning of ‘work-related qualities’. For Part 3 of this Determination, work-related qualities that may be taken into account in making an assessment of candidates’ suitability to perform duties in accordance with paragraph 10A(2)(c) of the Act include: skills and abilities; qualifications; training and competencies; standard of work performance; capacity to perform effectively to produce outcomes at the level required by the relevant duties; relevant personal qualities, such as honesty and integrity; potential for further development; and ability to contribute to team performance. This list is not exhaustive.

Division 2—Engagement of non-ongoing employees

Clause 15 Engagement of SES employee for specified term

Clause 15 sets out the circumstances in which a person may be engaged as an SES employee for a specified term in accordance with subsection 22(4) of the Act.

For this Determination, the person may be engaged for a specified term if the term does not exceed 5 years and the engagement may be extended once or more than once, but may not be extended to exceed 5 years.

The Note to the clause states that the usual basis for engagement of a Parliamentary Service employee is as an ongoing Parliamentary Service employee, in keeping with paragraph 10A(1)(b) of the Act—Secretary is expected to have regard to that paragraph before engaging a person as a non-ongoing employee.

Clause 16 Engagement on non-ongoing basis

Clause 16 deals with the engagement of persons as non-ongoing employees (at classification levels below the Senior Executive Service (SES)) for a specified term or the duration of a specified task and includes provisions dealing with extensions of specified terms of engagement of certain non-SES employees.

Subclause 16(1) prescribes the circumstances in which a Secretary may engage a person as a non-SES employee for a specified term, or for the duration of a specified task, for the purposes of subsection 22(4) of the Act.

Note 1 to subclause 16 refers the reader to subsection 22(4) of the Act. Note 2 explains that paragraph 10A(1)(c) of the Act requires engagement and promotion decisions to be based on merit and that subdivisions 3 and 4 of Part 3 explain how this employment principle is to be applied. Note 3 reiterates that the usual basis for engagement of a Parliamentary Service employee is as an ongoing Parliamentary Service employee and refers to paragraph 10A(1)(b) of the Act—a Secretary is expected to have regard to that paragraph before engaging a person as a non-ongoing Parliamentary Service employee.

Subclause 16(2) provides, under the heading ‘Specified task’, that where a Secretary engages a person as a non-ongoing employee for a specified task, the Secretary must, at the time of the engagement, be able to estimate reasonably the duration of the task, and be satisfied that the services of the person are unlikely to be required after the task is complete.

Paragraph 16(3)(a) provides that a Secretary may engage a person as a non-ongoing employee for a specified term if the duties of the employment are to be performed by the person only for a limited period, and the performance of those duties by that person is unlikely to be required after that period; for example, if the Department has a temporary increase in its workload, or has a temporary demand for employees with particular skills, or needs to replace an ongoing employee who is on leave or who is assigned to other duties.

Paragraph 16(3)(b) provides that a Secretary may engage a person as a non-ongoing employee for a specified term if the particular skills, knowledge or experience required to perform the duties of the employment can best be met by employing a person who has recently worked in the industry that corresponds to the employment for which the person is being engaged.

Paragraph 16(3)(c) provides that a Secretary may engage a person as a non-ongoing employee for a specified term if the purpose of the employment is to assist the person to gain skills and experience, by participating in the workforce under a scheme approved by the Secretary or by

the Public Service Commissioner, or to gain a formal occupational qualification, licence, accreditation or registration.

Paragraph 16(3)(d) provides that a Secretary may engage a person as a non-ongoing employee for a specified term if the person has received a written offer of ongoing employment, but prefers to be engaged as a non-ongoing employee.

Paragraph 16(3)(e) provides that a Secretary may engage a person as a non-ongoing employee for a specified term if the person is an ongoing Parliamentary Service employee.

Paragraph 16(4)(a) provides that if a Secretary engages a person as a non-ongoing employee for a specified term, in accordance with paragraphs 16(3)(a) or (b), the period of the engagement must be a period that represents a reasonable estimate of the time required for the performance of the duties and must not be more than 18 months.

Paragraph 16(4)(b) provides that if a Secretary engages a person as a non-ongoing employee for a specified term, as described in paragraphs 16(3)(a) or (b), any extension of the engagement must be for a period that represents a reasonable estimate of the length of time required for the performance of the duties.

Paragraph 16(4)(c) provides that if a Secretary engages a person as a non-ongoing employee for a specified term, as described in paragraphs 16(3)(a) or (b), subject to subclause 16(5), the total period of the engagement, including any extensions of the engagement, must not exceed three years.

Subclause 16(5) provides that the period of three years mentioned in paragraph 16(4)(c) may be extended, for a period of not more than 12 months, only if the Secretary considers that the engagement is necessary for the Department's operations; and the Commissioner is satisfied that special circumstances exist and authorises the Secretary to extend the engagement.

Subclause 16(6) provides that in addition to subclauses 16(3), (4) and (5) a Secretary may engage a person as a non-ongoing employee for a specified term if the person is an employee of a State or Territory, or an authority of a State or Territory, and the Secretary has entered into an agreement with a State or Territory, or an authority of a State or Territory, to engage the person as a non-ongoing employee for a specified term, and the period of the engagement is the period decided by the Secretary.

Division 3—Merit in engagement and promotion

Subdivision 1—Merit-based decision-making: standard provisions

Clause 17 Purpose of Subdivision 1 of Division 3 of Part 3

Clause 17 outlines that the scope of the Subdivision (clauses 17 to 21) is to determine the scope or application of the Employment Principle on merit; and the minimum requirements that a Secretary must meet in order to uphold that Employment Principle.

The Note indicates that Subdivision 2 of Division 3 of Part 3 provides modifications of and exceptions to the merit requirements for certain kinds of engagement and promotion decisions.

Clause 18 How a Secretary upholds the principle of merit-based decision-making

Clause 18 provides that a Secretary upholds the Employment Principle in section 10A(1)(c) of the Act in relation to a decision to engage or promote a person by ensuring that the decision is based on a selection processes that meets the requirements of Subdivision 1 of Division 3 of Part 3 or, for decisions to which the Subdivision 2 of Division 3 of Part 3 (clauses 22 to 33) applies, the requirements of Division 2 as modified by that Division.

A Note to Clause 18 refers the reader to section 26 of the Act which provides for the engagement of ongoing Parliamentary Service employees.

Clause 19 Merit-based selection process

Clause 19 sets out requirements for a merit-based selection process for engagement and promotion decisions. These requirements are well established and have been in place since the Act came into effect in 1999. Subclause 19(1) provides that a competitive selection process for a decision to engage or promote a person to fill a vacancy meets the requirements of Subdivision 1 of Division 1 of Part 3 of this Determination only if the following circumstances apply:

- the vacancy is notified in accordance with clause 20 or is a vacancy for which there was a similar vacancy notified in accordance with clause 20;
- the aim and purpose of the selection process is determined in advance and information about the process is readily available to applicants;
- the selection process is applied fairly in relation to each eligible applicant;
- the selection process is transparent and appropriately documented;
- merit is the primary consideration in making the engagement or promotion decision, in accordance with subsection 10A(2) of the Act;
- the selection process is free from discrimination, patronage and favouritism, consistent with Parliamentary Service Employment Principle 10A(1)(f);
- in the case of a decision to engage a person—the engagement would comply with the restrictions on engagement of redundancy benefit recipients in clause 108.

There are two Notes below subclause 19(1). The first Note explains that Subdivision 2 of Division 3 of Part 3 of this Determination provides modifications of, and exceptions to, the requirements in Subdivision 1 for certain kinds of engagement and promotion decisions. The second Note explains that Division 2 of Part 3 provides for matters regarding the engagement of non-ongoing employees.

Subclause 19(2) provides that for the purposes of paragraph 19(1)(e), secondary considerations that may be relevant to the selection decision include such factors as a

candidate's ability to commence by a particular date, their willingness to relocate, or their ability to meet other reasonable Department requirements.

Clause 20 Notification of vacancy in Gazette

Clause 20 sets out minimum requirements concerning notification in the Public Service Gazette in order to meet the 'reasonable opportunity to apply' component of paragraph 10A(2)(a) of the Act.

Under a heading 'Basic requirement for notification of vacancy', subclause 20(1) provides that, subject to clause 20, a selection process for a decision to fill a vacancy meets the requirements of Subdivision 1 of Division 3 of Part 3 only if the circumstances in paragraphs 20(1)(a) to (c) apply.

Paragraph 20(1)(a) requires that the vacancy, or similar vacancy, in the Department be notified in the Public Service Gazette within a period of 12 months before the written decision to engage or promote the person.

Paragraph 20(1)(b) requires that the vacancy be notified as open to all eligible members of the community (see also subclause 20(3)).

Paragraph 20(1)(c) requires the vacancy to be notified with a closing date for applications of at least seven calendar days after the notification, unless otherwise approved by the Commissioner. (In practice, vacancies generally remain open for longer than seven days; two weeks is common.)

Under a heading 'Notification of SES vacancies—external advertising', subclause 20(2) provides that a vacancy at an SES classification must be notified in the Public Service Gazette and advertised externally (for example, on a recruitment website) as open to all eligible members of the community. This continues an existing requirement.

Under a heading, 'Restricting applications to Parliamentary Service and Parliamentary Service employees (other than Parliamentary Service Level 1 and training classifications)', subclause 20(3) provides that if a Secretary decides that, for reasons of cost or operational efficiency, a vacancy at a non-SES classification should be filled by a person who is already a Parliamentary Service or Parliamentary Service employee, the vacancy may, with the agreement of the Commissioner, be notified in the Public Service Gazette as open only to persons who are Parliamentary Service or Parliamentary Service employees at the time of the notification.

Under the same heading, subclause 20(4) provides that subclause 20(3) does not apply in relation to a vacancy at the Parliamentary Service Level 1 classification or a training classification, and that these vacancies must be notified as open to all eligible members of the community.

Under a heading, 'Multiple Department notification', subclause 20(5) provides that a Department participating in a multiple department selection process must ensure that there is adequate notification of the vacancy under its own Department name in the Public Service Gazette (for example, a heading followed by a link to multiple department notification).

Under a heading, 'External advertising', subclause 20(6) provides that if a vacancy notified in the Public Service Gazette as open to all eligible members of the community is also advertised externally (for example on a recruitment website) the external advertising must take place within four weeks before or four weeks after the Public Service Gazette notification.

Under a heading ‘Re-notification requirement’, subclause 20(7) provides that if a vacancy is notified in the Public Service Gazette as open only to persons who are Parliamentary Service employees; and it is subsequently decided to advertise the vacancy externally as open to all eligible members of the community, the vacancy must be re-notified in the Public Service Gazette with the changed eligibility provision.

Clause 21 Additional requirement for SES engagement or promotion decisions

Clause 21 sets out additional requirements for a merit-based selection process for engagement and promotion of a person as an SES employee.

Paragraph 21(a) requires a representative of the Commissioner to be a full participant in the selection process or, if there was a similar vacancy, the selection process for the similar vacancy.

Paragraph 21(b) requires that, at the end of the process, the representative has certified that the selection process complied with the Act and this Determination, and that the Commissioner has endorsed the representative’s certification of the process.

Subdivision 2—Merit-based decision-making: exceptions to standard provisions

Clause 22 Purpose of Subdivision

Clause 22 sets out the purpose of Subdivision 2 of Division 3 of Part 3 of this Determination. The purpose is to modify the requirements of Subdivision 1 of Division 3 of Part 3 and the scope and application of Employment Principle 10A(1)(c) of the Act in relation to engagement and promotion decisions in specific circumstances where this is appropriate.

Clause 23 Engagement on a short-term, irregular or intermittent basis

Subclause 23(1) provides that a Secretary may engage a person to perform duties as a non-ongoing employee without complying with Subdivision 1 of Division 3 of Part 3 if the engagement is for a specified term or the duration of a specified task and the period of employment is 12 months or less, and, taking into account any expected extension of the engagement, the period of employment will not be for more than 12 months.

Subclause 23(2) provides that a Secretary may engage a person to perform duties as a non-ongoing employee without complying with Subdivision 1 of Division 3 of Part 3 of this Determination if the engagement is for duties that are irregular or intermittent.

Subclause 23(3) provides that a Secretary must ensure as far as practicable that a vacancy in the Department to which clause 23 applies is brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for it; for example, by advertising and providing access to non-ongoing employment registers.

Subclause 23(4) provides that as a minimum requirement, the Secretary must be satisfied that the person to be engaged has the work-related qualities genuinely required to perform the relevant duties.

Clause 23 sets a minimum requirement for these engagements. This better supports the Employment Principle in paragraph 10A(1)(c) of the Act.

Clause 24 Engagement of non-ongoing Parliamentary Service employee as ongoing employee in exceptional circumstances

Clause 24 provides for a Secretary to seek the Commissioner's authorisation of an engagement by the Secretary of a non-ongoing Parliamentary Service employee as an ongoing employee, without the need to notify a vacancy or conduct a competitive merit selection process, in certain exceptional circumstances. This provision may apply, for example, if a person engaged through a competitive merit selection process as a non-ongoing employee is regarded as eminent in their field and the Secretary believes that the duties are more appropriately undertaken by an ongoing employee.

Subclause 24(1) provides that a Secretary may, in writing, seek the Commissioner's authorisation of the engagement by the Secretary of a non-ongoing employee as an ongoing employee without complying with Subdivision 1 of Division 3 of Part 3 of this Determination if the Secretary is satisfied that:

- the relevant duties are more appropriately undertaken by an ongoing Parliamentary Service employee; and
- the person to be engaged as an ongoing Parliamentary Service employee has the work-related qualities genuinely required to perform the relevant duties; and
- the engagement as an ongoing Parliamentary Service employee is at the person's classification (or equivalent) as a non-ongoing Parliamentary Service employee; and
- the original engagement of the person as a non-ongoing Parliamentary Service employee, or an extension of the engagement of the person as a non-ongoing Parliamentary Service employee, complied with all aspects of Subdivision 1 of Division 3 of Part 3; and
- the engagement is necessary for the department's operations.

Clause 25 Engagement of ongoing SES employee as non-ongoing SES employee

Clause 25 provides for a Secretary to engage an ongoing SES employee to perform duties as a non-ongoing SES employee, in certain circumstances, without the need to notify a vacancy or conduct a competitive merit selection process. Such a non-ongoing engagement would be subject to the time limits specified in clause of this Determination, and must be at the same classification as the person's current SES classification or at a lower SES classification. The circumstances are:

- the person is to be engaged for a specified term or specified task; and
- the person resigns as an ongoing SES employee in order to commence the engagement as a non-ongoing SES employee for a specified term or specified task; and
- the engagement as a non-ongoing SES employee for a specified term or specified task is at the same classification as the person's current SES classification, or at a lower SES classification.

Clause 26 Affirmative measure—Aboriginals or Torres Strait Islanders

Clause 26 provides for a Secretary to identify a vacancy as open only to Aboriginals or Torres Strait Islanders within the meaning of the *Racial Discrimination Act 1975*. The vacancy must be notified in the *Public Service Gazette* with that restriction, and a competitive merit selection process conducted with eligible candidates. The clause contains conditions which clarify the eligibility requirements.

