



## Parliamentary Service Determination 2013

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We, Senator the Hon John Hogg, President of the Senate, and Anna Burke MP, Speaker of the House of Representatives, make the following determination under the *Parliamentary Service Act 1999*.

Dated: 26 June 2013

Senator the Hon John Hogg  
President of the Senate

Anna Burke MP  
Speaker of the House of Representatives

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# Contents

<b>Part 1—Preliminary</b>	1
1 Name of determination .....	1
2 Commencement .....	1
3 Authority .....	1
4 Dictionary .....	1
5 Repeal .....	1
<b>Part 2—Parliamentary Service Values</b>	2
6 Parliamentary Service Value 1—Committed to Service .....	2
7 Parliamentary Service Value 2—Ethical .....	2
8 Parliamentary Service Value 3—Respectful .....	3
9 Parliamentary Service Value 4—Accountable .....	3
10 Parliamentary Service Value 5—Impartial .....	3
<b>Part 3—Parliamentary Service employment</b>	5
<b>Division 1—Preliminary</b>	5
11 Definitions .....	5
12 Meaning of <i>vacancy</i> .....	5
13 Meaning of similar <i>vacancy</i> .....	5
14 Meaning of <i>work-related qualities</i> .....	5
<b>Division 2—Engagement of non-ongoing employees</b>	6
15 Engagement of SES employee for specified term .....	6
16 Engagement on non-ongoing basis .....	6
<b>Division 3—Merit in engagement and promotion</b>	8
<b>Subdivision 1—Merit-based decision-making: standard provisions</b>	8
17 Purpose of Subdivision .....	8
18 How a Secretary upholds the principle of merit-based decision-making .....	8
19 Merit-based selection process .....	8
20 Notification of vacancy in Gazette .....	9
21 Additional requirements for SES engagement or promotion decisions .....	10
<b>Subdivision 2—Merit-based decision-making: exceptions to standard provisions</b>	10
22 Purpose of Subdivision .....	10
23 Engagement on a short-term, irregular or intermittent basis .....	10
24 Engagement of non-ongoing Parliamentary Service employee as ongoing employee in exceptional circumstances .....	11
25 Engagement of ongoing SES employee as non-ongoing SES employee .....	11
26 Affirmative measure—Aboriginal and Torres Strait Islanders .....	12
27 Affirmative measure—intellectual disability .....	12
28 Affirmative measure—person unable to participate in selection process .....	12
29 Engagement of person from State or Territory jurisdiction .....	12
30 Re-engagement of election candidates .....	13
31 Promotion on completion of appointment to statutory office .....	14
32 Engagement of ongoing APS employee as ongoing Parliamentary Service Employee .....	14
33 Re-engagement of former Parliamentary Service employee .....	15
<b>Division 4—Assignment of duties and movement between Departments</b>	16
34 Definition .....	16
35 Minimum requirements for assignment of duties at or below classification .....	16

---

36	Minimum requirements for temporary assignment of higher duties .....	16
37	Assignment from non-SES classification to SES classification .....	17
<b>Division 5—Notification of employment decisions</b>		18
38	Purpose of Division.....	18
39	Notification of decisions in Public Service <i>Gazette</i> .....	18
40	Cancellation decisions that must be notified in Gazette .....	20
41	Date of effect of promotion.....	20
<b>Division 6—Employer powers of Secretaries</b>		23
42	Definition.....	23
43	Condition of engagement—health clearance .....	23
44	Direction to attend medical examination.....	23
45	Workforce participation schemes.....	24
<b>Part 4—Workplace Diversity</b>		25
46	How a Secretary upholds Employment Principle on non-discrimination.....	25
47	How a Secretary upholds Employment Principle on diversity .....	25
48	Measures for workplace diversity programs .....	25
49	Workplace diversity program to be published.....	25
50	Review of workplace diversity program .....	26
<b>Part 5—Performance management</b>		27
51	How a Secretary upholds Employment Principle on effective performance .....	27
52	Initiating Code of Conduct proceedings in relation to performance matters.....	27
<b>Part 6—Safe workplaces</b>		28
53	How Secretary upholds Employment Principle on providing a safe workplace etc.....	28
<b>Part 7—Code of Conduct</b>		29
54	Allegations of breach of Code of Conduct by Secretary or statutory office holder.....	29
55	Employee movement not to take effect pending resolution of Code of Conduct investigation .....	29
56	Duty not to disclose information .....	30
57	Statutory office holder bound by Code of Conduct.....	31
58	Limitation on sanctions for breaches of Code of Conduct .....	32
<b>Part 8—ISACs</b>		33
59	Function of ISAC.....	33
60	Establishment of ISAC .....	33
61	Constitution of ISAC .....	33
62	ISAC procedures—minimum requirements .....	34
63	ISAC procedures—Merit Protection Commissioner’s instructions.....	34
64	Assistance to ISAC .....	34
65	Assessment and recommendation by ISAC .....	34
66	Non-agreement on recommendation by ISAC .....	35
67	ISAC recommendation not binding .....	35
68	Effect of acting on ISAC recommendation .....	35
69	Effect of not acting in accordance with ISAC recommendation .....	35
70	Offence .....	36

---

---

<b>Part 9—Review of actions</b>	37
<b>Division 1—Preliminary</b>	37
71    General policy about review .....	37
72    Outline of Part.....	37
73    Review of certain promotion and engagement decisions .....	37
74    Review of other Parliamentary Service action .....	37
75    Secretary’s responsibility.....	38
76    Definition.....	38
<b>Division 2—Review of certain Parliamentary Service promotion decisions and engagement decisions (including decisions involving APS employees)</b>	39
77    Application of Division 2.....	39
78    Entitlement for review—promotion decision.....	39
79    Entitlement for review—engagement decision .....	40
80    Grounds for review .....	40
81    Application for review .....	40
82    Appointment of PRC.....	41
83    Constitution of PRC.....	41
84    Statements by parties .....	42
85    Frivolous or vexatious applications .....	43
86    PRC procedures—minimum requirements .....	43
87    PRC procedures—Merit Protection Commissioner’s instructions .....	43
88    Assistance to PRC.....	43
89    Requirement to provide information or documents.....	43
90    Conduct of review by PRC .....	43
91    Non-agreement on decision by PRC .....	44
92    Effect of PRC decision.....	44
93    Offence .....	45
<b>Division 3—Application by Parliamentary Service employees for review of other actions</b>	46
<b>Subdivision 1—Reviewable action</b>	46
94    Entitlement for review .....	46
95    What Parliamentary Service action is <i>reviewable action</i> .....	46
<b>Subdivision 2—Primary review</b>	48
96    Application for primary review.....	48
97    Referral to Merit Protection Commissioner .....	48
98    Notice that action not reviewable.....	49
99    Conduct of review by Secretary .....	49
100   Conduct of review by Merit Protection Commissioner .....	50
<b>Subdivision 3—Secondary review</b>	50
101   Application for secondary review .....	50
102   Secretary to give documents to Merit Protection Commissioner .....	50
103   Conduct of review.....	50
<b>Subdivision 4—Action following recommendation to Secretary</b>	51
104   Action by Secretary.....	51
<b>Subdivision 5—Other provisions about review</b>	51
105   Review procedures—minimum requirements .....	51
106   Requirement to provide information or documents.....	52

---

---

107	Making of application does not operate as stay.....	52
108	Offence .....	52
<b>Part 10—Other employment matters</b>		<b>53</b>
109	Knowledge obligation .....	53
110	Restrictions on engaging redundancy benefit recipients .....	53
111	Termination of employment of non-ongoing Parliamentary Service employees .....	54
112	Incentive to retire—SES employee .....	55
<b>Part 11—Merit Protection Commissioner</b>		<b>56</b>
<b>Division 1—Prescribed functions</b>		<b>56</b>
113	Prescribed functions.....	56
<b>Division 2—Basic procedural requirements for Code of Conduct inquiries</b>		<b>57</b>
114	Basic requirements for procedures for determining breach of Code of Conduct by Parliamentary Service employee or former Parliamentary Service employee.....	57
<b>Division 3—Complaints of former employees</b>		<b>58</b>
115	Investigation of complaints by former employees .....	58
<b>Division 4—Review of determination of breach of Code of Conduct by former Parliamentary Service employee</b>		<b>59</b>
116	Entitlement for review .....	59
117	Application for review .....	60
118	Notice that action not reviewable.....	60
119	Conduct of review .....	60
120	Review procedures—minimum requirements .....	60
121	Requirement to provide information or documents.....	61
122	Making of an application does not operate as stay.....	61
123	Offence .....	61
<b>Division 5—Review of actions of statutory office holders</b>		<b>62</b>
124	Review of actions of statutory office holders who are not Secretaries .....	62
<b>Division 6—Miscellaneous</b>		<b>63</b>
125	Independence of Merit Protection Commissioner .....	63
126	Entrusted person .....	63
127	Protected information.....	63
128	Compellability of entrusted persons to give evidence.....	63
129	Giving information or producing documents .....	63
<b>Part 12—Whistleblower reports</b>		<b>64</b>
130	Basic requirements for procedures—Secretary .....	64
131	Basic requirements for dealing with reports—Commissioner or Merit Protection Commissioner.....	64
132	Decision to decline to conduct or discontinue an inquiry—prescribed circumstances.....	65
<b>Part 13—Attachment of salaries to satisfy judgement debts</b>		<b>66</b>
133	Definitions .....	66
134	Application of this Part .....	66
135	Application of State and Territory law.....	66
136	Paying officer .....	67
137	Authority to make deductions .....	67
138	Administration fee .....	68

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139	More than one judgement debt.....	68
140	Effect of deductions.....	69
141	Rate of deductions.....	69
142	Move to another Department.....	69
143	Administration of deductions.....	70
144	Recovery of overpayment.....	70
<b>Part 14—Delegation</b>		71
145	Delegation by Merit Protection Commissioner.....	71
146	Delegation by Secretary.....	71
<b>Part 15—Miscellaneous</b>		73
147	Use and disclosure of personal information.....	73
<b>Part 16—Transitional arrangements</b>		75
148	Definitions.....	75
149	Review of matters relating to Code of Conduct as in force before 1 July 2013.....	75
150	Review of action lodged before 1 July 2013.....	75
151	Conduct of ISAC and recommendation by ISAC.....	76
152	Review of promotion notified before 1 July 2013.....	76
153	Notification of employment opportunities, employment decisions and cancellation decision.....	77
<b>Schedule 1—Dictionary</b>		78
<b>Schedule 2—Comparison with Public Service Classifications</b>		80
1	Meaning of comparable classification or lower.....	80
2	Meaning of higher classification.....	80
<b>Schedule 3—Non-reviewable actions</b>		82





# Part 1—Preliminary

## 1 Name of determination

This determination is the *Parliamentary Service Determination 2013*.

## 2 Commencement

This determination commences on 1 July 2013.

## 3 Authority

This determination is made under the *Parliamentary Service Act 1999*.

Note: See section 71 of the Act.

## 4 Dictionary

The Dictionary in Schedule 1 to this determination defines certain terms used in this determination.