Subclause 26(1) provides that in notifying a vacancy in accordance with paragraph 20(1)(b) of this Determination, a Secretary may, consistent with Commonwealth law, identify a vacancy as open only to Aboriginals or Torres Strait Islanders within the meaning of the *Racial Discrimination Act 1975*.

Subclause 26(2) provides that the Secretary must ensure that, in all other respects, a decision to fill the vacancy is made in a way that meets the requirements of Subdivision 1 of Division 3 of Part 3 of this Determination.

Subclause 26(3) provides that the Secretary must ensure that a selection process for a vacancy identified under this clause accepts as applicants only persons who are of Aboriginal and/or Torres Strait Islander descent; and identify as Aboriginal and/or Torres Strait Islander; and are accepted by their community as being Aboriginal and/or Torres Strait Islander.

Clause 27 Affirmative measure—intellectual disability

Clause 27 provides for a Secretary to identify a vacancy as open only to people with intellectual disability, as assessed by a registered medical practitioner or a disability employment service provider. The vacancy must be notified in the *Public Service Gazette* with that restriction, and a competitive merit selection process conducted with eligible candidates. The clause contains conditions which clarify the eligibility requirements.

Subclause 27(1) provides that in notifying a vacancy in accordance with paragraph 20(1)(b) of this Determination, a Secretary may, consistent with Commonwealth law, identify a vacancy as open only to persons with intellectual disability.

Subclause 27(2) provides that the Secretary must ensure that, in all other respects, a decision to fill the vacancy is made in a way that meets the requirements of Subdivision 1 of Division 3 of Part 3 of this Determination.

Subclause 27(3) provides that the Secretary must ensure that a selection process for a vacancy identified under this clause accepts as applicants only persons with an appropriate referral or assessment by a registered medical practitioner or a disability employment service provider.

Clause 28 Affirmative measure—engagement of person unable to participate in selection process

Clause 28 provides for the engagement of persons with disability who have been assessed as being unable to participate in a competitive selection process.

Subclause 28(1) provides that this clause applies in relation to a person with disability who has been assessed by a disability employment service provider as being likely to be unable, due to their disability, to compete successfully on merit in a competitive selection process that complies with Subdivision 1 of Division 3 of Part 3 of this Determination.

Subclause 28(2) provides that a Secretary may engage the person as a Parliamentary Service employee to fill a vacancy that has been designed for, or identified as suitable for, the person, in consultation with the disability employment service provider. The vacancy is not required to be notified in the *Public Service Gazette*, and no competitive merit selection process is required.

Clause 29 Engagement of person from State or Territory jurisdiction

Clause 29 provides that a Secretary may engage a person as a non-ongoing Parliamentary Service employee for a specified term without notifying a vacancy in the *Public Service Gazette* or conducting a competitive merit selection process if the person is an employee of a State or Territory, or of an authority of a State or Territory, and the Department has entered

into an agreement with the State or Territory, or relevant authority, to engage the person as a non-ongoing employee for a specified term.

Clause 30 Re-engagement of election candidates

Clause 30 provides for the re-engagement, in certain circumstances, of Parliamentary Service employees who have resigned to contest an election.

Subclause 30(1) provides that Subdivision 1 of Division 3 of Part 3 does not apply to the proposed re-engagement of a person:

- (a) who contests an election prescribed in subclause 30(5); and
- (b) to whom section 32 of the Act applies; and
- (c) who applies to the Secretary for re-engagement:
 - (i) within the time limit; or
 - (ii) if the Commissioner has made a declaration under subclause (4)—as soon as practicable after the person receives notice of the declaration; and
- (d) if the person's previous engagement was non-ongoing:
 - (i) whose engagement would not have ended had the person not resigned to contest the election; and
 - (ii) who applies to the Secretary for re-engagement before the engagement would have ended had the person not resigned.

Subclause 30(2) provides that the re-engagement must:

- (a) be on the same basis (ongoing or non-ongoing) as the person's previous engagement; and
- (b) involve duties that:
 - (i) are the same as, or similar to, the duties the person performed immediately before the resignation; or
 - (ii) if those duties are unavailable—are at the same classification as the person's duties immediately before the resignation; and
- (c) be on:
 - (i) the terms and conditions that applied to the person immediately before the person resigned; or
 - (ii) if a term or condition applying to the person's classification has changed since the person resigned—the terms and conditions mentioned in subparagraph (i) as modified by the change.

Subclause 30(3) provides that the continuity of the service of the person is taken not to have been broken by the period between the person's resignation and the person's re-engagement as a Parliamentary Service employee. However, that period does not count as service for the purposes of:

- (a) the National Employment Standards; or
- (b) an employment arrangement that applies to the employee.

A Note refers the reader to the *Long Service Leave (Commonwealth Employees) Act 1976* and the *Maternity Leave (Commonwealth Employees) Act 1973* for information on how entitlements to long service leave and paid maternity leave are affected by resignation to contest an election,

Subclause 30(4) provides that the Commissioner may declare that the engagement of a person is a re-engagement in accordance with this clause if the Commissioner considers it appropriate to do so.

A Note provides an example of when the Commissioner might make a declaration—if the Department in which a person was employed before resigning to contest an election is no longer responsible for the duties the person performed, or no longer exists, the Commissioner may consider it appropriate to make the declaration.

Subclause 30(5) prescribes the following elections for subclause 30(1):

- (a) an election of a House of the Parliament of the Commonwealth or of a State;
- (b) an election of the Legislative Assembly of the Australian Capital Territory or the Northern Territory;
- (c) an election of the Torres Strait Regional Authority established under Division 5 of Part 3A of the *Aboriginal and Torres Strait Islander Act 2005*.

Subclause 30(6) provides a definition of ‘time limit’ for a person who contests an election, as follows:

- (a) if the result of the election is not disputed—2 months after the declaration of the result; or
- (b) if the result of the election is disputed—2 months after the petition disputing the result is decided by a court of disputed returns, or is withdrawn or lapses.

Clause 31 Promotion on completion of an appointment to a statutory office

Clause 31 provides for the promotion without a competitive merit selection process or notification of a vacancy in the Public Service *Gazette*, in certain circumstances, of an ongoing Parliamentary Service employee who has completed an appointment to a statutory office.

Subclause 31(1) allows a Secretary to request the Commissioner to authorise the promotion of an ongoing Parliamentary Service employee without complying with Subdivision 1 of Division 3 of Part 3 of this Determination if:

- the employee was granted leave without pay for appointment to a statutory office of a kind that requires the Commissioner, or a representative of the Commissioner, to be a participant in the selection process for the office, and
- the employee’s appointment to the statutory office has not expired, or expired no more than 3 months before the Commissioner was asked to authorise the promotion, and
- the duties to which the employee is to be assigned are assessed by the Secretary as being at a Parliamentary Service classification that is equivalent to, or lower than, the duties of the statutory office, and
- the Secretary is satisfied that the employee has the necessary work-related qualities to perform duties at the Parliamentary Service classification to which the employee is to be promoted.

Subclause 31(2) provides that the Commissioner may authorise the promotion.

Subclause 31(3) provides that, in deciding whether to authorise the promotion, the Commissioner may take into account the matters mentioned in paragraphs (1)(a) to (d) of this clause and any other relevant matters including the duration of the appointment and the selection process for the appointment.

Clause 32 Engagement of an ongoing APS employee as an ongoing Parliamentary Service employee

Clause 32 continues longstanding mobility arrangements that apply to persons employed in the Parliamentary Service and the APS. It allows Secretaries to engage an ongoing Parliamentary Service employee as ongoing Parliamentary Service employee at a comparable or lower classification as set out in Schedule 2 to this Determination without notifying a vacancy in the *Public Service Gazette* or conducting a competitive merit selection process.

Clause 33 Re-engagement of a former Parliamentary Service employee

Clause 33 provides for a Secretary to re-engage a former Parliamentary Service employee, in certain circumstances, without notifying a vacancy in the *Public Service Gazette* and conducting a competitive merit selection process.

Subclause 33(1) provides that a Secretary may engage a former employee as an ongoing or non-ongoing Parliamentary Service employee without complying with Subdivision 1 of Division 3 of Part 3 of this Determination if the Secretary is satisfied that doing so is appropriate because:

- following an investigation of the circumstances in which the person's former employment ended, the Secretary is satisfied that it should not have ended; or
- the re-engagement gives effect to a settlement of an application for relief in relation to the termination of the employee's employment; or
- an appropriate authority has recommended or ordered the reinstatement of the person (for example the Federal Court of Australia, the Fair Work Commission, or the Australian Human Rights Commission).

Subclause 33(2) provides that an engagement under this clause must be on the same basis (ongoing or non-ongoing) as the person's former employment, and must be at the same classification or a lower classification.

Division 4 Assignment of duties and movement of employees between agencies

Clause 34 Definition

Clause 34 defines a ***section 25 decision*** for the purposes of Division 4 of Part 3 of this Determination as a decision made by a Secretary under section 25 of the Act.

Clause 35 Minimum requirements for decisions relating to assignment of duties at or below classification

Clause 35 sets out the minimum requirements for a section 25 decision relating to the ongoing or temporary assignment of duties to an employee at or below the employee's classification level (including where this involves a temporary movement from another Parliamentary Service Department).

This clause requires Secretaries to ensure that such decisions are based on an assessment of the employee's work-related qualities and the work-related qualities required to perform the relevant duties, and that they take into account efficient and effective organisational performance.

Note 1 to clause 35 explains that subsection 23(4) of the Act restricts the circumstances in which an employee's classification may be reduced without their consent. Note 2 explains that Subdivision 1 of Division 3 of Part 3 of this Determination imposes additional obligations in relation to promotions.

Clause 36 Minimum requirements for decisions relating to the temporary assignment of higher duties

Clause 36 sets out the minimum requirements for section 25 decisions relating to the temporary assignment of duties to an employee at a higher classification level, including where this involves a temporary movement from another Parliamentary Service Department.

Subclause 36(1) provides that a Secretary must ensure that such decisions are based on an assessment of the employee's work-related qualities and the work-related qualities required to perform the relevant duties, and that they take into account efficient and effective organisational performance.

Subclause 36(2) provides that section 25 decisions must also take into account of:

- the duration of the vacancy and whether it would be more appropriate to fill the vacancy on an ongoing basis;
- the relative importance to the Department of the duties to be performed at the higher classification and the other duties to be performed in the Department;
- the expected cost to the Department of the employee performing duties at the higher classification;
- the need for Parliamentary Service employees to be given the opportunity to gain experience in performing duties at a higher classification.

A Note explains that Subdivision 1 of Division 3 of Part 3 of this Determination imposes additional obligations in relation to promotions.

Clause 37 Assignment from non-SES classification to SES classification

Clause 37 provides that a section 25 decision may be made, subject to the Commissioner's agreement, to assign duties on an ongoing basis at an SES classification to an employee who

is not an SES employee, provided that the employee's classification is in the same classification group as the SES classification as set out in the Classification Rules. A Note refers the reader to the definition of *classification group* in the dictionary.

Division 5—Notification of employment decisions

Clause 38 Purpose of Division 5

Clause 38 establishes that the purpose of Division 5 of Part 3 of this Determination is to set out requirements for notifying certain employment decisions in the *Public Service Gazette*, and to provide for the date of effect of promotion decisions.

Clause 39 Decisions that must be notified in the Gazette

Clause 39 makes provision for certain decisions to be notified in the *Public Service Gazette*.

Subclause 39(1) provides that certain employment decisions must be notified in the *Public Service Gazette* within three months after the decision is made. The decisions are:

- (a) an engagement of a person as an ongoing Parliamentary Service employee (including under paragraph 72(1)(b) of the *Public Service Act 1999*);
- (b) an engagement of a person as an Parliamentary Service employee for a specified term of more than 12 months or for the duration of a specified task that is reasonably expected to take more than 12 months (including under paragraph 72(1)(b) of the *Public Service Act 1999*);
- (c) in relation to a person who is engaged as an Parliamentary Service employee for a specified term of 12 months or less—an extension of the engagement that results in the term of engagement being more than 12 months;
- (d) a movement (other than a temporary movement) by an ongoing Parliamentary Service employee to perform duties in another agency, if the vacancy was notified in the *Public Service Gazette*;
- (e) an assignment of duties (other than a temporary assignment of duties) to an ongoing Parliamentary Service employee in a Department, if the vacancy was notified in the *Public Service Gazette*;
- (f) the promotion of an ongoing Parliamentary Service employee;
- (g) the promotion of an ongoing Parliamentary Service employee, following the decision of a Promotion Review Committee under subclause 90(1)(b)(ii) that has not been notified under paragraph (f);
- (h) the engagement of an ongoing Parliamentary Service employee as an ongoing Parliamentary Service employee if the engagement:
 - (i) follows a decision of a Promotion Review Committee mentioned in subclause 90(1)(b)(ii); and
 - (ii) has not been notified under paragraph (a);
- (i) the termination, and the grounds for termination, of the employment of an ongoing Parliamentary Service employee under section 29 of the Act;
- (j) the retirement of an SES employee with the payment of an incentive under section 37 of the Act.

Subclause 39(2) provides that the employment decision must be notified in the *Public Service Gazette* within 3 months after the decision is made, unless the Commissioner agrees to a different arrangement.

Subclause 39(3) provides that, if the employment decision is a decision to engage, promote or move a person, or assign the duties of a person, and is made on the basis that the person is

required to satisfy an eligibility requirement (such as a security or character clearance), the 3 month period mentioned in subclause 39(2) is taken to commence at the time the eligibility requirement is met.

Subclause 39(4) provides that a notification must include the employee's name unless the Secretary decides that the name should not be included because of the employee's work-related or personal circumstances.

Subclause 39(5) provides that the Secretary may not make a decision under subclause 39(4) without the approval of the Commissioner, who, in the case of a non-SES employee, will consult the Merit Protection Commissioner.

Subclause 39(6) provides that if a notification that does not include the employee's name relates to a promotion that is subject to review, the Secretary's Department must, on or before the day of the notification, notify all parties who are eligible to seek review of the promotion so they are aware of their rights of review, and must advise the Merit Protection Commissioner that eligible parties have been notified.

Subclause 39(7) provides that if an engagement or promotion decision was made as a result of a selection process that complied with Subdivision 1 of Division 3 of Part 3 of this Determination in relation to a 'similar' vacancy, the notification of the decision must include a statement to that effect.

Subclause 39(8) provides that if a person whose engagement is notified under paragraph 2.29(1)(a) was an ongoing APS employee immediately before the engagement and was engaged at a higher classification than the person's classification as an APS employee, the notification of the decision must include a statement to that effect and must note that the engagement may be subject to review by a Promotion Review Committee in accordance with Part 9 of this Determination.

Subclause 39(9) provides that if an engagement notified under paragraph 39(1)(a) was made under clause 24 (engagement of non-ongoing Parliamentary Service employee as ongoing employee in exceptional circumstances), the notification of the decision must include a statement to that effect.

Clause 40 Cancellation decisions that must be notified in the Gazette

Clause 40 makes provision for the notification in the Public Service *Gazette* of the cancellation of certain decisions.