Note: A number of terms used in this determination are defined in the Act, including:

- (a) APS employee;
- (b) Classification Rules;
- (c) Code of Conduct;
- (d) Commissioner;
- (e) Department;
- (f) ongoing Parliamentary Service employee;
- (g) Presiding Officers.

## 5 Repeal

The *Parliamentary Service Determination 2003/2* is repealed.

## **Part 2—Parliamentary Service Values**

### **6 Parliamentary Service Value 1—Committed to Service**

Having regard to an individual's duties and responsibilities, upholding the Parliamentary Service Value in subsection 10(1) of the Act requires the following:

- (a) engaging effectively and working actively to provide responsive, client-focussed service delivery;
- (b) ensuring that decisions and interactions are objective and impartial;
- (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) managing time and priorities to deliver intended results;
- (k) being responsive to the needs of the Parliament and understanding the environment in which it operates.

### **7 Parliamentary Service Value 2—Ethical**

Having regard to an individual's duties and responsibilities, upholding the Parliamentary Service Value in subsection 10(2) of the Act requires the following:

- (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 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.

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**8 Parliamentary Service Value 3—Respectful**

Having regard to an individual's duties and responsibilities, upholding the Parliamentary Service Value in subsection 10(3) of the Act requires the following:

- (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 supporting the Parliament;
- (f) complying with all relevant anti-discrimination laws.

**9 Parliamentary Service Value 4—Accountable**

Having regard to an individual's duties and responsibilities, upholding the Parliamentary Service Value in subsection 10(4) of the Act requires the following:

- (a) being answerable to the Presiding Officers 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.

**10 Parliamentary Service Value 5—Impartial**

Having regard to an individual's duties and responsibilities, upholding the Parliamentary Service Value in subsection 10(5) of the Act requires the following:

- (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;

Clause 10

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- (f) providing advice that takes account of the context in which policy needs to be implemented, the broader 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**

#### **11 Definitions**

In this Part:

*broadband* has the meaning given by subrule 9(4) of the Classification Rules (as in force immediately before 1 July 2013).

#### **12 Meaning of *vacancy***

For this Part, a *vacancy* exists in a Department if a Secretary decides that:

- (a) a specified group of duties needs to be performed; and
- (b) it is appropriate to consider engaging or promoting a person to perform the duties.

#### **13 Meaning of similar *vacancy***

For this Part, a vacancy is *similar* to a vacancy that is notified under clause 20 (a *notified vacancy*) if the vacancy and the notified vacancy:

- (a) are in the same Department; and
- (b) are for the same category of employment (ongoing or non-ongoing); and
- (c) relate to the performance of similar duties in a similar location.

#### **14 Meaning of *work-related qualities***

For this Part, work-related qualities that may be taken into account in making an assessment of a candidate's suitability to perform duties in accordance with paragraph 10A(2)(c) of the Act include the following:

- (a) skills and abilities;
- (b) qualifications, training and competencies;
- (c) standard of work performance;
- (d) capacity to perform effectively to produce outcomes at the level required by the relevant duties;
- (e) relevant personal qualities, such as honesty and integrity;
- (f) potential for further development;
- (g) ability to contribute to team performance.

## Division 2—Engagement of non-ongoing employees

### 15 Engagement of SES employee for specified term

- (1) This section sets out the circumstances in which a person may be engaged as an SES employee for a specified term.

Note: See subsection 22(4) of the Act.

- (2) The person may be engaged for a specified term if the term does not exceed 5 years.

- (3) The engagement may be extended once or more than once, but the engagement may be extended only to the extent that the total term does not exceed 5 years.

Note: The usual basis for engagement of a Parliamentary Service employee is as an ongoing Parliamentary Service employee: see 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 employee.

### 16 Engagement on non-ongoing basis

- (1) This clause prescribes circumstances in which a Secretary may engage a person as an employee (other than an SES-employee) for a specified term or for the duration of a specified task.

Note 1: See subsection 22(4) of the Act.

Note 2: Paragraph 10A(1)(c) of the Act requires engagement and promotion decisions to be based on merit. Divisions 3 and 4 explain how this Employment Principle is to be applied.

Note 3: The usual basis for engagement of a Parliamentary Service employee is as an ongoing Parliamentary Service employee: see 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 employee.

#### *Specified task*

- (2) If a Secretary engages a person as a non-ongoing employee for a specified task, the Secretary must, at the time of the engagement:
- (a) be able to reasonably estimate the duration of the task; and
  - (b) be satisfied that the services of the person are unlikely to be required after the task is complete.

#### *Specified term*

- (3) A Secretary may engage a person as a non-ongoing employee for a specified term if:
- (a) 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; or

Examples: The Department:

- (a) has a temporary increase in its workload; or
- (b) has a temporary demand for employees with particular skills; or
- (c) needs to replace an ongoing employee who is on leave or who is assigned to other duties.

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- (b) 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; or
  - (c) the purpose of the employment is to assist the person to gain:
    - (i) skills and experience, by participating in the workforce under a scheme approved by the Secretary or by the Australian Public Service Commissioner; or
    - (ii) a formal occupational qualification, licence, accreditation or registration; or
  - (d) the person has received a written offer of ongoing employment, but prefers to be engaged as a non-ongoing employee; or
  - (e) the person is an ongoing Parliamentary Service employee.
- (4) If a Secretary engages a person as a non-ongoing employee for a specified term:
- (a) the period of the engagement:
    - (i) must be a period that represents a reasonable estimate of the time required for the performance of the duties; and
    - (ii) for a person engaged in accordance with paragraph (3)(a) or (b)—must not be more than 18 months; and
  - (b) for a person engaged in accordance with paragraph (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; and
  - (c) subject to subclause (5), the total period of the engagement, including any extensions of the engagement, must not exceed 3 years.
- (5) The period of 3 years mentioned in paragraph (4)(c) may be extended, for a period of not more than 12 months, only if:
- (a) the Secretary considers that the engagement is necessary for the Department's operations; and
  - (b) the Commissioner:
    - (i) is satisfied that special circumstances exist; and
    - (ii) authorises the Secretary to extend the engagement.
- (6) In addition to subclauses (3), (4) and (5):
- (a) a Secretary may engage a person as a non-ongoing employee for a specified term if:
    - (i) the person is an employee of a State or Territory, or an authority of a State or Territory; and
    - (ii) 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
  - (b) the period of engagement mentioned in paragraph (a) is the period decided by the Secretary.

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## **Division 3—Merit in engagement and promotion**

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

#### **17 Purpose of Subdivision**

The purpose of this Subdivision is to determine:

- (a) the scope or application of the Employment Principle mentioned in paragraph 10A(1)(c) of the Act, in relation to most promotions and most ongoing and long-term non-ongoing engagements; and
- (b) the minimum requirements that a Secretary must meet in order to uphold that Employment Principle.

Note: Subdivision 2 provides modifications of and exceptions to the requirements in this Subdivision for certain kinds of engagement and promotion decisions.

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

A Secretary upholds the Employment Principle mentioned in paragraph 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 process that meets the requirements of:

- (a) this Subdivision; or
- (b) for a decision to which Subdivision 2 applies—this Subdivision as modified by that Subdivision.

Note: See section 26 of the Act for engagement of ongoing APS employees.

#### **19 Merit-based selection process**

- (1) A competitive selection process for a decision to engage or promote a person to fill a vacancy meets the requirements of this Subdivision only if the following apply:
  - (a) the vacancy:
    - (i) is notified in the *Public Service Gazette* in accordance with clause 20; or
    - (ii) is a vacancy for which there was a similar vacancy notified in the *Public Service Gazette* in accordance with clause 20;
  - (b) the aim and purpose of the selection process is determined in advance and information about the process is readily available to:
    - (i) each candidate for the vacancy; or
    - (ii) if there was a similar vacancy—each candidate for the similar vacancy;
  - (c) the selection process operates fairly in relation to:
    - (i) each candidate; or
    - (ii) if there was a similar vacancy—each candidate for the similar vacancy;
  - (d) the selection process is transparent and appropriately documented;
  - (e) merit is the primary consideration in making the engagement or promotion decision, in accordance with paragraph 10A(1)(c) of the Act;



- 
- (f) the selection process is free from discrimination, patronage and favouritism, in accordance with the Employment Principle mentioned in paragraph 10A(1)(f) of the Act;
  - (g) 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 110.

Note 1: Subdivision 2 provides modifications of and exceptions to the requirements in this Subdivision for certain kinds of engagement and promotion decisions.

Note 2: Division 2 provides for matters regarding the engagement of non-ongoing employees.

- (2) For paragraph (1)(e), secondary considerations that may be relevant to the selection decision include such factors as the ability to commence by a particular date, willingness to relocate or ability to meet other reasonable departmental requirements.

## **20 Notification of vacancy in Gazette**

### *Basic requirement for notification of vacancy*

- (1) Subject to this clause, a selection process for a decision to fill a vacancy meets the requirements of this Subdivision only if:
  - (a) the vacancy, or a similar vacancy, in the Department is notified in the *Public Service Gazette* within a period of 12 months before the written decision to engage or promote a person; and
  - (b) the vacancy is notified as open to all eligible members of the community; and
  - (c) the vacancy is notified with a closing date for applications of at least 7 days after the notification (unless otherwise approved by the Commissioner).

### *Notification of SES vacancies—external advertising*

- (2) A vacancy at an SES classification must be notified in the *Public Service Gazette* as open to all eligible members of the community.

### *Restricting applications to Parliamentary Service and APS employees (other than APS Level 1 and training classifications)*

- (3) Despite subclause (1), if the 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 employee or APS 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 employees or APS employees at the time of the notification.
- (4) Subclause (3) does not apply in relation to a vacancy at the APS Level 1 classification or a training classification.

### *Multiple Department notification*

- (5) A Department participating in a multiple Department selection process must ensure that there is adequate notification of the vacancy under its own name in

Clause 21

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the Public Service *Gazette* (for example, by means of a heading followed by a link to the multiple Department notification).

*External advertising*

- (6) 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 4 weeks before or 4 weeks after the Public Service *Gazette* notification.

*Re-notification requirement*

- (7) If:
- (a) a vacancy is notified in the Public Service *Gazette* as open only to persons who are Parliamentary Service employees or APS employees; and
  - (b) the Secretary subsequently decides 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.

## **21 Additional requirements for SES engagement or promotion decisions**

A selection process that results in a decision to engage or promote a person as an SES employee meets the requirements of this Subdivision only if:

- (a) a representative of the Commissioner was a full participant in:
  - (i) the selection process; or
  - (ii) if there was a similar vacancy—the selection process for the similar vacancy; and
- (b) at the end of the process:
  - (i) the representative certifies that the selection process complied with the Act and this determination; and
  - (ii) the Commissioner endorses the representative's certification of the process.

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

### **22 Purpose of Subdivision**

The purpose of this Subdivision is to:

- (a) modify the requirements of Subdivision 1; and
- (b) determine the scope or application of the Employment Principle mentioned in paragraph 10A(1)(c) of the Act in relation to engagement and promotion decisions in circumstances where this is appropriate.