Subclause 40(1) provides that a Secretary must notify in the Public Service *Gazette* a decision to cancel certain kinds of decisions, within 3 months after the cancellation decision is made. The decisions are:

- an engagement of a person notified under paragraph 39(1)(a) or (b);
- an extension of an engagement notified under paragraph 39(1)(c);
- a movement notified under paragraph 39(1)(d);
- an assignment of duties notified under paragraph 39(1)(e);
- a promotion notified under paragraph 39(1)(f) (whether the cancellation decision is made by the Secretary, or is the result of a decision of a Promotion Review Committee);
- a termination notified under paragraph 39(1)(i);

- a retirement notified under paragraph 39(1)(j).

Subclause 40(2) provides that the notification of a cancellation decision must include the date of effect of the cancellation decision and the person's name unless the original notification did not include the name.

Clause 41 Date of effect of promotions

Cause 41 establishes the dates of effect of promotions, subject to the notification of a promotion decision in the Public Service *Gazette* and whether the promotion may be subject to review by a Promotion Review Committee in accordance with Part 9 of this Determination.

Subclause 41(1) provides that, subject to clause 55—which deals with the date of effect of a promotion where the employee is under investigation for a breach of the Code of Conduct—clause 41 applies to a promotion decision, defined to mean a decision to promote an ongoing APS employee, or to engage an ongoing APS employee as an ongoing Parliamentary Service employee at a classification higher than the employee's APS classification.

Subclause 41(2) provides that, if the promotion decision is not subject to PRC review, the decision takes effect either, if a date of effect has been agreed that is not earlier than the notification, on that date; or, otherwise, four weeks after notification.

Subclause 41(3) provides that, if the promotion decision is subject to PRC review, but no application for review is made before the end of the application period, the decision takes effect either, if a date of effect has been agreed that is not earlier than the end of the application period, on that date, or, otherwise, two weeks after the end of the application period.

Subclause 41(4) provides that, if the promotion decision is subject to PRC review and an application for review is made before the end of the application period, but is withdrawn before the PRC makes a decision on the application, the decision takes effect either, if a date of effect has been agreed that is not earlier than the end of the application period, on that date, or, otherwise, two weeks after the Secretary is notified of the withdrawal of the application.

Subclause 41(5) provides that, if the promotion decision is subject to PRC review, an application for review is made before the end of the application period and a PRC is appointed, but the application lapses before the PRC completes the review, the decision takes effect either, if a date of effect has been agreed that is after the Secretary is notified of the lapse of the application, on that date, or, otherwise, two weeks after the Secretary is notified.

Subclause 41(6) provides that, if the promotion decision is subject to PRC review, an application for review is made before the end of the application period, but the Merit Protection Commissioner decides under clause 82 that it is not necessary to appoint a PRC to deal with the application, the decision takes effect either, if a date of effect has been agreed that is after the Secretary is notified of the decision of the Merit Protection Commissioner, on that date, or, otherwise, the later of the day the Secretary is notified and four weeks after the notification.

Subclause 41(7) provides that, if the promotion decision is subject to PRC review, an application for review is made before the end of the application period and a PRC is appointed, and the PRC upholds the decision, the promotion decision takes effect either, if a date of effect has been agreed that is after the Secretary is notified of the decision of the PRC, on that date, or, otherwise, four weeks after the Secretary is notified.

Subclause 41(8) provides that, if the promotion decision is subject to PRC review, an application for review is made before the end of the application period and a PRC is

appointed, and the PRC varies the decision, the promotion decision takes effect either, if a date of effect has been agreed that is after the Secretary is notified of the decision of the PRC, on that date, or otherwise, four weeks after the Secretary is notified.

Subclause 41(9) defines:

- ‘application period’ to mean (for a promotion decision) the period in which an application for PRC review of the decision may be made (including any extension of that period)
- ‘notification’ to mean (for a promotion decision) the notification of the decision under clause 40
- ‘PRC review’ to mean review by a Promotion Review Committee under Part 9 of the Regulations.

Subclause 41(10) provides that in this clause a reference to a date of effect on which a promotion decision has been agreed is a reference to a date that has been agreed as the date of effect by the employee, the Secretary, and, if the employee is moving from another department, the original Secretary.

Division 6—Employer powers of Secretaries

Clause 42 Definition

Clause 43 defines *nominated medical practitioner* for the purposes of Division 6 of Part 3 of this Determination to be a person who is registered or licensed as a health practitioner under a law of a State or Territory that provides for the registration or licensing of health practitioners and who is nominated by a Secretary to assess the fitness for duty of a Parliamentary Service employee in the Secretary's Department.

Clause 43 Condition of engagement—health clearance

Clause 43 applies to a Parliamentary Service employee whose engagement in a Department is subject, under paragraph 22(6)(e) of the Act, to a condition dealing with health clearances.

Subclause 43(2) provides that, while the engagement is subject to the condition:

- (a) the Secretary of the Department may, in writing, direct the employee to, within a specified period, undergo a medical examination by a nominated medical practitioner and give the Secretary a report of the examination; and
- (b) the nominated medical practitioner may give the relevant Secretary a report of the examination.

A Note explains that arrangements will be made in Departments to ensure that employees know the period in which an engagement is subject to a condition dealing with health clearances.

Clause 44 Direction to attend medical examination

Clause 44 sets out circumstances in which a Secretary may give a Parliamentary Service employee in the Secretary's Department a written direction to undergo an examination by a nominated medical practitioner and/or to give the Secretary a report of the examination within a specified period:

Subclause 44(2) prescribes as a circumstance that the Secretary believes that the state of health of the employee:

- may be affecting the employee's work performance; or
- has caused, or may cause, the employee to have an extended absence from work; or
- may be a danger to the employee; or
- has caused, or may cause, the employee to be a danger to other employees or members of the public; or
- may be affecting the employee's standard of conduct.

Subclause 44(3) prescribes as a circumstance that the employee is to be assigned new duties and the Secretary believes the employee's state of health may affect the employee's ability to undertake the duties.

Subclause 44(4) prescribes as a circumstance that the employee is to travel overseas as part of the employee's employment.

Subclause 44(5) provides that the nominated medical practitioner may give the Secretary a report of the examination.

Clause 45 Workforce participation schemes

Subclause 45(1) provides that a Secretary may approve a scheme to assist persons engaged for a specified term, or for the duration of a specified task, in the Department, to gain skills and experience to enhance workforce participation.

Subclause 45(2) provides that the approval of the scheme must be notified in the *Public Service Gazette* within 14 days of the day the scheme is approved.

Part 4—Workplace Diversity**Clause 46 How a Secretary upholds Employment Principle on non-discrimination**

Clause 46 provides that a Secretary of a Department must uphold the Employment Principle mentioned in paragraph 10A(1)(f) of the Act by putting in place measures in the Department directed at ensuring that all relevant anti-discrimination laws are complied with.

Clause 47 How a Secretary upholds Employment Principle on diversity

Clause 47 provides that a Secretary must uphold the Employment Principle mentioned in paragraph 10A(1)(g) of the Act by implementing the workplace diversity program established under section 18 of the Act and putting in place any other measures that are, in the Secretary's view, required to ensure that:

- the diversity of Parliamentary Service employees is recognised, fostered and used to the best advantage of the workplace, taking into account the organisational and business goals of the Department and the skills required to perform relevant duties; and
- employees are helped to balance their work, family and other caring responsibilities effectively.

Clause 48 Measures for workplace diversity programs

Clause 48 requires that a workplace diversity program for a Department must include measures directed at ensuring that:

- the corporate, business and human resource plans of the Department demonstrate that the Department values the diverse backgrounds of its employees and values, and is able to access and make use of the diverse skills and experience of its employees; and
- workplace structures, systems and procedures assist employees in balancing their work, family and other caring responsibilities effectively; and
- the diversity of the Australian community is reflected in the Department's strategies to attract, recruit and retain employees, in line with the Department's organisational and business goals and the skills required to perform relevant duties.

Clause 49 Workplace diversity program to be published

Subclause 49(1) provides that, as soon as practicable after establishing a workplace diversity program for a Department, the Secretary of the Department must publish the program on the Department's website.

Subclause 49(2) requires that, if the Secretary revises the workplace diversity program in any way, the Secretary must, as soon as practicable after revising the program, publish the revised program on the Department's website.

Clause 50 Review of workplace diversity program

Clause 50 provides that the Secretary of a Department must review the Department's workplace diversity program at least every 4 years to ensure that the program continues:

- to assist in giving effect to the Employment Principles mentioned in paragraph 10A(1)(f) and (g) of the Act; and
- to achieve the outcomes mentioned in clause 48

Part 5—Performance management

Clause 51 How a Secretary upholds Employment Principle on effective performance

Subclause 51(1) provides that clause 51 sets out how the Secretary of a Department must uphold the Employment Principle mentioned in paragraph 10A(1)(d) of the Act.

Subclause 51(2) provides that the Secretary must put in place measures that support effective performance by the Department's employees by ensuring that the Department does the following:

- builds the capability necessary to achieve the outcomes properly expected by the Parliament;
- has fair and open performance management processes and practices that support a culture of high performance, in which all performance is effectively managed;
- provides each employee with a clear statement of the performance and behaviour expected of the employee, and an opportunity to discuss the employee's responsibilities;
- requires employees to participate constructively in Department-based performance management processes and practices;
- invests in building the capability of managers to manage performance effectively; and
- uses departmental performance management processes to guide salary movement and reward.

Clause 52 Initiating Code of Conduct proceedings in relation to performance matters

Clause 52 provides that, if the conduct of a Parliamentary Service employee raises concerns that relate to both effective performance and possible breaches of the Code of Conduct, the Secretary must, before making a decision to initiate an inquiry under procedures established by the Secretary under subsection 15(3) of the Act, have regard to any relevant standards and guidance issued by the Commissioner.

Part 6—Safe workplaces

Clause 53 How Secretary upholds Employment Principle on providing a safe workplace etc

Subclause 53(1) provides that a Secretary must uphold the Employment Principle mentioned in paragraph 10A(1)(e) of the Act by putting in place measures directed at ensuring that the relevant Department complies with all applicable work health and safety legislation.

Subclause 53(1) provides that Parliamentary Service employees must take proper steps to support these measures, having regard to their duties and responsibilities.

Part 7—Code of Conduct

Clause 54 Allegations of breach of Code of Conduct by Secretary or statutory office holder

Subclause 54(1) provides that, if an allegation, other than a whistleblower's report, is made about conduct by a Secretary or a statutory office holder amounting to a breach of the Code of Conduct, the allegation must be referred to the Presiding Officers.

Subclause 54(2) provides that if the Presiding Officers consider that the matter may warrant investigation, the Presiding Officers may refer the matter to the Commissioner for advice or for inquiry and a report in accordance with paragraph 40(1)(b) of the Act.

Subclause 54(3) enables the Presiding Officers to request the Commissioner to include recommendations in the report, in accordance with subsection 40(2) of the Act.

Subclause 54(4) defines *statutory office holder* to mean a person, other than the Commissioner, who holds an office or appointment under this Act, being an office or appointment prescribed by clause 57 for the purposes of the definition of *statutory office holder* in subsection 14(3) of the Act.

Clause 55 Employee movement not to take effect pending resolution of Code of Conduct investigation

This clause sets out circumstances in which the movement of a Parliamentary Service or APS employee may not take place pending the resolution of a Code of Conduct investigation.

Subclause 55(1) provides that clause 55 applies if:

- either an ongoing Parliamentary Service employee in a Department or an ongoing APS employee is suspected of having breached the Code of Conduct; and
- the employee has been informed of any matters set out in directions made under subsection 15(6) of the Act or subsection 15(6) of the *Public Service Act 1999*; and
- the Secretary of the Department (the *original Secretary*), or head of the APS agency, in which the employee is employed has not yet determined whether the breach occurred; and
- a decision has been made that, apart from this clause, would result in the movement of the employee between Departments (including on promotion) or under section 26 of the Act to a Department.

Subclause 55(2) provides that, unless the original Secretary or head of the APS agency, and the Secretary of the Department to which the employee would be moving, agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

Subclause 55(3) provides that the matter is taken to be resolved when a determination is made in relation to the suspected breach or it is decided that a determination is not necessary.

Subclause 55(4) defines *APS Code of Conduct* for the purpose of clause 55 to mean the rules in section 13 of the *Public Service Act 1999*.

Clause 56 Duty not to disclose information

Subclause 56(1) provides that clause 56 sets out conduct requirements made for subsection 13(13) of the Act.

Subclause 56(2) provides that clause 56 does not affect other restrictions on the disclosure of information.

Subclause 56(3) provides that a Parliamentary Service employee must not disclose information which the employee obtains or generates in connection with his or her employment if the information:

- was, or is to be, communicated in confidence: to or by the Presiding Officers, a committee of either House or a joint committee, a Senator or a Member of the House of Representatives; or within the Parliamentary Service; or
- was received in confidence from a person or persons outside the Parliament or the Parliamentary Service who has not, or have not, given permission for the disclosure;

whether or not the disclosure would found an action for breach of confidence.

Subclause 56(4) provides that subclause 56(3) does not prevent a disclosure of information by a Parliamentary Service employee if:

- the information is disclosed in the course of the employee's duties; or
- the information is disclosed in accordance with an authorisation given by a Secretary, or by the Parliamentary Librarian in relation to information acquired or created in connection with the functions of the Parliamentary Librarian as set out in section 38B of the Act; or
- the disclosure is otherwise authorised by law; or
- the information that is disclosed is already in the public domain as the result of a disclosure of information that is lawful under this determination or another law; and can be disclosed without disclosing, expressly or by implication, other information to which subclause 56(3) applies.

Subclause 56(5) provides that subclause 56 (3) does not limit the authority of a Secretary to give lawful and reasonable directions in relation to the disclosure of information.

Subclause 56(6) provides that nothing in clause 56 affects the provision of advice to a House, a committee or a member of either House by a Parliamentary Service employee for the purpose of the performance of the duties or functions of a House, a committee or a member of either House.

A Note refers to section 70 of the *Crimes Act 1914* for the circumstances in which publication or communication by a Parliamentary Service employee of a fact or document is an offence.

Clause 57 Statutory office holder bound by Code of Conduct

Clause 57 prescribes certain offices and appointments for the purposes of subsection 14(3) of the Act and provides for the extent to which a statutory office holder is bound by the Code of Conduct.

Subclause 57(1) provides that for the definition of ***statutory office holder*** in subsection 14(3) of the Act, an office is prescribed if:

- the office is held by a person who is engaged or employed under the Act; and
- the holder is assisted by, or has dealings with, Parliamentary Service employees in a supervisory capacity, or in another capacity related to the holder's day to day working relationship with Parliamentary Service employees; and
- the office is not an office of Secretary.

Subclause 57(2) provides that for the definition of *statutory office holder* in subsection 14(3) of the Act, an appointment is prescribed if:

- the appointment is the appointment of a person under the Act; and
- the appointee is assisted by, or has dealings with, Parliamentary Service employees in a supervisory capacity or another capacity related to the appointee's day to day working relationship with Parliamentary Service employees; and
- the appointment is not an appointment as Secretary.

Subclause 57(3) provides that, for subsection 14(2A) of the Act, a statutory office holder is bound by the Code of Conduct only to the extent to which the statutory office holder:

- is assisted by Parliamentary Service employees in a supervisory capacity or another capacity related to the statutory office holder's day to day working relationship with Parliamentary Service employees; or
- deals with Parliamentary Service employees in a supervisory capacity, or in another capacity related to the statutory office holder's day to day working relationship with Parliamentary Service employees.