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

- (1) A Secretary may engage a person to perform duties as a non-ongoing employee without complying with Subdivision 1 if:

- 
- (a) the engagement is for a specified term or the duration of a specified task;  
and
  - (b) for an engagement for a specified term—the period of the engagement is not more than 12 months, including any expected extension.
- (2) A Secretary may engage a person to perform duties as a non-ongoing employee without complying with Subdivision 1 if the engagement is for duties that are irregular or intermittent.
  - (3) A Secretary must ensure as far as practicable that a vacancy to which this clause 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.
  - (4) The Secretary must be satisfied that the person to be engaged has the work-related qualities required to perform the relevant duties.

Note: Clauses 15 and 16 provide for matters regarding the engagement of non-ongoing employees.

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

- (1) A Secretary may, in writing, ask the Commissioner to authorise the Secretary to engage a non-ongoing Parliamentary Service employee as an ongoing Parliamentary Service employee without complying with Subdivision 1, if the Secretary is satisfied that:
  - (a) the duties to be performed by the employee are more appropriately undertaken by an ongoing employee than by a non-ongoing employee; and
  - (b) the person to be engaged has the work-related qualities required to perform the duties; and
  - (c) the engagement is at the person's classification (or equivalent) as a non-ongoing Parliamentary Service employee; and
  - (d) the 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 Subdivision 1; and
  - (e) the engagement is necessary for the Department's operations.
- (2) The Commissioner may authorise the engagement if the Commissioner is satisfied that exceptional circumstances exist to justify the engagement.

#### **25 Engagement of ongoing SES employee as non-ongoing SES employee**

A Secretary may engage a person who is an ongoing SES employee to perform duties as a non-ongoing SES employee without complying with Subdivision 1 if:

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

Note: The engagement of non-ongoing SES employees is subject to clause 15.

Clause 26

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**26 Affirmative measure—Aboriginal and Torres Strait Islanders**

- (1) In notifying a vacancy in accordance with paragraph 20(1)(b), a Secretary may, consistently with Commonwealth law, identify a vacancy as open only to an Aboriginal or a Torres Strait Islander.
- (2) The Secretary must ensure that a decision to fill the vacancy complies with Subdivision 1 in all other respects.
- (3) The Secretary must ensure that the selection process for the vacancy identified under this clause accepts as applicants only persons who:
  - (a) are of Aboriginal and/or Torres Strait Islander descent; and
  - (b) identify as Aboriginal and/or Torres Strait Islander; and
  - (c) are accepted by their community as being Aboriginal and/or Torres Strait Islander.

**27 Affirmative measure—intellectual disability**

- (1) In notifying a vacancy in accordance with paragraph 20(1)(b), a Secretary may, consistently with Commonwealth law, identify a vacancy as open only to a person with an intellectual disability.
- (2) The Secretary must ensure that a decision to fill the vacancy complies with Subdivision 1 in all other respects.
- (3) The Secretary must ensure that the selection process for the 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.

**28 Affirmative measure—person unable to participate in selection process**

- (1) This clause applies in relation to a person with a disability who has been assessed by a disability employment service provider as likely to be unable, because of the disability, to compete successfully on merit in a competitive selection process that complies with Subdivision 1.
- (2) A Secretary may engage the person as a Parliamentary Service employee to fill a vacancy without complying with Subdivision 1 if the vacancy is designed and created, or identified as suitable, for the person in consultation with the disability employment service provider.

**29 Engagement of person from State or Territory jurisdiction**

A Secretary may engage a person as a non-ongoing Parliamentary Service employee for a specified term without complying with Subdivision 1 if:

- (a) the person is an employee of a State or Territory, or of an authority of a State or Territory; and
- (b) the Secretary has entered into an agreement with the State or Territory, or the authority of the State or Territory, to engage the person as a non-ongoing employee for a specified term.

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**30 Re-engagement of election candidates**

- (1) Subdivision 1 does not apply to the proposed re-engagement of a person:
- (a) who contests an election prescribed in subclause (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.
- (2) 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.
- (3) 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, but 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.
- Note: For how entitlements to long Service leave and paid maternity leave are affected by resignation to contest an election, see the *Long Service Leave (Commonwealth Employees) Act 1976* and the *Maternity Leave (Commonwealth Employees) Act 1973*.
- (4) 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.
- Note: For example, 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.
- (5) For subclause (1), the following elections are prescribed:

Clause 31

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- (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*.
- (6) In this clause:
- time limit***, for a person who contests an election, means:
- (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.

**31 Promotion on completion of appointment to statutory office**

- (1) A Secretary may, in writing, request the Commissioner to authorise the promotion of an ongoing Parliamentary Service employee without complying with Subdivision 1 if the following apply:
  - (a) 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;
  - (b) 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;
  - (c) the duties to which the employee is to be assigned are assessed by the Secretary as being at a classification that is equivalent to, or lower than, the duties of the statutory office;
  - (d) the Secretary is satisfied that the employee has the work-related qualities to perform duties at the classification to which the employee is to be promoted.
- (2) The Commissioner may authorise the promotion.
- (3) In deciding whether to authorise the promotion the Commissioner may take into account the matters mentioned in paragraphs (1)(a) to (d) and any other matters that the Commissioner considers relevant, including:
  - (a) the duration of the appointment; and
  - (b) the selection process for the appointment.

**32 Engagement of ongoing APS employee as ongoing Parliamentary Service Employee**

A Secretary may, without complying with Subdivision 1, engage a person who is an ongoing APS employee as an ongoing Parliamentary Service employee if the person is to be employed at a comparable classification or lower, as set out in Schedule 2.

Note: See section 26 of the Act for engagement of ongoing APS employees.