Subclause 57(3) also provides that, if there is an inconsistency between the requirements of:

- the Code of Conduct; and
- an Australian law that relates to a statutory office holder's office or appointment;

the Code of Conduct does not bind the statutory office holder to the extent of the inconsistency.

A Note under subclause 57(3) states that the Code of Conduct requires the upholding of the Parliamentary Service Values and Parliamentary Service Employment Principles, among other things.

Subsection 57(4) provides, for subsection 14(2A) of the Act, that a statutory office holder is bound by the Code of Conduct as if the Code of Conduct referred to the statutory office holder's office or appointment and matters related to the office or appointment.

Clause 58 Limitation on sanctions for breaches of Code of Conduct

Clause 58 provides that a deduction from the salary of a Parliamentary Service employee imposed under paragraph 15(1)(e) of the Act must not be more than 2% of the employee's annual salary.

Part 8—ISACs

Clause 59 Function of ISAC

Clause 59 sets out in subclause (1) that the function of an ISAC is to make recommendations to a Secretary about the suitability of candidates for:

- engagement connected with employment in the Department; or
- promotion to employment in the Department; or
- assignment to duties in connection with employment in the Department.

Subclause 59(2) provides that the employment must be at a classification mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules, as in force immediately before 1 July 2013.

Clause 60 Establishment of ISAC

Clause 60 provides that the Merit Protection Commissioner may establish an ISAC at the request of a Secretary (subclause (1)) and that the Merit Protection Commissioner may charge the Secretary a fee for carrying out functions for the Secretary under Part 8 (subclause (2)).

Clause 61 Constitution of ISAC

Subclause 61(1) provides that an ISAC must comprise:

- a Convenor nominated by the Merit Protection Commissioner; and
- a person nominated by the relevant Secretary; and
- a Parliamentary Service employee nominated by the Merit Protection Commissioner.

Subclause 61(2) provides that the Merit Protection Commissioner must be satisfied that the Parliamentary Service employee nominated under paragraph (1)(c) has the skills and personal qualities necessary to undertake his or her role independently and impartially.

Subclause 61(3) requires the Parliamentary Service employee nominated under paragraph (1)(c) to be made available for the purposes of the ISAC, subject to the operational efficiency of the Department in which he or she is employed.

Subclause 61(4) provides that, if a member of an ISAC ceases to act as a member before the ISAC has made its recommendation to the relevant Secretary, the ISAC is to be reconstituted by the remaining members and another member nominated in accordance with subclause 61(1).

Subclause 61(5) requires the reconstituted ISAC to have regard to matters put before, or decided by, the ISAC as previously constituted.

Subclause 61(6) provides that a person is not subject to direction in carrying out his or her duties as a member of an ISAC, except:

- by a Court; or
- by instructions issued under clause 63.

Clause 62 ISAC procedures—minimum requirements

Clause 62 prescribes minimum requirements for an ISAC in carrying out its functions.

Subclause 62(1) provides that the procedures used by an ISAC in performing its functions under Part 8 must meet the following minimum requirements:

- the procedures must have due regard to procedural fairness;
- the functions must be carried out in private;
- the functions of the ISAC must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.

Subclause 62(2) requires that a person appearing before an ISAC must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

Clause 63 ISAC procedures—Merit Protection Commissioner’s instructions

Clause 63 sets out requirements in relation to instructions to be issued by the Merit Protection Commissioner.

Subclause 63(1) requires the Merit Protection Commissioner to issue, as soon as practicable after the commencement of this clause, instructions about the procedures to be followed by an ISAC in performing its functions under this Part.

Subclause 63(2) enables the Merit Protection Commissioner to issue instructions, in writing, about the procedures to be followed by a Secretary who is appointed, under subclause ^65(3), to act on behalf of an ISAC in performing the functions of the ISAC under this Part.

Subsection 63(3) provides that the instructions must not be inconsistent with the Act or this determination.

Subclause 63(4) requires an ISAC, or a Secretary appointed under subclause 65(3) to act on behalf of an ISAC, must comply with the instructions.

Clause 64 Assistance to ISAC

Clause 64 provides that the Merit Protection Commissioner must take all reasonable steps to ensure that staff and other resources are available to assist an ISAC to carry out its functions efficiently and effectively.

Clause 65 Assessment and recommendation by ISAC

Subclause 65(1) provides that, if an ISAC is established in respect of a vacancy, the ISAC must:

- assess the relative merits of the candidates for the relevant employment on the basis of the relative suitability of the candidates for the duties; the relationship between the candidates’ work-related qualities and the work-related qualities required for the duties; and the relative capacity of the candidates to achieve outcomes related to the duties; and
- report on the assessment to the relevant Secretary; and
- make a recommendation to the Secretary, primarily on the basis of the assessment, as to which candidate it considers to be the most suitable for the relevant employment.

Subclause 65(2) enables an ISAC, in conducting an assessment under subclause (1), to seek and accept expert opinion about the work-related qualities and capabilities of candidates.

Under subclause 65(3) the ISAC may appoint the relevant Secretary to act on behalf of the ISAC in conducting some or all of an assessment under subclause 65(1).

Subclause 65(4) requires the Secretary to act in accordance with instructions given to the Secretary by the ISAC; and to act in accordance with instructions from the Merit Protection Commissioner only to the extent that the Secretary is appointed as an agent of the ISAC under subclause 65(3).

Subclause 65(5) provides that, if the ISAC considers that none of the candidates is suitable for the relevant employment, the ISAC must make a recommendation to the Secretary to that effect.

Clause 66 Non-agreement on recommendation by ISAC

Clause 66 applies if all members of an ISAC do not agree on a recommendation (subclause 66(1)).

Subclause 66(2) provides that, if 2 members agree on a recommendation, that recommendation is taken to be the recommendation of the ISAC.

Subclause 66(3) provides that, if there is no agreement between any of the members, the Convenor's recommendation is taken to be the recommendation of the ISAC.

Clause 67 ISAC recommendation not binding

Clause 67 provides that the recommendation of an ISAC is not binding on a Secretary.

Clause 68 Effect of acting on ISAC recommendation

Subclause 68(1) provides that an engagement, promotion or assignment of duties made in accordance with an ISAC recommendation is not subject to review under Part 9.

Subclause 68(2) provides that the engagement, promotion or assignment of duties must be notified in the Public Service *Gazette* as having been made in accordance with an ISAC recommendation.

The Note under subclause 68(2) advises that the subclause also applies to any subsequent engagement, promotion or assignment of duties made by a Secretary in accordance with an ISAC recommendation.

Subclause 68(3) provides that the engagement, promotion or assignment of duties is not affected by:

- a defect in the nomination of a member of the ISAC; or
- a failure to comply with the instructions issued under clause 63.

Clause 69 Effect of not acting in accordance with ISAC recommendation

Subclause 69(1) provides that, if, instead of acting in accordance with an ISAC recommendation of a candidate in respect of a vacancy, a Secretary promotes another ongoing Parliamentary Service employee to the relevant employment, the promotion is subject to review under Division 2 of Part 9.

Subclause 69(2), however, provides that subclause 69(1) does not apply if:

- after the ISAC has made its recommendation, the candidate is found to have breached the Code of Conduct (and the Secretary believes that the candidate is no longer suitable for the vacancy) or the candidate has lost a qualification which is essential for the candidate's suitability for the vacancy (the example of a security clearance is given); and

- the Secretary has consulted with the Merit Protection Commissioner about the candidate; and
- the Secretary acts in accordance with the recommendation of the ISAC in relation to the next suitable candidate.

Subclause 69(2) requires the promotion to be notified in the *Public Service Gazette* as a promotion decision that is subject to review under Division 2 of Part 9.

Clause 70 Offence

Subclause 70(1) provides that a person commits an offence if the person obstructs an ISAC in carrying out its functions under this Part and prescribes a penalty of 10 penalty units.

Subclause 70(2) provides that strict liability applies to the physical element of an offence against subclause (1) that the functions being carried out by the ISAC were functions under Part 8.

Part 9—Review of actions

Division 1—Preliminary

Clause 71 General policy about review

Clause 71 sets out the general policy about review, in subclauses 71(1) to 71(5) as follows:

- (1) The Parliamentary Departments should achieve and maintain workplaces that encourage productive and harmonious working environments.
- (2) It is intended that Part 9 should provide for a fair system of review of Parliamentary Service actions.
- (3) The concerns of Parliamentary Service employees are intended to be dealt with quickly, impartially and fairly.
- (4) The review processes are intended to be consistent with the use of alternative dispute resolution methods to reach satisfactory outcomes where appropriate.
- (5) Nothing in Part 9 is intended to prevent an application for review from being resolved by conciliation or other means at any time before the review process is completed.

Clause 72 Outline of Part

Clause 72 states that Part 9 makes provision in relation to the following matters:

- the entitlement of Parliamentary Service employees to review of certain promotion decisions and other Parliamentary Service actions;
- the entitlement of ongoing APS employees to review of certain promotion decisions;
- the entitlement of Parliamentary Service employees and ongoing APS employees to review of certain engagement decisions;
- the responsibilities and powers of Secretaries and the Merit Protection Commissioner in relation to review of Parliamentary Service actions; and
- the role and powers of PRCs constituted for the review of decision mentioned in Clause 72.

A Note below clause 72 refers the reader to subsection 33(6) of the Act which sets out a reporting power for the Merit Protection Commissioner.

Clause 73 Review of certain promotion and engagement decisions

Clause 73 provides that Division 2 of Part 9 provides for applications for review of certain promotion and engagement decisions to be made to the Merit Protection Commissioner for review by a PRC.

The Note refers the reader to subclause 92(1) which states that a decision by a PRC is binding on a Secretary.

Clause 74 Review of other Parliamentary Service action

Clause 74 states that Division 3 of Part 9 provides for primary and secondary review of other Parliamentary Service actions.

Paragraph 74(a) provides for applications for review of actions to be made to the relevant Secretary or, in certain circumstances, to the Merit Protection Commissioner.

Paragraph 74(b) provides for secondary review of actions that were the subject of primary review by a Secretary to be made to the Merit Protection Commissioner.

A Note to Clause 74 refers the reader to Clause 104, outlining that a recommendation made on an application to the Merit Protection Commissioner for primary or secondary review is not binding on a Secretary.

Clause 75 Secretary's Responsibility

Clause 75 sets out a Secretary's responsibility for ensuring that applications for review can be dealt with in accordance with Division 1 and that the Parliamentary Service Values and the Parliamentary Service Employment Principles are upheld and promoted.

Clause 76 Definition

Clause 76 defines ***PRC decision*** and ***relevant employment*** for the purposes of Part 9. ***PRC decision*** means a decision by a PRC; ***relevant employment*** means employment as an ongoing Parliamentary Service employee at a classification in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules.

Division 2—Review of certain Parliamentary Service promotion decisions and engagement decisions (including decisions involving APS employees)

Clause 77 Application of Division 2

Subclauses 77(1) and 77(2) set out the circumstances in which Division 2 applies.

Subclause 77(1) provides that Division 2 applies if

- a ***promotion decision*** is made by a Secretary to promote an ongoing Parliamentary Service employee to employment at a classification in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules; and
- the promotion decision is not made in accordance with the recommendation of an ISAC; and
- the promotion decision is not made in accordance with a PRC decision.

Subclause 77(2) provides that Division 2 applies if

- an ***engagement decision*** is made by a Secretary to engage an ongoing APS employee at a classification in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules;
- and the engagement decision is not made in accordance with the recommendation of an ISAC; and
- the engagement decision is not made in accordance with a PRC decision.

Paragraph 77(3) defines ***engagement decision*** for the purposes of Division 2 as being a decision to engage an ongoing APS employee at a higher classification than the employee's classification as an APS employee, worked out in accordance with Clause 2 of Schedule 2.

Clause 78 Entitlement for review-promotion decision

Clause 78 sets out the circumstances in which an ongoing Parliamentary Service or APS employee is entitled to apply to have a promotion decision reviewed by a PRC.

Subclause 78(1) provides that an ongoing Parliamentary Service employee is entitled to apply to the Merit Protection Commissioner to have a promotion decision reviewed by a PRC if

- the ongoing Parliamentary Service employee has applied for promotion to the relevant employment and
- a promotion decision is made in relation to that employment.

A Note below subclause 78(1) indicates when a PRC may be appointed to deal with applications for review.

Subclause 78(2) provides that an ongoing APS employee is entitled to apply to the Merit Protection Commissioner to have a promotion decision reviewed by a PRC if

- the ongoing APS employee has applied for engagement to the relevant employment and
- the engagement would be at a higher classification than the APS employee's classification as an APS employee worked out in accordance with clause 2 of Schedule 2; and
- a promotion decision is made in relation to the relevant employment;

A Note below subclause 78(2) indicates when a PRC may be appointed to deal with applications for review.

Clause 79 Entitlement for review—engagement decision

Clause 79 sets out the circumstances in which an ongoing Parliamentary Service or APS employee is entitled to apply to have an engagement decision reviewed by a PRC.

Subclause 79(1) provides that an ongoing Parliamentary Service employee is entitled to apply to the Merit Protection Commissioner to have an engagement decision reviewed by a PRC if

- the ongoing Parliamentary Service employee has applied for promotion to the relevant employment and
- an engagement decision is made in relation to that employment.

The Note indicates when a PRC may be appointed to deal with applications for review.

Subclause 79(2) provides that an ongoing APS employee is entitled to apply to the Merit Protection Commissioner to have a promotion decision reviewed by a PRC if

- the ongoing APS employee has applied for engagement to the relevant employment and
- the engagement would be at a higher classification than the APS employee's classification as an APS employee worked out in accordance with clause 2 of Schedule 2; and
- an engagement decision is made in relation to the relevant employment;

The Note indicates when a PRC may be appointed to deal with applications for review.

Clause 80 Grounds for review

Clause 80 provides that a promotion or engagement decision may only be reviewed under Division 2 on the grounds of merit.

The Note refers the reader to paragraph 10A(1)(c) and subsection 10(A)(2) of the Act—employment decisions relating to engagement or promotion based on merit.

Clause 81 Application for review

Clause 81 sets out how an application for review of a promotion or engagement decision must be made.

Subclause 81(1) provides that an application for review of a promotion decision must:

- (a) be in writing; and
- (b) be received by the Merit Protection Commissioner at the place specified in the Public Service *Gazette* and within:
 - (i) the period specified in the Public Service *Gazette* as part of notifying the promotion; or
 - (ii) if the Merit Protection Commissioner has given an extension of time to a class of employees before the end of the period mentioned in subparagraph (i)—that extension of time.

Subclause 81(2) provides that an application for review of an engagement decision must:

- (a) be in writing; and
- (b) be received by the Merit Protection Commissioner at the place specified in the Public Service *Gazette* and within:
 - (i) the period specified in the Public Service *Gazette* as part of notifying the engagement; or

- (ii) if the Merit Protection Commissioner has given an extension of time to a class of employees before the end of the period mentioned in subparagraph (ii)—that extension of time.

Subclause 81(3) provides that the making of an application for review of a promotion decision or engagement decision under this Division operates to stay the decision until it takes effect in accordance with Part 3 of this Determination.

Clause 82 Appointment of PRC

Clause 82 sets out the circumstances in which a PRC can be appointed.