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**33 Re-engagement of former Parliamentary Service employee**

- (1) A Secretary may re-engage a former employee as an ongoing or non-ongoing Parliamentary Service employee without complying with Subdivision 1 if the Secretary is satisfied that the re-engagement is appropriate because:
- (a) following an investigation of the circumstances in which the person's former engagement ended, the Secretary is satisfied that the engagement should not have ended; or
  - (b) the re-engagement gives effect to a settlement of an application for relief in relation to the termination of the employee's engagement; or
  - (c) an appropriate authority has recommended or ordered the reinstatement of the person.

Note: Examples of appropriate authorities include the Federal Court of Australia, the Fair Work Commission and the Australian Human Rights Commission.

- (2) The re-engagement must be:
- (a) on the same basis (ongoing or non-ongoing) as the person's former engagement; and
  - (b) at the same or a lower classification.

## **Division 4—Assignment of duties and movement between Departments**

### **34 Definition**

In this Division:

*section 25 decision* means a decision made by a Secretary under section 25 of the Act.

### **35 Minimum requirements for assignment of duties at or below classification**

A Secretary must ensure that a section 25 decision relating to the ongoing or temporary assignment of duties to an employee at or below the employee's classification (including where this involves a temporary movement from another Department):

- (a) is based on an assessment of the employee's work-related qualities and the work-related qualities required to perform the relevant duties; and
- (b) takes into account efficient and effective organisational performance.

Note 1: Subsection 23(4) of the Act restricts the circumstances where an employee's classification may be reduced without the employee's consent.

Note 2: Subdivision 1 of Division 3 imposes additional obligations in relation to promotions.

### **36 Minimum requirements for temporary assignment of higher duties**

- (1) A Secretary must ensure that a section 25 decision relating to the temporary assignment of duties to an employee at a higher classification level (including where this involves a temporary transfer from another Department):
  - (a) is based on an assessment of the employee's work-related qualities and the work-related qualities required to perform the relevant duties; and
  - (b) takes into account efficient and effective organisational performance.
- (2) A section 25 decision mentioned in subclause (1) must also take into account the following matters:
  - (a) the duration of the duties to be performed and whether it would be more appropriate to perform those duties on an ongoing basis;
  - (b) the relative importance to the Department of the duties to be performed at the higher classification level and the other duties to be performed in the Department;
  - (c) the expected cost to the Department of the employee performing duties at the higher classification level;
  - (d) the need for Parliamentary Service employees to be given the opportunity to gain experience in performing duties at a higher classification level.

Note: Subdivision 1 of Division 3 imposes additional obligations in relation to promotions.



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**37 Assignment from non-SES classification to SES classification**

A section 25 decision relating to the assignment of duties on an ongoing basis at an SES classification to an employee who is not an SES employee may be made only if:

- (a) the employee's classification is in the same classification group as the SES classification; and
- (b) the Commissioner authorises the decision.

Note: For paragraph (a), see the definition of *classification group* in the Dictionary.

## **Division 5—Notification of employment decisions**

### **38 Purpose of Division**

The purpose of this Division is to:

- (a) set out requirements for notifying certain employment decisions in the *Public Service Gazette*; and
- (b) provide for the date of effect of a promotion decision.

### **39 Notification of decisions in *Public Service Gazette***

- (1) A Secretary must notify an employment decision of any of the following kinds in the *Public Service Gazette*:
  - (a) an engagement of a person as an ongoing Parliamentary Service employee (including under paragraph 72(1)(c) or (d) of the *Public Service Act 1999*);
  - (b) an engagement of a person as a 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)(c) or (d) of the *Public Service Act 1999*);
  - (c) in relation to a person who is engaged as a 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 Department, 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 subparagraph 90(1)(b)(ii), that has not been notified under paragraph (f);
  - (h) the engagement of an ongoing APS employee as an ongoing Parliamentary Service employee if the engagement:
    - (i) follows a decision of a Promotion Review Committee mentioned in subparagraph 90(1)(b)(iii); 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.
- (2) 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.
- (3) If the employment decision is:

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- (a) a decision to engage, promote or move a person, or assign the duties of a person; and
- (b) 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 (2) is taken to commence at the time the eligibility requirement is met.
- (4) 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.
- (5) The Secretary may only make a decision under subclause (4) if:
- (a) the Secretary has obtained the approval of the Commissioner; and
- (b) for a decision that relates to a non-SES employee—the Commissioner has consulted the Merit Protection Commissioner on the decision.
- (6) If a notification that does not include the employee's name relates to a promotion that is subject to review:
- (a) 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
- (b) the Department must, at the same time as the parties are notified, advise the Merit Protection Commissioner that eligible parties have been notified.
- (7) If an engagement notified under paragraph (1)(a), or a promotion notified under paragraph (1)(f), was made as a result of a selection process that complied with Subdivision 1 of Division 3 in relation to a similar vacancy, the notification of the decision must include a statement to the following effect:
- This engagement/promotion is made following a selection process that complies with Subdivision 1 of Division 3 of Part 3 of the Parliamentary Service Determination 2013 (similar vacancy previously notified).*
- (8) If an engagement notified under paragraph (1)(a) is the engagement of a person who:
- (a) was an ongoing APS employee immediately before the engagement; and
- (b) was engaged at a higher classification than the person's classification as a APS employee worked out in accordance with clause 2 of Schedule 2;
- the notification of the decision must include a statement to the following effect:
- This engagement of an ongoing APS employee at a higher classification may be subject to review by a Promotion Review Committee in accordance with Part 9 of the Parliamentary Service Determination 2013.*
- Note: See Schedule 2 for comparison of Parliamentary Service classifications with APS classifications.
- (9) If an engagement notified under paragraph (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 the following effect:
- This engagement was authorised by the Commissioner under clause 24 of the Parliamentary Service Determination 2013—exceptional circumstances.*
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Clause 40

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**40 Cancellation decisions that must be notified in Gazette**

- (1) A Secretary must notify a decision (a ***cancellation decision***) to cancel a decision of any of the following kinds in the Public Service *Gazette* within 3 months after the cancellation decision is made:
  - (a) an engagement of a person notified under paragraph 39(1)(a) or (b);
  - (b) an extension of an engagement notified under paragraph 39(1)(c);
  - (c) a movement notified under paragraph 39(1)(d);
  - (d) an assignment of duties notified under paragraph 39(1)(e);
  - (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) or (g);
  - (f) a termination notified under paragraph 39(1)(i);
  - (g) a retirement notified under paragraph 39(1)(j).
- (2) The notification of a cancellation decision must include:
  - (a) the date of effect of the cancellation decision; and
  - (b) the name of the person to whom the cancellation decision relates, unless the original notification did not include the name.

**41 Date of effect of promotion**

- (1) Subject to clause 55, this clause applies to a decision (a ***promotion decision***) to:
  - (a) promote an ongoing Parliamentary Service employee; or
  - (b) engage an ongoing APS employee as an ongoing Parliamentary Service employee at a higher classification than the employee's APS classification, worked out in accordance with clause 2 of Schedule 2.

*Not subject to review*

- (2) If the promotion decision is not subject to PRC review, the decision takes effect:
  - (a) if a date of effect has been agreed that is not earlier than the notification—that date; or
  - (b) otherwise—4 weeks after notification.

*No application for review*

- (3) 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:
  - (a) if a date of effect has been agreed that is not earlier than the end of the application period—that date; or
  - (b) otherwise—2 weeks after the end of the application period.

*Application for review is withdrawn*

- (4) 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:
  - (a) if a date of effect has been agreed that is not earlier than the end of the application period—that date; or

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- (b) otherwise—2 weeks after the Secretary is notified of the withdrawal of the application.

*Application for review lapses*

- (5) 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:
- (a) if a date of effect has been agreed that is after the Secretary is notified of the lapse of the application—that date; or
  - (b) otherwise—2 weeks after the Secretary is notified.

*PRC is not appointed*

- (6) 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:
- (a) if a date of effect has been agreed that is after the Secretary is notified of the decision of the Merit Protection Commissioner—that date; or
  - (b) otherwise—the later of:
    - (i) the day the Secretary is notified; and
    - (ii) 4 weeks after the notification.

*PRC upholds original promotion decision*

- (7) 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:
- (a) if a date of effect has been agreed that is after the Secretary is notified of the decision of the PRC—that date; or
  - (b) otherwise—4 weeks after the Secretary is notified.

*PRC varies original promotion decision*

- (8) 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:
- (a) if a date of effect has been agreed that is after the Secretary is notified of the decision of the PRC—that date; or
  - (b) otherwise—4 weeks after the Secretary is notified.

- (9) In this clause:

***application period***, for a promotion decision, means the period in which an application for PRC review of the decision may be made (including any extension of that period).

***notification***, for a promotion decision, means the notification of the decision under clause 39.

**Part 3** Parliamentary Service employment

**Division 5** Notification of employment decisions

Clause 41

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***PRC review*** means review by a Promotion Review Committee under Part 9 of this determination.

- (10) In this clause, a reference to a ***date of effect*** of a promotion decision having been agreed is a reference to a date that has been agreed as the date of effect by:
- (a) the Parliamentary Service employee; and
  - (b) the Secretary of the employee's Department; and
  - (c) if the employee is moving from another Department—the Secretary of that Department.

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## **Division 6—Employer powers of Secretaries**

### **42 Definition**

In this Division:

*nominated medical practitioner* means a person who is:

- (a) 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
- (b) nominated by a Secretary to assess the fitness for duty of a Parliamentary Service employee in the Secretary's Department.

### **43 Condition of engagement—health clearance**

- (1) This clause 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.
- (2) While the engagement is subject to the condition:
  - (a) the Secretary of the Department may, in writing, direct the employee to do either or both of the following within a specified period:
    - (i) undergo a medical examination by a nominated medical practitioner;
    - (ii) give the Secretary a report of the examination; and
  - (b) the nominated medical practitioner may give the relevant Secretary a report of the examination.

Note: 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.

### **44 Direction to attend medical examination**

- (1) If a circumstance mentioned in subclause (2), (3) or (4) applies, a Secretary may give a Parliamentary Service employee in the Secretary's Department a written direction to do either or both of the following within a specified period:
  - (a) undergo an examination by a nominated medical practitioner;
  - (b) give the Secretary a report of the examination.
- (2) A circumstance is that the Secretary believes that the state of health of the employee:
  - (a) may be affecting the employee's work performance; or
  - (b) has caused, or may cause, the employee to have an extended absence from work; or
  - (c) may be a danger to the employee; or
  - (d) has caused, or may cause, the employee to be a danger to other employees or members of the public; or
  - (e) may be affecting the employee's standard of conduct.

Clause 45

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- (3) A circumstance is 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.
- (4) A circumstance is that the employee is to travel overseas as part of the employee's employment.
- (5) The nominated medical practitioner may give the Secretary a report of the examination.

**45 Workforce participation schemes**

- (1) A Secretary may approve a scheme to assist persons engaged for a specified term, or for the duration of a specified task, in the relevant Department, to gain skills and experience to enhance workforce participation.
- (2) 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**

### **46 How a Secretary upholds Employment Principle on non-discrimination**

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.

### **47 How a Secretary upholds Employment Principle on diversity**

A Secretary must uphold the Employment Principle mentioned in paragraph 10A(1)(g) of the Act by:

- (a) implementing the workplace diversity program established under section 18 of the Act; and
- (b) putting in place any other measures that are, in the Secretary's view, required to ensure that:
  - (i) 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
  - (ii) employees are helped to balance their work, family and other caring responsibilities effectively.