Subclause 82(1) indicates that under Division 2, when the Merit Protection Commissioner receives an application for review of a promotion or engagement decision, the Merit Protection Commissioner must consider the circumstances in which the application was made and, if he or she believes that a review of the promotion or engagement decision is necessary must appoint a PRC to deal with the application.

Subclause 82(2) provides that a particular PRC may be appointed to deal with:

- applications by ongoing Parliamentary Service and APS employees for review of a promotion decision;
- applications by ongoing Parliamentary Service and APS employees for review of an engagement decisions; and
- applications in relation to more than one promotion or engagement decision.

Clause 83 Constitution of PRC

Clause 83 prescribes the composition of a PRC.

Subclause 83(1) requires that a PRC must comprise a Convenor and a Parliamentary Service employee nominated by the Merit Protection Commissioner and a Parliamentary Service employee nominated by the relevant Secretary.

Subclause 83(2) requires that the Merit Protection Commissioner must be satisfied that the Parliamentary Service employee nominated by the Merit Protection Commissioner, has the skills and personal qualities necessary to undertake the role independently and impartially.

Subclause 83(3) stipulates that the Parliamentary Service employee nominated by the Merit Protection Commissioner must be made available for the purposes of the PRC, subject to the operational efficiency of the Department in which he or she is employed.

Subclause 83(4) provides that, if a member of a PRC ceases to act as a member before the PRC had made its recommendation, the PRC is to be reconstituted by the remaining members and another member nominated in accordance with subclause 83(1).

Subclause 83(5) indicates that the reconstituted PRC must have regard to matters put before, or decided by, the PRC as previously constituted.

Subclause 83(6) provides that a member of a PRC is not subject to direction in carrying out duties as a member, except by a Court or by instructions issued under clause 87.

Clause 84 Statements by parties

Clause 84 sets out how and when statements by an applicant and the person promoted are to be provided to the Merit Protection Commissioner and the procedure if a statement is not provided within the time required.

Subclauses 84(1) and 84(2) require an applicant for review of a promotion or engagement decision and the person promoted or engaged to provide a statement in writing that sets out his or her claim for promotion or engagement to the relevant employment.

Subclause 84(3) provides that the statement must be given within 14 days after the closing date for lodging applications for review of the decision.

Subclause 84(4) provides that if, within that 14 days, either party asks the Merit Protection Commissioner for, and the Merit Protection Commissioner allows, a longer period, the statement must be given within that longer period.

Subclause 84(5) provides that, if a statement is not given within the time required under subclause (3) or (4) the PRC may consider and decide an application for review without the statement.

Subclause 84(6) provides that, subject to paragraph 86(1)(a), a person mentioned in subclause 84(1) is not entitled to have access to a statement mentioned in subclause 84(1) or subclause 84(2) that is given to the Merit Protection Commissioner by another person mentioned in those subclauses, and that a person mentioned in subclause 84(2) is not entitled to have access to a statement mentioned in subclauses 84(1) or (2) that was given to the Merit Protection Commission by another person mentioned in those subclauses.

Clause 85 Frivolous or vexatious applications

Clause 85 provides that, if each member of a PRC is satisfied that an application for review is frivolous or vexatious, the PRC may refuse to consider, or further consider, that application.

Clause 86 PRC procedures—minimum requirements

Subclause 86(1) sets out minimum requirements that the procedures used by a PRC in conducting a review under Division 2 must meet; these are:

- the procedures must have due regard to procedural fairness;
- the review must be conducted in private;
- the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.

Subclause 86(2) requires that a person appearing before a PRC must do so without representation unless the Merit Protection Commissioner decides that it would be reasonable to allow the person to be represented.

Clause 87 PRC procedures—Merit Protection Commissioner's instructions

Subclause 87(1) requires that the Merit Protection Commissioner to issue, as soon as practicable after the commencement of this Determination, instructions, about the procedures to be followed by a PRC in performing its functions under Division 2.

Subclause 87(2) requires that these instructions must not be inconsistent with the Act or this Determination.

Subclause 87(3) requires that a PRC must comply with the instructions

Clause 88 Assistance to PRC

Clause 88 requires the Merit Protection Commissioner to take all reasonable steps to ensure that staff are available to assist a PRC to carry out its functions effectively and efficiently.

Clause 89 Requirement to provide information or documents

Subclause 89(1) provides that a PRC may, by written notice to a Secretary, require the Secretary to give the PRC stated information or documents relevant to the review.

Subclause 89(2) requires the Secretary to give the information or documents in the way, and at or within the time, specified in the notice.

Clause 90 Conduct of review by PRC

Clause 90 specifies how a PRC must conduct a review.

Paragraph 90(1)(a) requires that in considering an application for review of a promotion or engagement decision, a PRC must assess the relative merits of the person being promoted or engaged and each applicant for review on the basis of:

- the relative suitability of each person for the duties;
- the relationship between each person's work-related qualities and the work-related qualities required for the duties; and
- the relative capacity of each person to achieve outcomes related to the duties.

Paragraph 90(1)(b) requires the PRC to decide, primarily on the basis of the assessment, that either the promotion or engagement decision should be upheld or that an applicant for review should be promoted or engaged to the relevant employment.

Subclause 90(2) requires the PRC to advise the relevant Secretary, in writing, of its decision.

Clause 91 Non-agreement on decision by PRC

Clause 91 applies if all members of a PRC do not agree on a decision in relation to an application for review of a promotion or engagement decision (subclause 91(1)).

Subclause 91(2) provides that if two members agree on a decision, that decision is taken to be the decision of the PRC.

Subclause 91(3) provides that if there is no agreement between any of the members, the Convenor's decision is taken to be the decision of the PRC.

Clause 92 Effect of PRC decision

Subclause 92(1) provides that a PRC decision is binding on the relevant Secretary.

The Note refers the reader to clause 41 which provides for the date of effect of a PRC decision.

Subclause 92(2) provides that the decision of a PRC is not affected by either a defect in the nomination of a member of the PRC or a failure to comply with instructions issued under clause 87.

Subclause 92(3) states that if a PRC has decided, after conducting a review under clause 90, that an applicant for review who is an ongoing Parliamentary Service employee should be promoted to the relevant employment, the applicant is taken to have been promoted to the relevant employment.

Subclause 92(4) sets out that if a PRC has decided, after conducting a review under clause 90, that an applicant for review who is an ongoing APS employee should be engaged to the relevant employment, the Secretary must offer the ongoing APS employee the relevant employment not later than two weeks after the PRC has notified the Secretary of its decision.

Notes 1 and 2 refer the reader to clause 41 which provides for the date of effect of a promotion or engagement decision made by a PRC.

Clause 93 Offence

Clause 93 provides that a person commits an offence if the person obstructs a PRC in carrying out its functions under Division 2 and prescribes a penalty of 10 penalty units.

Subclause 90(2) provides that strict liability applies to the physical element of an offence against subclause (1) that the functions being carried out by the PRC were functions under Division 2.

Division 3—Application by Parliamentary Service employees for review of other actions

Subdivision 1—Reviewable action

Clause 94 Entitlement for review

Clause 94 sets out circumstances in which an employee is entitled to review of action.

Subclause 94(1) provides that a non-SES employee (an *affected employee*) is entitled to review of Parliamentary Service action under this Division if the action is:

- action by a Secretary or a Parliamentary Service employee; or
- reviewable action (including the action of finding that the affected employee has breached the Code of Conduct).

Subclause 94(2) provides that, if the affected employee makes an application for review under this Division, the affected employee ceases to be entitled to review under this Division if, after the application is made:

- the employee ceases to be employed; or
- the employee is promoted to an SES position.

Subclause 94(3) provides that a former Parliamentary Service employee is not entitled to review under this Division.

The Note refers the reader to Division 4 of Part 11 for rights of former Parliamentary Service employees to review.

Clause 95 What Parliamentary Service action is reviewable action

Clause 95 provides that a Parliamentary Service action is *reviewable action* if the affected employee is entitled, under subsection 33(1) of the Act, to review of the action.

However, subclause 95(2) provides that the action is not, or ceases to be, reviewable action if:

- it is action mentioned in Schedule 3; or
- the affected person has applied to have the action reviewed by a Court or Tribunal and the action may be reviewed by that Court or Tribunal.

In addition, subclause 95(3) provides that the action is not, or ceases to be, reviewable action, if the person who, or would be, conducting the review considers that the action should not be reviewable for any of the following reasons:

- (a) the application by the affected employee for review of the action is misconceived or lacking in substance;
- (b) the application by the affected employee for review of the action is frivolous or vexatious;
- (c) the affected employee has previously applied for review of the action under this Division;
- (d) the affected employee has applied to have the action reviewed under Division 2 of this Part;
- (e) the affected employee has applied, or could apply, to have the action reviewed by an external review body and review by the review body would be more appropriate than review under this Division;

- (f) the affected employee does not have sufficient direct personal interest in review of the action;
- (g) review, or further review, of the action is not otherwise justified in all the circumstances.

Notes provide examples for paragraphs (e) and (g).

Subclause 95(4) provides that an action mentioned in an item of the table in the subclause is not, or ceases to be, reviewable action if a circumstance mentioned in the item applies.

A table contained in subclause 95(4) sets out certain actions and the circumstances in which they are not, or cease to be, reviewable actions.

Item 1 of the table in subclause 95(4) provides that an action is not reviewable, or ceases to be reviewable, if the action is an application for primary review of a Parliamentary Service action to an affected employee's Secretary under subclause 96(1) and the application is not made within 120 days of the Parliamentary Service action.

Item 2 of the table in subclause 95(4) provides that an action is not reviewable, or ceases to be reviewable, if the action is an application for primary review of a Parliamentary Service action made to the Merit Protection Commissioner under paragraph 96(2)(a) and the application is not made within 60 days of the determination that the affected employee has breached the Code of Conduct.

Item 3 of the table in subclause 95(4) provides that an action is not reviewable, or ceases to be reviewable, if the action is an application for primary review of a Parliamentary Service action made to the Merit Protection Commissioner under paragraph 96(2)(b) and the application is not made within 60 days of the sanction for breach of the Code of Conduct being imposed.

Item 4 of the table in subclause 95(4) provides that an action is not reviewable, or ceases to be reviewable, if the action is an application for primary review of a Parliamentary Service action made to the Merit Protection Commissioner under subclause 96(3) and the application is not made within 60 days of the Parliamentary Service action.

Item 5 of the table in subclause 95(4) provides that an action is not reviewable, or ceases to be reviewable, if the action is an application to the Merit Protection Commissioner for secondary review of a Parliamentary Service action if the Secretary has told the affected employee under clause 98 that the action is not reviewable and the application is not made within 60 days of the affected employee being told that the Parliamentary Service action is not reviewable.

Item 6 of the table in subclause 95(4) provides that an action is not reviewable, or ceases to be reviewable, if the action is an application to the Merit Protection Commissioner for secondary review of a Parliamentary Service action if: the Secretary has told the affected employee of the Secretary's decision under subclause 99(5); and the affected employee is not satisfied with the decision; and the application is not made within 60 days of the affected employee being told of the Secretary's decision.

Item 7 of the table in subclause 95(4) provides that an action is not reviewable, or ceases to be reviewable, if the action is an application to the Merit Protection Commissioner for secondary review of a Parliamentary Service action and the application for primary review of the action was an application referred to in item 1 of the table in subclause 94(4).

Subclause 95(5) provides that an action mentioned in an item of the table in subclause 94(4) is reviewable action if the person who is, or would be, conducting the review considers that there are exceptional circumstances explaining the failure to make an application within the period in the item.

Subdivision 2—Primary review

Clause 96 Application for primary review

Clause 96 sets out requirements for applications for primary review.

Subclause 96(1) provides that an affected employee may apply in writing to the relevant Secretary for primary review of a reviewable action.

Subclause 96(2), however, provides that the application must be made to the Merit Protection Commissioner if the application is for review of:

- a determination that the affected employee has breached the Code of Conduct; or
- a sanction imposed for breach of the Code of Conduct.

Subclause 96(3) provides, in addition, that the employee may apply in writing to the Merit Protection Commissioner for review of the action if:

- the Secretary was directly involved in the action; or
- it is not appropriate, because of the seriousness or sensitivity of the action, for the Secretary to deal with the application; or
- the action is claimed to be victimisation or harassment of the employee for having made a previous application for review of action.

Subsection 96(4) provides that the application must state briefly:

- why the review is sought; and
- if a particular outcome is sought—the outcome sought.

A Note provides examples of outcomes that might be sought.

Clause 97 Referral to Merit Protection Commissioner

Clause 97 sets out circumstances in which a Secretary may refer a review application to the Merit Protection Commissioner.

Subclause 97(1) provides that, if an application for review of a reviewable action is made to the relevant Secretary, the Secretary may, with the Merit Protection Commissioner's agreement, refer the application to the Merit Protection Commissioner.

Subclause 97(2) provides the following examples of when the Secretary may refer the application to the Merit Protection Commissioner:

- the Secretary was directly involved in the action; or
- the Secretary thinks that it is not appropriate, because of the seriousness or sensitivity of the action, for the Secretary to deal with the application.

Subclause 97(3) provides that, if the Secretary refers the application to the Merit Protection Commissioner, the Secretary must tell the employee in writing.

A Note refers the reader to Clause 100 which deals with review of applications referred to the Merit Protection Commissioner by a Secretary.

Clause 98 Notice that action not reviewable

Clause 98 provides that, if an application for review of a Parliamentary Service action is made and the action is not, or has ceased to be, reviewable action under subclauses 95(3) or (4) (application for primary review), the person who would have conducted the review must tell the employee in writing:

- that the action is not reviewable; and
- the reasons why it is considered that the action is not reviewable; and
- if the application was not made or referred to the Merit Protection Commissioner—of the employee’s right to apply to the Merit Protection Commissioner under clause 101 for secondary review of the action.

Clause 99 Conduct of review by Secretary

Clause 99 sets out requirements for a Secretary’s dealing with an application for review.

Subclause 99(1) provides that, if a Secretary:

- does not refer an application for review to the Merit Protection Commissioner; and
- considers the employee is entitled to review under this Division:

the Secretary must review the action and attempt to resolve the employee’s concerns about the action.

Under subclause 99(2), the Secretary may, subject to the minimum requirements in subclause 105(1), conduct the review in any manner the Secretary thinks fit.

Subclause 99(3) enables the Secretary to confirm or vary the application or set the action aside and substitute a new action.

Subclause 99(4) provides that Subclause 99(3) does not limit the employer powers of the Secretary in relation to the action or the affected employee.

An example provided in relation to subclause 99(3) is that the Secretary may take other appropriate action to rectify effects of the action or restore the affected employee to the position in which the employee would have been if the action had not been taken.

Subclause 99(5) requires the Secretary to tell the employee in writing of:

- any decision made on the application; and
- the reasons for the decision; and
- any action to be taken as a result of the review; and
- the applicant’s right to apply to the Merit Protection Commissioner under clause 101 for secondary review of the action.

Clause 100 Conduct of review by Merit Protection Commissioner

Subclause 100(1) provides that this clause applies if an application for review of a Parliamentary Service action is:

- made to the Merit Protection Commissioner under subclause 96(2) or (3); or
- referred to the Merit Protection Commissioner under subclause 97(1).

Subclause 100(2) provides that, if the Merit Protection Commissioner considers that the employee is entitled to review under this Division, he or she:

- must review the action; and
- may, subject to the minimum requirements mentioned in subclause 105(1), conduct the review in any manner he or she thinks fit.
- must make a written recommendation to the Secretary, telling the Secretary of the reasons for the recommendation; and

- must tell the employee in writing of the recommendation and reasons given to the Secretary.

Subdivision 3—Secondary review

Clause 101 Application for secondary review

Subclause 101(1) enables an affected employee to apply in writing to the Merit Protection Commissioner for secondary review of a reviewable action if the Secretary has told the employee under clause 98 that the action is not a reviewable action; or the employee is dissatisfied with the outcome of the Secretary's review of the action under clause 99.

Subclauses 101(2) and (3) provide that the application must be made through the Secretary and must state briefly why the review is sought.

Clause 102 Secretary to give documents to Merit Protection Commissioner

Subclause 102(1) requires that, within 14 days after receiving the application, the Secretary must give the application and any relevant documents relating to the primary review of the action to the Merit Protection Commissioner.

Subclause 102(2) requires the Secretary to give to the affected employee a copy of any documents given to the Merit Protection Commissioner under subclause 102(1).

Clause 103 Conduct of review

Clause 103 sets out what the Merit Protection Commissioner must or may do if he or she considers that the employee is entitled to review under this Division. In that circumstance, the Merit Protection Commissioner:

- must review the action; and
- may subject to the minimum requirements mentioned in subclause 105(1), conduct the review in any manner the Merit Protection Commissioner thinks fit; and
- must make a recommendation about the action; and
- must tell the Secretary, in writing, the recommendation and reasons for the recommendation; and
- must tell the employee in writing of the recommendation and reasons given to the Secretary.

Subdivision 4—Action following recommendation to Secretary

Clause 104 Action by Secretary

Clause 104 sets out what the Secretary must or may do if the Secretary receives a recommendation from the Merit Protection Commissioner under clause 100 or 103.

Subclause 104(1) provides that, in that circumstance, the Secretary must, as soon as possible:

- consider the recommendation; and
- make a decision about the recommendation.

Subclause 104(2) enables the Secretary to confirm or vary the relevant action or set the action aside and substitute a new action.

Subclause 104(3) provides that, if the Secretary acts in accordance with the recommendation, he or she is not required to seek the views of the employee before acting on the recommendation.

A Note mentions that the views of the Parliamentary Service employee have already been sought by the Merit Protection Commissioner during the review in accordance with the principles of procedural fairness.

Subclause 104(4) provides that subclause 104(2) does not limit the employer powers of the Secretary in relation to the action or the affected employee.

An example provided is that the Secretary may take other appropriate action to rectify effects of the action or restore the affected employee to the position in which the employee would have been if the action had not been taken.

Subclause 104(5) requires the Secretary to tell the employee and the Merit Protection Commissioner in writing of his or her decision and the reasons for the decision.

A Note refers the reader to subsection 33(6) of the Act which allows for matters to be reported to the Secretary of the relevant Department and to the Presiding Officers, for presentation to the Parliament, if the Merit Protection Commissioner is not satisfied with the response to recommendations contained in a report to a Secretary.

Subdivision 5—Other provisions about review

Clause 105 Review procedures—minimum requirements

Clause 105 sets out minimum requirements for a review conducted under Division 3 of Part 9. These are that:

- the procedures must have due regard to procedural fairness;
- the review must be conducted in private;
- the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.

Subclause 105(2) requires that a person appearing before the Merit Protection Commissioner must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

Clause 106 Requirement to provide information or documents

Subclause 106(1) enables the Merit Protection Commissioner to, by written notice given to a Secretary or Parliamentary Service employee, require the Secretary or Parliamentary Service employee to give a person or committee, specified in the notice, information or documents specified in the notice.

Subclause 106(2) requires the Secretary or employee to provide the information or documents and to do so in the way, and at or within the time, stated in the notice.

Clause 107 Making of application does not operate as stay

Clause 107 provides that the making of an application for review of a Parliamentary Service action under this Division does not operate to stay the action.

Clause 108 Offence

Clause 108 provides that a person commits an offence if the person obstructs a person in carrying out his or her functions under Division 3 of Part 9 and prescribes a penalty of 10 penalty units.

Subclause 108(2) provides that strict liability applies to the physical element of an offence against subclause 108(1) that the functions being carried out by the PRC were functions under Division 3 of Part 9.

Part 10—Other employment matters

Clause 109 Knowledge obligation

Clause 109 requires each Parliamentary Service employee to inform himself or herself about the Act and this Determination.

Clause 110 Restrictions on engaging redundancy benefit recipients

For clause 110, subclause 110(1) provides that a person is a *redundancy benefit recipient* if the person has received a redundancy benefit from a Department or an APS agency and the redundancy benefit period has not elapsed.

For clause 110, subclause 110(2) provides that, subject to subclause 110(3), each of the following payments is a *redundancy benefit*:

- a severance payment or similar payment made to an employee on the ending of the employee's employment;
- a payment made to an employee as a result of the shortening of a retention period;
- an incentive to retire payment under section 37 of the Act or section 37 of the Public Service Act 1999.

For clause 110, subclause 110(3) provides that each of the following payments is not a *redundancy benefit*:

- a payment made to an employee as redundancy pay under section 119 of the *Fair Work Act 2009* (A Note indicates that the amount of the payment mentioned in paragraph (a) is known as the National Employment Standards redundancy amount);
- a payment made as compensation for early termination to a person who was engaged for a specified term or for the duration of a specified task;
- a payment made to a person if the person's employment ended otherwise than at the initiative of the employer;
- a payment made to a person in lieu of notice of termination of employment.

For clause 110, subclause 110(4) provides that the *redundancy benefit period*, for a person who receives a redundancy benefit as a result of the ending of the person's employment, begins when the employment ends and lasts for the number of weeks and days calculated as follows:

$$\text{redundancy benefit period} = \frac{\text{gross amount of person's redundancy benefit}}{\text{weekly salary used to calculate redundancy benefit}}$$

Subclause 110(5) provides, in calculating the redundancy benefit period:

- where an employee has periods of full-time and part-time service, and the period of part-time service falls last (so that the person's redundancy benefit is calculated on the basis of the part-time weekly salary), the weekly salary to be used is the full-time equivalent of that part-time weekly salary; and
- treat a fraction of a week as a proportion of 7 days; and
- round the proportion down to the nearest whole number.

Subclause 110(6) enables a Secretary to engage a redundancy benefit recipient as a Parliamentary Service employee only if the Secretary considers that the engagement is

essential for the Department's operations, having regard to the nature of the duties to be performed and the work-related qualities of the person.

Subclause 110(7) provides, in addition to the requirement in subclause 110(6), that a Secretary must also:

- obtain the Commissioner's approval before engaging a redundancy benefit recipient as either an ongoing Parliamentary Service employee or a non-ongoing SES employee; and
- consult with the Commissioner before engaging a redundancy benefit recipient, if the engagement is as a non-ongoing Parliamentary Service employee (at a non-SES classification) for a specified term of more than 6 months or for the duration of a specified task where it is estimated that the duration of the task is likely to be more than 6 months; and
- consult with the Commissioner before extending the engagement (at a non-SES classification) of a non-ongoing employee who is a redundancy benefit recipient, where the total term of engagement will exceed 6 months.

Clause 111 Termination of employment of non-ongoing Parliamentary Service employees

Subclause (1) of clause 111 clause sets out procedures applicable to the termination of the employment of a non-ongoing Parliamentary Service employee.

Subclause 111(2) provides that, if an employment arrangement sets out procedures applicable to the termination of the employment of the non-ongoing Parliamentary Service employee, the procedures apply to the termination of the employment unless the procedures:

- if the employment arrangement is a fair work instrument—are an unlawful term; or
- if the employment arrangement is a transitional instrument that is not an award—are prohibited content; or
- if the employment arrangement is not a fair work instrument or a transitional instrument—would be an unlawful term if the employment arrangement were a fair work instrument.

Notes explain that:

- the engagement of a non-ongoing Parliamentary Service employee may be terminated on the grounds of a breach of the Code of Conduct only in accordance with procedures established by a Secretary under subsection 15(3) of the Act;
- the *Fair Work Act 2009* has rules and entitlements that apply to termination of employment; and
- a Secretary cannot terminate the employment of an SES employee unless the Commissioner has issued a certificate under section 38 of the Act that the termination has satisfied the requirements of this determination and is in the public interest.

Clause 112 Incentive to retire—SES employee

Clause 112 provides that a Secretary must not give a notice to an SES employee under section 37 of the Act unless the Commissioner is satisfied that the following requirements have been met:

- the employee is an ongoing SES employee;
- the employee is advised of possible options for assignment, including assignment to a group of duties at a lower classification;

- the employee is given reasonable access to independent financial advice and career counselling;
- the Commissioner has agreed to the amount to be paid to the employee by the Secretary if the employee retires within the period specified in the notice.

Notes advise that:

- a notice given to an SES employee under subsection 37(1) of the Act must be in writing and must state that the employee will become entitled to a payment of a specified amount if the employee retires within a period specified in the notice; and
- under clause 39 the retirement of an SES employee within the period specified in a notice given under section 37 of the Act must be notified in the Public Service Gazette.

Part 11—Merit Protection Commissioner

Division 1—Prescribed functions

Clause 113 Prescribed functions

Clause 113 prescribes functions in relation to the Merit Protection Commissioner.

Subclause 113(1) prescribes the Merit Protection Commissioner's functions set out in Part 9 for the purposes of paragraph 48(1)(d) of the Act.

Subclause 113(2) prescribes the Merit Protection Commissioner's functions set out in Divisions 3, 4, 5 and 6 of this Part for the purposes of subsection 48(1)(e) of the Act.

A Note indicates that functions of the Merit Protection Commissioner in relation to whistleblower reports are set out in Part 12.

Division 2—Basic procedural requirements for Code of Conduct inquiries

Clause 114 Basic requirements for procedures for determining breach of Code of Conduct by Parliamentary Service employee or former Parliamentary Service employee

Subclause 114(1) provides that, for paragraph 48A(2)(a) of the Act, clause 114 prescribes basic requirements that the Merit Protection Commissioner's written procedures must comply with.

Subclause 114(2) provides that the procedures must require that the Merit Protection Commissioner not make a determination in relation to an alleged breach of the Code of Conduct by a Parliamentary Service employee or a former Parliamentary Service employee unless:

- the Merit Protection Commissioner has taken reasonable steps to tell the employee or former employee the details of the suspected breach (including any variation of those details) and the sanctions that may be imposed on the employee under subsection 15(1) of the Act; and
- the employee or former employee has been given a reasonable opportunity to make a statement in relation to the alleged breach.

Subclause 114(3) provides that the procedures must require that the process for determining whether a Parliamentary Service employee or a former Parliamentary Service employee has breached the Code of Conduct be carried out as quickly and with as little formality as a proper consideration of the matter allows.

Subclause 114(4) provides that the procedures must require that reasonable steps be taken to ensure that any person authorised under the Merit Protection Commissioner's written procedures to determine whether a Parliamentary Service employee or a former Parliamentary Service employee has breached the Code of Conduct is, and appears to be, independent and unbiased.

Subclause 114(5) provides that the procedures must require that a written record be prepared stating whether it has been determined that the Parliamentary Service employee or a former Parliamentary Service employee has breached the Code of Conduct.

Division 3—Complaints of former employees

Clause 115 Investigation of complaints by former employees

Clause 115 provides that the Merit Protection Commissioner may investigate a complaint by a former Parliamentary Service employee that relates to the employee's entitlements on separation from the Parliamentary Service (subclause (1)) and may make recommendations to the employee's former Secretary in relation to the complaint (subclause (2)).

Division 4—Review of determination of breach of Code of Conduct by former Parliamentary Service employee

Clause 116 Entitlement for review

Clause 116 prescribes circumstances in which a former employee is, or is not, entitled to review of a determination that the former employee has breached the Code of Conduct.

Subclause 116(1) provides that a former Parliamentary Service employee who was not an SES employee at the time the employee's employment ceased is entitled to review of a determination by a Secretary, made after the affected former employee's engagement ceased, that the affected former employee has breached the Code of Conduct (including by engaging in conduct referred to in subsection 15(2A) of the Act).

Subclause 116(2) provides that the affected former employee is not, or ceases to be, entitled to review of the determination mentioned in subclause 116(1) if:

- (a) the affected former employee has applied to have the determination reviewed by a Court or a Tribunal and the determination may be reviewed by that Court or Tribunal; or
- (b) the Merit Protection Commissioner considers that the determination should not be reviewable for any of the following reasons:
 - (i) the affected former employee has previously applied for review of the determination under this Division;
 - (ii) the affected former employee has applied, or could apply, to have the determination reviewed by an external review body and review by the review body would be more appropriate than review under this Division;
 - (iii) review, or further review, of the determination is not otherwise justified in all the circumstances.

Note 1 provides examples of external review bodies.

Note 2 mentions that review may be not justified because the affected former employee does not respond to a request under clause 121 for further information about why the review is sought.

Subclause 116(3) provides that the affected former employee is not, or ceases to be, entitled to review of the determination mentioned in subclause 116(1) if an application for review of the determination is not made within 60 days of the determination that the affected former employee has breached the Code of Conduct.

Subclause 116(4) provides, however, that an affected former employee is entitled to review of the determination if the Merit Protection Commissioner considers that there are exceptional circumstances explaining the failure to make an application within the period mentioned in subclause 116(3).

An example provided is that the affected former employee could demonstrate that the affected former employee did not receive notification of the determination.

Subclause 116(5) provides that the affected former employee is also entitled to review as mentioned in clause 115 and is not entitled to any other review.

Clause 117 Application for review

Subclause 117(1) provides that an affected former employee mentioned in clause 119 may apply, in writing, to the Merit Protection Commissioner for review of the determination.

Subclause 117(2) provides that the application must state briefly why the review is sought and, if a particular outcome is sought, the outcome that is sought.

Clause 118 Notice that action not reviewable

Clause 118 provides that, if an application for review of a determination is made and the determination is not reviewable under subclause 116(2)(b) or (3), the Merit Protection Commissioner must tell the affected former employee in writing that the determination is not reviewable and the reasons why the determination is not reviewable.

Clause 119 Conduct of review

Clause sets out what the Merit Protection Commissioner must or may do if he or she considers that the affected former employee is entitled to review under this Division. Those actions are that the Merit Protection Commissioner:

- must review the determination; and
- may, subject to the minimum requirements mentioned in clause 120, conduct the review in any manner the Merit Protection Commissioner thinks fit; and
- must make a recommendation to the Secretary, in writing, about the determination; and
- must tell the Secretary, in writing, the reasons for the recommendation; and
- must tell the affected former employee in writing of the recommendation and reasons given to the Secretary.

Clause 120 Review procedures—minimum requirements

Clause 120 sets out minimum requirements for a review conducted under Division 4 of Part 11. These are that:

- the procedures must have due regard to procedural fairness;
- the review must be conducted in private;
- the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.

Subclause 120(2) requires that a person appearing before the Merit Protection Commissioner must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

Clause 121 Requirement to provide information or documents

Subclause 121(1) enables the Merit Protection Commissioner to, by written notice given to a Secretary or Parliamentary Service employee, require the Secretary or Parliamentary Service employee to give a person or committee, specified in the notice, information or documents specified in the notice.

Subclause 121(2) requires the Secretary or employee to provide the information or documents and to do so in the way, and at or within the time, stated in the notice.

Clause 122 Making of an application does not operate as stay

Clause 122 provides that the making of an application for review of a determination under this Division does not operate to stay the determination.

Clause 123 Offence

Clause 123 provides that a person commits an offence if the person obstructs the Merit Protection Commissioner in carrying out his or her functions under this Division and prescribes a penalty of 10 penalty units.

Subclause 123(2) provides that strict liability applies to the physical element of an offence that the functions being carried out by the Merit Protection Commissioner were functions under this Division.

Division 5—Review of actions of statutory office holders

Clause 124 Review of actions of statutory office holders who are not Secretaries

Clause 124 makes provisions about the review of actions of statutory office holders who are not Secretaries.

Subclause 124(1) provides that a non-SES employee may apply to the Merit Protection Commissioner for review of an action of a statutory office holder that:

- relates to the employee’s Parliamentary Service employment; and
- is not a termination of the employee’s employment; and
- if the statutory office holder were a Secretary, would be reviewable action for Division 3 of Part 9.

Subclause 124(2) enables the Merit Protection Commissioner to, by written notice given to the statutory office holder, require the statutory office holder to give the Merit Protection Commissioner a report about the action and other stated information or documents relevant to the review.

Subclause 124(3) requires the statutory office holder to provide the report about and other stated information or documents in the way, and at or within the time, stated in the notice.

Subclause 124(4) provides that the Merit Protection Commissioner must:

- review the action; and
- make a recommendation to the statutory office holder in writing about the action; and
- tell the statutory office holder in writing of the reasons for the recommendation; and
- tell the employee in writing of the recommendation and reasons given to the statutory office holder.

Subclause 124(5) provides that, if the Merit Protection Commissioner is not satisfied with the statutory office holder’s response to the Merit Protection Commissioner’s recommendation, the Merit Protection Commissioner may give a report on the matter to the Presiding Officers.

Subclause 124(6) provides the following definitions for the purposes of Clause 124:

statutory office holder means a person who holds any office or appointment under this Act, being an office or appointment prescribed by clause 57 for the purposes of the definition of ***statutory office holder*** in subsection 14(3) of the Act.

Division 6—Miscellaneous

Clause 125 Independence of Merit Protection Commissioner

Clause 125 provides that the Merit Protection Commissioner is not subject to direction in carrying out his or her duties under Part 8 or 9 of this determination, except by a Court.

Clause 126 Entrusted person

Clause 126 provides for paragraph (e) of the definition of *entrusted person* in subsection 65AB(1) of the Act, that a member of a committee established or appointed by the Merit Protection Commissioner under this determination is prescribed.

Clause 127 Protected information

Clause 127 provides for paragraph (c) of the definition of *protected information* in subsection 65AB(1) of the Act, that information that was obtained by an entrusted person in connection with the performance of functions or duties, or the exercise of powers, under clause 124 is prescribed.

Clause 128 Compellability of entrusted persons to give evidence

Clause 128 provides, for paragraph 65AB(7)(d) of the Act, that information that was obtained by an entrusted person in connection with the performance of functions or duties, or the exercise of powers, under clause 124 is prescribed.

Clause 129 Giving information or producing documents

Clause 129 provides that, for paragraph 65AD(2)(b) of the Act, clause 124 is prescribed.

Part 12—Whistleblower reports

Clause 130 Basic requirements for procedures—Secretary

Clause 130 prescribes basic procedures a Secretary must establish for dealing with whistleblower reports.

Subclause 130(1) provides that procedures established by a Secretary for dealing with a whistleblower report made to the Secretary must comply with the requirements set out in subclause 130(2).

Subclause 130(2) provides that the procedures must require the Secretary to:

- accept the whistleblower report;
- inform the whistleblower that the whistleblower must not be victimised or discriminated against for making the report (a Note refers the reader to subsection 16(1) of the Act);
- commence an inquiry into the whistleblower report, unless a circumstance mentioned in clause 132 applies;
- complete the inquiry, unless a circumstance mentioned in clause 132 applies;
- report the outcome of the inquiry to the whistleblower;
- ensure that the outcome of the inquiry is dealt with as soon as practicable;
- consider, having regard to all the circumstances, whether the subject of the whistleblower report should have an opportunity to be heard in relation to the report;
- if the Secretary decides to decline to conduct or discontinue an inquiry because a circumstance in clause 132 applies—inform the whistleblower of the decision.

Clause 131 Basic requirements for dealing with reports—Commissioner or Merit Protection Commissioner

Subclause 131(1) provides that the Commissioner or Merit Protection Commissioner must, in dealing with a whistleblower report, comply with the requirements set out in subclauses 131(2) to (5).

Subclause 131(2) provides that the Commissioner or Merit Protection Commissioner must accept the whistleblower report if:

- the Commissioner or Merit Protection Commissioner considers that it would be inappropriate for the whistleblower to make the whistleblower report to the relevant Secretary; or
- the whistleblower has made a whistleblower report to the relevant Secretary and is not satisfied with the Secretary's decision to decline to conduct or discontinue an inquiry into the whistleblower report or the outcome of the Secretary's inquiry into the whistleblower report.

Subclause 131(3) provides that the Commissioner or Merit Protection Commissioner must commence an inquiry into the whistleblower report, unless a circumstance mentioned in clause 132 applies (in relation to an inquiry conducted by the Commissioner, a Note refers the reader to the notification requirement in subsection 40(1A) of the Act.)

Subclause 131(4) provides that the Commissioner or Merit Protection Commissioner must complete the inquiry into the whistleblower report, unless a circumstance mentioned in clause

132 applies and report the outcome of the inquiry to the whistleblower and the relevant Secretary.

Subclause 131(5) requires the Commissioner or Merit Protection Commissioner to consider, having regard to all the circumstances, whether the subject of the whistleblower report should have an opportunity to be heard in relation to the report.

Clause 132 Decision to decline to conduct or discontinue an inquiry—prescribed circumstances

Clause 132 sets out the circumstances in which office holders may decline to conduct or discontinue a whistleblower inquiry.

Subclause 132(1) provides that a Secretary, the Commissioner or the Merit Protection Commissioner may decline to conduct or discontinue an inquiry into a whistleblower report if a circumstance mentioned in subclause (2), (3) or (4) applies.

Subclause 132(2) provides that a circumstance is that the Secretary, Commissioner or Merit Protection Commissioner reasonably believes that:

- the whistleblower report would be dealt with more appropriately by different means (an example given is, if other action is being undertaken under the Act or another Commonwealth law, that action may be considered more appropriate); or
- the whistleblower report is vexatious, frivolous, misconceived, insufficiently detailed or lacking in substance; or
- conducting the inquiry would not be justified in all the circumstances.

Subclause 132(3) provides that a circumstance for the Commissioner is that the whistleblower report has not been considered by the relevant Secretary or that the report is being, or has already been, considered by the Merit Protection Commissioner.

Subsection 132(4) provides that a circumstance for the Merit Protection Commissioner is that the whistleblower report has not been considered by the relevant Secretary or that the report is being, or has already been, considered by the Commissioner.

Part 13—Attachment of salaries to satisfy judgement debts

Clause 133 Definitions

Clause 133 defines *debtor*, *net salary*, *paying officer* and *total gross salary* for this Part.

Subclause 133(1) defines *debtor* as a Secretary or Parliamentary Service employee who owes a judgement debt.

paying officer is defined in relation to a debtor, as a person appointed under clause 136 who is responsible for dealing with the debtor; and

Subclause 133(2) defines the *net salary* of a debtor as being the debtor's total gross salary, less any amount to be deducted

- to pay income tax;
- to pay child support in accordance with the *Child Support (Assessment) Act 1989*; or
- as a contribution to a superannuation fund that the debtor is required to make in relation to the debtor's employment in the Department and is the minimum amount required by law or the rules of the fund.

Subclause 133(3) defines the *total gross salary* of a debtor as being the amount of:

- the debtor's gross salary as a Secretary or a Parliamentary Service employee (not including any payment of compensation under the *Safety, Rehabilitation and Compensation Act 1988*); and
- the allowances, in the nature of salary, that are paid regularly to the debtor; without any reduction for salary sacrifice arrangements or other arrangements with a similar purpose.

Clause 134 Application of this Part

Clause 134 sets out that Part 13 does not apply in relation to a debtor whose estate has been sequestrated, either voluntarily or compulsorily, for the benefit of creditors and who has not yet obtained a certificate of discharge.

Clause 135 Application of State and Territory law

Clause 135 sets out that a law of a State or Territory that deals with satisfying a judgement debt:

- applies to a debtor's judgement debt to the extent that the law deals with the calculation of interest on the debt; and
- does not apply to the judgement debt for any other purpose.

Clause 136 Paying officer

Clause 136 provides for the appointment of one or more persons as paying officers.

Subclause 136(1) sets out that if a Secretary believes that the making or deductions from a debtor's salary is required, he or she must appoint one or more persons as paying officers for the purpose of making those deductions.

Subclause 136(2) provides that, if the debtor is the Secretary:

- the Secretary must not appoint a paying officer under subclause 136(1); and
- the Secretary must act under this subclause without considering whether the making of deductions from the Secretary's salary is required; and
- the Secretary must delegate in writing, his or her power under subclause 136(1) to appoint a paying officer to an SES employee in the Department; and
- the SES employee must decide whether the making of deductions from the Secretary's salary is required and, if the SES employee decides that the making of deductions is required—appoint a person as a paying officer for the purpose of making those deductions; and
- the Secretary must not take any action, or make any arrangement, in relation to the administration under this Part of the Secretary's debt, other than making the delegation mentioned above and, if a paying officer is appointed, assisting the paying officer in the repayment of the debt.

Subclause 136(3) sets out that if a person is appointed as a paying officer:

- the appointment authorises the person to act as a paying officer only in relation to the debtor to whom the appointment relates; and
- the person is responsible for making deductions from the debtor's salary to satisfy the judgement debt against the debtor.

Subclause 136(4) provides that a debtor is not authorised to be the paying officer for himself or herself.

Clause 137 Authority to make deductions

Clause 137 sets out the circumstances in which deductions from a debtor's salary in order to satisfy a judgement debt may be started.

Subclause 137(1) lists these circumstances as:

- the paying officer has received a statutory declaration, made by the judgement creditor, that the judgement debt exists and has not been discharged; and
- the paying officer has received a copy of the judgement to which the judgement debt relates, certified by the Registrar or other appropriate officer of the relevant court; and
- the paying officer has received the fee (if any) required under clause 138; and
- the paying officer has given the debtor a notice in accordance with subclause 137(2); and
- the debtor does not, within the time specified in the notice given under subclause (2), satisfy the paying officer that the judgement debt has been satisfied.

A Note to subclause 137(1) refers the reader to clause 139 which deals with cases where there are two or more judgements debts against a debtor.

Subclause 137(2) requires the paying officer to notify the debtor, as soon as practicable, that it is proposed to make the deductions and to require the debtor to state in writing, whether the judgement has been satisfied. Where the judgement has been satisfied, evidence in support of that fact is to be provided. Where the judgement debt has not been satisfied, the debtor must state the amount due under the judgement at the time the statement is made.

Subclause 137(3) provides that, if the debtor does not give the paying officer evidence that the judgement debt has been satisfied by the time specified in the notice under subclause 137(2), the paying officer must deduct from the debtor's salary on each pay day for the debtor, an amount equal to:

- the deduction required under clause 141, or
- a lesser amount that, in the paying officer's opinion, is needed to satisfy the balance of the judgement debt.

Subclause 137(4) provides that, after making the first deduction, the paying officer is authorised to continue to make deductions only if the paying officer has no reason to believe that the judgement debt has been discharged.

Subclause 137(5) requires the paying officer to ensure that the amount of each deduction is paid to the judgement creditor.

Clause 138 Administration fee

Subclause 138(1) provides that a judgement creditor (other than the Commonwealth) who requests the payment of a judgement debt must pay a fee of \$38 for making of deductions.

Subclause 138(2) provides that the fee is the price of the supply of a service for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*.

Subclause 138(3) provides that, if a judgement creditor (other than the Commonwealth) requests the payment of a judgement debt, but does not pay the fee when making the request, the paying officer must notify the judgement creditor that the fee is payable for making the deductions and that not deductions will be made unless the fee is paid.

Clause 139 More than one judgement debt

Clause 139 deals with the order in which judgement debts are to be dealt with.

Subclause 139(1) provides that, if more than one judgement debt exists against a debtor, the paying officer must deal with the judgement debts in the order in which requests were received and must not make a deduction for the purposes of a particular judgement debt until all judgement debts for which earlier requests were made have been satisfied.

Subclause 139(2) requires that, if the paying officer receives two or more requests at the same time for the payment of judgement debts against a debtor, the paying officer must deal with them in the order of the dates and times at which judgement was given for each debt, starting with the earliest judgement.

Clause 140 Effect of deductions

Clause 140 provides that, if an amount is paid to a judgement creditor after a deduction is made from the debtor's salary on a pay day for the debtor:

- an amount equal to that amount is taken to have been paid by the Commonwealth to the debtor on account of salary payable to the debtor on that pay day; and
- an amount equal to that amount is taken to have been paid by the debtor to the judgement creditor for the purposes of the judgement debt.

Clause 141 Rate of deductions

Clause 141 sets out how the rate of deductions from a debtor's salary is to be determined.

Subclause 141(1) provides that for paragraph 137(3)(a), the rate at which a deduction is to be made from the debtor's net salary on a pay day for the debtor is 20% unless subclause (2), (3) or (4) applies.

Subclause 141(2) provides that, if the paying officer is satisfied that the debtor:

- is suffering serious financial hardship; or
- would suffer serious financial hardship if the rate of deduction is not reduced,

the paying officer may reduce the rate at which deductions are to be made.

Subclause 141(3) provides that, if the debtor asks the paying officer, in writing, to make deductions at a rate greater than 20% of the debtor's net salary, the paying officer must comply with the request as soon as practicable.

Subclause 141(3) provides that, if:

- deductions are being made at a rate greater than 20% of the debtor's net salary; and
- the debtor asks a paying officer, in writing, to reduce the rate of the deductions;

the paying officer must reduce the rate as soon as practicable, but is not required to reduce the rate to less than 20%.

Clause 142 Move to another Department

Clause 142 sets out the arrangements to apply if a debtor moves between departments.

Subclause 142(1) provides that, if a debtor moves from a Department (***Department 1***) to another Department (***Department 2***), the debtor's paying officer in Department 1 must notify the Secretary of Department 2 of:

- the existence of each judgement debt against the debtor; and
- the arrangements in Department 1 for making deductions from the debtor's salary; and
- any deductions made for the purposes of each of those judgement debts.

Subclause 142(2) provides that, if more than one judgement debt exists against the debtor:

- the debtor's paying officer in Department 1 must advise the Secretary of the order in which the judgement debts were to have been dealt with in accordance with clause 139; and
- the paying officer who is appointed in Department 2 in relation to the debtor must deal with the judgement debts in that order.

Subclause 142(3) provides that the paying officer in Department 2 is taken:

- to have received the statutory declaration, and copy of the judgement, mentioned in clause 137; and
- to have received the fee (if any) required under clause 138; and
- to have given to the debtor any notice that was given, in respect of the debtor, by a paying officer in another Department.

Subclause 142(4) provides that the paying officer in Department 2 must notify the judgement creditor of the move, and the deductions that the paying officer will make.

Subclause 142(5) provides that the judgement creditor is not required to pay another fee for the making of deductions.

Clause 143 Administration of deductions

Subclause 143(1) provides that a paying officer in relation to a debtor may require the judgement creditor to confirm that the judgement debt has not been discharged and suspend the making of deductions until the paying officer receives the confirmation.

Subclause 143(2) provides that, if a debtor's employment ceases, or is terminated, for any reason (including the debtor's death) the paying officer must notify the judgement creditor of the cessation or termination as soon as practicable.

Clause 144 Recovery of overpayment

Clause 144 provides that, if a payment made to a judgement creditor for the purposes of a judgement debt exceeds the amount due under the judgement, the excess is repayable by the judgement creditor to the debtor.

Part 14—Delegation

Clause 145 Delegation by Merit Protection Commissioner

Clause 145 enables the Merit Protection Commissioner to delegate powers or functions.

Subclause 145(1) provides that the Merit Protection Commissioner may, in writing, delegate any of his or her powers or functions under this determination (other than under this clause) to:

- an APS employee made available to the Merit Protection Commissioner by an Agency Head (within the meaning of the *Public Service Act 1999*); or
- a Parliamentary Service employee made available to the Merit Protection Commissioner by the Secretary of the Department in which the employee is employed.

Subclause 145 (2) provides that a person exercising powers or functions under a delegation under this clause must comply with any directions of the Merit Protection Commissioner.

Clause 146 Delegation by Secretary

Clause 146 provides that a Secretary may delegate powers or functions under this Determination and prescribes the circumstances in which the delegation may occur. In each circumstance, the delegation must be in writing and may be in relation to any of the Secretary's powers or functions under this Determination (other than this clause).

Subclause 146(1) provides that a Secretary may delegate any of the Secretary's powers or functions to a Parliamentary Service employee.

Subclause 146(2) provides that a Secretary may, delegate any of the Secretary's powers or functions to the Parliamentary Librarian.

Subclause 146(3) provides that a Secretary may delegate any of the Secretary's powers or functions to a person who is not a Parliamentary Service employee.

Subclause 146(4) provides that if a Parliamentary Service employee (the *first delegate*) to whom powers or functions are delegated under subclause 146(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*).

Subclause 146(5) provides, however, that, if the first delegate is subject to directions in relation to the exercise of a power or function delegated under subclause 146(1), the first delegate must give corresponding directions to the second delegate.

Subclause 146(6) provides that if powers or functions are delegated under subclause 146(2), the Parliamentary Librarian may, in writing, delegate any of those powers or functions to a Parliamentary Service employee.

Subclause 146(7) provides, however, that, if the Parliamentary Librarian is subject to directions in relation to the exercise of a power or function delegated under subclause 146(2), the Parliamentary Librarian must give corresponding directions to the Parliamentary Service employee to whom a delegation is given under subclause 146(6).

Subclause 146(8) provides that a power or function that is exercised or performed by a person under a delegation under subclause = 146(4) or (6) 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 subclause 146(1) or (2).

Subclause 146(9) provides that a person exercising powers or functions under a delegation under this clause must comply with any directions of the person who delegated the power or function.

Part 15—Miscellaneous

Clause 147 Use and disclosure of personal information

Clause 147 sets out requirements for the use and disclosure of personal information.

Subclause 147(1) provides that a Secretary may use personal information in the possession, or under the control, of the Secretary, if the use is necessary for, or relevant to, the performance or exercise of his or her employer powers.

Subclause 147(2) provides that a Secretary may disclose personal information in his or her possession, or under his or her control, if the disclosure is necessary for, or relevant to:

- the performance or exercise of the employer powers of the Secretary or another Secretary; or
- the exercise of a power or performance of a function of the Commissioner; or
- the exercise of a power or performance of a function of the Merit Protection Commissioner; or
- the performance of a function of an ISAC.

Subclause 147(3) provides that the Merit Protection Commissioner may disclose personal information in his or her possession, or under his or her control if:

- the information was obtained by the Merit Protection Commissioner during the course of a PRC review or review of action; and
- the disclosure is necessary for, or relevant to, a Secretary's consideration of alleged misconduct by a Parliamentary Service employee.

Subclause 147(4) provides that the Commissioner may use personal information in his or her possession, or under his or her control if:

- the information was obtained as part of the Commissioner's review or inquiry functions; and
- the use is necessary for, or relevant to, an inquiry relating to the Code of Conduct conducted by the Commissioner.

Subclause 147(5) provides that the Commissioner may disclose personal information in his or her possession, or under his or her control if:

- the information was obtained as part of the Commissioner's review or inquiry functions; and
- the disclosure is necessary for, or relevant to, a Secretary's consideration of alleged misconduct by a Parliamentary Service employee.

Subclause 147(6) provides that use or disclosure under this clause must be consistent with any guidelines issued by the Commissioner after consultation with the Australian Information Commissioner performing the privacy functions.

A Note advises that ***Privacy functions*** has the meaning given by section 9 of the *Australian Information Commissioner Act 2010*.

Subclause 147(7) provides that use of personal information under this clause is an authorised use for paragraph 1(c) of Information Privacy Principle 10 set out in section 14 of the *Privacy Act 1988*.

Subclause 147(8) provides that disclosure of personal information under this clause is an authorised disclosure for paragraph 1(d) of Information Privacy Principle 11 set out in section 14 of the *Privacy Act 1988*.

A Note states that the *Freedom of Information Act 1982* and the *Privacy Act 1988* have rules about the disclosure of personal information.

Part 16—Transitional arrangements

Division 16.1—Transitional arrangements arising from commencement of *Parliamentary Service Amendment Act 2012*

Clause 148 Definitions

Clause 148 provides the following definitions for the purposes of Division 16.1:

new Parliamentary Service Determination means the *Parliamentary Service Determination 2013* as in force on and after 1 July 2013.

old Parliamentary Service Determination means the *Parliamentary Service Determination 2003/2*.

Clause 149 Review of matters relating to Code of Conduct as in force before 1 July 2013

Clause 149 provides that, if item 9, 10 or 11 of Schedule 2 to the *Parliamentary Service Amendment Act 2013* applies in relation to conduct by a Secretary relating to the Code of Conduct, the Merit Protection Commissioner must:

- review a determination made by the Secretary that the Parliamentary Service employee in the relevant Department has breached the Code of Conduct under the same requirements as the relevant item applied in relation to the Secretary; and
- review the sanction (if any) imposed on the Parliamentary Service employee under the same requirements as the relevant item applied in relation to the Secretary.

A Note outlines what the items in the *Parliamentary Service Amendment Act 2013* mentioned above relate to.

Clause 150 Review of action lodged before 1 July 2013

Clause 150 provides transitional arrangements for review of action applications lodged before 1 July 2013.

Subclause 150(1) provides that subclause (2) applies if:

- before 1 July 2013, a Parliamentary Service employee applied for a review of Parliamentary Service action; and
- the application was not made under subclause 96(2); and
- the review had not been completed under Division 3 of Part 9 before 1 July 2013.

A Note states that the application may have been made to a Secretary or the Merit Protection Commissioner. Also, the application may have been referred to the Merit Protection Commissioner by a Secretary.

Subclause 150(2) provides that the old Parliamentary Service Determination continues to apply, on and after 1 July 2013, in relation to the review.

Subclause 150(3) provides that subclause (4) applies if:

- before 1 July 2013, a Parliamentary Service employee applied for review of Parliamentary Service action; and
- the application was not made in accordance with subclause 96(2); and
- on or after 1 July 2013, the Merit Protection Commissioner proposes to review the reviewable action.

Subclause 150(4) provides that the old Parliamentary Service Determination continues to apply, on and after 1 July 2013, in relation to the review by the Merit Protection Commissioner.

Clause 151 Conduct of ISAC and recommendation by ISAC

Clause 151 provides transitional arrangements for the conduct of ISACs and recommendations by ISACs.

Subclause 151(1) provides that subclause (2) applies if, before 1 July 2013, an ISAC was established in relation to an employment opportunity and, immediately before 1 July 2013:

- the ISAC was still in existence and had not made a recommendation; or
- a recommendation by the ISAC, made within 12 months after the date of notification of the employment opportunity, was in force.

Subclause 151(2) provides that the new Parliamentary Service Determination applies, on and after 1 July 2013, in relation to the ISAC and the recommendation.

Subclause 151(3), however, provides that, if:

- the employment opportunity was advertised or notified on the basis that the old Parliamentary Service Determination would apply on and after 1 July 2013; or
- official information provided in relation to the advertisement or notification of the employment opportunity stated that the old Parliamentary Service Determination would apply on and after 1 July 2013;

the old Parliamentary Service Determination continues to apply, on and after 1 July 2013, in relation to the ISAC and the recommendation.

An example provided is that official information provided in relation to the advertisement or notification of the employment opportunity includes a statement in an application pack or information provided by a contact person identified in the advertisement or notification.

Clause 152 Review of promotion notified before 1 July 2013

Clause 152 provides transitional arrangements for review of promotions notified before 1 July 2013.

Subclause 152(1) provides that subclause (2) applies if, before 1 July 2013, a promotion was notified in accordance with the old Parliamentary Service Determination.

Subclause 152(2) provides that the old Parliamentary Service Determination continues to apply, on and after 1 July 2013, in relation to:

- the promotion; and
- any entitlement to have access to a statement given as part of a review of the promotion.

Clause 153 Notification of employment opportunities, employment decisions and cancellation decision

Clause 153 provides transitional arrangements about the notification of certain decisions.

Subclause 153(1) provides that if a Secretary notified a vacancy in accordance with Division 3.5 of Part 3 of the old Parliamentary Service Determination before the commencement day:

- clause 39 does not apply in relation to that action; and

- the relevant provisions of Part 3 of the old Parliamentary Service Determination continue to apply in relation to that action.

Subclause 153(2) provides that, if:

- an employment decision of a kind mentioned in subclause 39(1), or a cancellation decision of a kind mentioned in subclause 40(1), was made before 1 July 2013; and
- the relevant Secretary did not notify the decision in the Public Service *Gazette* before 1 July 2013;

a reference in subclause 39(2) or 40(1) to a period of 3 months is taken to be a reference to a period of 3 months commencing on 1 July 2013.

A Note states that subclauses 39(2) and 40(1) require that employment decisions and cancellation decisions of the kind specified in those subclauses be notified in the Public Service Gazette within 3 months after the decision is made.

Schedule 1—Dictionary

A Note refers the reader to clause 4 which, among other things, mentions terms defined in the Act.

The Dictionary defines terms used in this Determination.

Schedule 2—Comparison with Public Service Classifications

A Note refers the reader to clauses 32, 39, 41, 77 and 78, dealing, respectively, with engagement of ongoing APS employee as ongoing Parliamentary Service employee, notification of decisions in the Gazette, date of effect of promotion, review of certain promotion and engagement decisions and entitlement for review—promotion decision.

Clause 1 Meaning of comparable classification or lower

Clause 1 provides that a person who is an ongoing APS employee is engaged as an ongoing Parliamentary Service employee at **a comparable classification or lower** if:

- the person is engaged as an ongoing Parliamentary Service employee at a classification mentioned in column 2 for an item in the following table; and
- immediately before the engagement, the person was engaged as an ongoing APS employee at the corresponding classification mentioned in column 3 for the item.

Comparable classification or lower		
Item	Column 1 Parliamentary Service group classification	Column 2 APS group classification
1	1	1
2	1,2	2
3	1,2,3	3
4	1,2,3,4	4
5	1,2,3,4,5	5
6	1,2,3,4,5,6	6
7	1,2,3,4,5,6,7	7
8	1,2,3,4,5,6,7,8	8
9	1,2,3,4,5,6,7,8,9	9
10	1,2,3,4,5,6,7,8,9,10	10
11	1,2,3,4,5,6,7,8,9,10,11	11

Clause 2 Meaning of higher classification

Clause 2 provides that a person who is an ongoing APS employee is engaged as an ongoing Parliamentary Service employee at a **higher classification** if:

- the person is engaged as an ongoing Parliamentary Service employee at a classification mentioned in an item in column 1 in the following table; and
- immediately before the engagement, the person was engaged as an ongoing APS employee at the corresponding classification mentioned in column 2 of the item.

Higher classification		
Item	Column 1	Column 2
	Parliamentary Service group classification	APS group classification
1	2,3,4,5,6,7,8,9,10,11	1
2	3,4,5,6,7,8,9,10,11	2
3	4,5,6,7,8,9,10,11	3
4	5,6,7,8,9,10,11	4
5	6,7,8,9,10,11	5
6	7,8,9,10,11	6
7	8,9,10,11	7
8	9,10,11	8
9	10,11	9
10	11	10

Schedule 3—Non-reviewable actions

Schedule 3 provides a list of non-reviewable actions.

A Note refers the reader to clause 95—What Parliamentary Service action is reviewable action?

The non-reviewable actions are listed in table items 1 to 11, as follows:

1. Action about the policy, strategy, nature, scope, resources or direction of the Parliamentary Service or a Department.
2. Action taken, or not taken, in accordance with a direction or reference given by the Presiding Officer under the Act or another Act.
3. The giving of a direction by the Commissioner under subsection 15(6) of the Act.
4. Action taken, or not taken, for an inquiry by:
 - (a) the Commissioner under subsection 40(1) of the Act; or
 - (b) the Merit Protection Commissioner under subsection 48(1) or 48A(1) of the Act.
5. The making of a determination by the Merit Protection Commissioner under paragraph 48A(1) of the Act.
6. Action arising under any of the following Acts:
 - (a) the *Australian Security Intelligence Organisation Act 1979*;
 - (b) the *Safety, Rehabilitation and Compensation Act 1988*;
 - (c) the *Superannuation Act 1976*;
 - (d) the *Superannuation Act 1990*;
 - (e) the *Superannuation Act 2005*.
7. Action relating to the engagement of a Parliamentary Service employee, to the extent that the action is not reviewable under Part 9 of this determination.
8. Action of a PRC.
9. Action relating to the promotion of an ongoing Parliamentary Service employee as an SES employee (whether or not the employee is already an SES employee).
10. Action relating to the assignment of the duties of a Parliamentary Service employee, unless the action involves:
 - (a) a reduction in classification; or
 - (b) a relocation to another place; or
 - (c) a promotion that meets all of the following criteria:
 - (i) the affected employee was an applicant for the promotion;
 - (ii) the promotion was to employment at a classification mentioned in Group 7 or 8 in Schedule 1 to the Classification Rules, as in force immediately before 1 July 2013;
 - (iii) there were serious defects in the selection process; or
 - (d) the assignment to an employee of duties that the employee could not reasonably be expected to perform.
11. Action relating to a decision by a Secretary, under subclause 39(2), not to include the name of an employee in the Public Service *Gazette*.

A Note at the end of the table mentions that, under section 20 of the Act, a Secretary is not subject to direction by a Presiding Officer in relation to the exercise of powers by the Secretary under Part 4 of the Act in relation to particular individuals.