### **48 Measures for workplace diversity programs**

A workplace diversity program for a Department must include measures directed at ensuring that:

- (a) 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
- (b) workplace structures, systems and procedures assist employees in balancing their work, family and other caring responsibilities effectively; and
- (c) 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.

### **49 Workplace diversity program to be published**

- (1) 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.
- (2) 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

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**50 Review of workplace diversity program**

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

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

## **Part 5—Performance management**

### **51 How a Secretary upholds Employment Principle on effective performance**

- (1) This clause sets out how the Secretary of a Department must uphold the Employment Principle mentioned in paragraph 10A(1)(d) of the Act.
- (2) The Secretary must put in place measures that support effective performance by the Department's employees by ensuring that the Department does the following:
  - (a) builds the capability necessary to achieve the outcomes properly expected by the Parliament;
  - (b) has fair and open performance management processes and practices that support a culture of high performance, in which all performance is effectively managed;
  - (c) 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;
  - (d) requires employees to participate constructively in Department-based performance management processes and practices;
  - (e) invests in building the capability of managers to manage performance effectively;
  - (f) uses departmental performance management processes to guide salary movement and reward.

### **52 Initiating Code of Conduct proceedings in relation to performance matters**

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**

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

- (1) 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.
- (2) Parliamentary Service employees must take proper steps to support these measures, having regard to their duties and responsibilities.

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## Part 7—Code of Conduct

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

- (1) 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.
- (2) If the Presiding Officers consider that the matter may warrant investigation, the Presiding Officers may refer the matter to the Commissioner:
  - (a) for advice; or
  - (b) for inquiry and a report in accordance with paragraph 40(1)(b) of the Act.
- (3) The Presiding Officers may request the Commissioner to include recommendations in the report, in accordance with subsection 40(2) of the Act.
- (4) In this clause:

*statutory office holder:*

- (a) means a person 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; and
- (b) does not include the Commissioner.

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

- (1) This clause applies if:
  - (a) either:
    - (i) an ongoing Parliamentary Service employee in a Department is suspected of having breached the Code of Conduct; or
    - (ii) an ongoing APS employee is suspected of having breached the APS Code of Conduct; and
  - (b) 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
  - (c) 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
  - (d) a decision has been made that, apart from this clause, would result in the movement of the employee:
    - (i) between Departments (including on promotion); or
    - (ii) under section 26 of the Act to a Department.
- (2) 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.

Clause 56

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- (3) For this clause, the matter is taken to be resolved when:
- (a) a determination is made in relation to the suspected breach; or
  - (b) it is decided that a determination is not necessary.

- (4) In this clause:

*APS Code of Conduct* means the rules in section 13 of the *Public Service Act 1999*.

**56 Duty not to disclose information**

- (1) This clause sets out conduct requirements made for subsection 13(13) of the Act.
- (2) This clause does not affect other restrictions on the disclosure of information.
- (3) A Parliamentary Service employee must not disclose information which the employee obtains or generates in connection with his or her employment if the information:
- (a) was, or is to be, communicated in confidence:
    - (i) 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
    - (ii) within the Parliamentary Service; or
  - (b) 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.
- (4) Subclause (3) does not prevent a disclosure of information by a Parliamentary Service employee if:
- (a) the information is disclosed in the course of the employee's duties; or
  - (b) the information is disclosed in accordance with an authorisation given by:
    - (i) a Secretary; or
    - (ii) 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
  - (c) the disclosure is otherwise authorised by law; or
  - (d) the information that is disclosed:
    - (i) is already in the public domain as the result of a disclosure of information that is lawful under this determination or another law; and
    - (ii) can be disclosed without disclosing, expressly or by implication, other information to which subclause (3) applies.
- (5) Subclause (3) does not limit the authority of a Secretary to give lawful and reasonable directions in relation to the disclosure of information.
- (6) Nothing in this clause 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.

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Note: See 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.

### **57 Statutory office holder bound by Code of Conduct**

- (1) For the definition of *statutory office holder* in subsection 14(3) of the Act, an office is prescribed if:
  - (a) the office is held by a person who is engaged or employed under the Act; and
  - (b) 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
  - (c) the office is not an office of Secretary.
- (2) For the definition of *statutory office holder* in subsection 14(3) of the Act, an appointment is prescribed if:
  - (a) the appointment is the appointment of a person under the Act; and
  - (b) 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
  - (c) the appointment is not an appointment as Secretary.
- (3) For subsection 14(2A) of the Act:
  - (a) a statutory office holder is bound by the Code of Conduct only to the extent to which the statutory office holder:
    - (i) 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
    - (ii) 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; and
  - (b) if there is an inconsistency between the requirements of:
    - (i) the Code of Conduct; and
    - (ii) 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.

Note: The Code of Conduct requires the upholding of the Parliamentary Service Values and Parliamentary Service Employment Principles, among other things.
- (4) For subsection 14(2A) of the Act, 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

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**58 Limitation on sanctions for breaches of Code of Conduct**

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

### 59 Function of ISAC

- (1) The function of an ISAC is to make recommendations to a Secretary about the suitability of candidates for:
  - (a) engagement connected with employment in the Department; or
  - (b) promotion to employment in the Department; or
  - (c) assignment to duties in connection with employment in the Department.
- (2) 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.

### 60 Establishment of ISAC

- (1) The Merit Protection Commissioner may establish an ISAC at the request of a Secretary.
- (2) The Merit Protection Commissioner may charge the Secretary a fee for carrying out functions for the Secretary under this Part.

### 61 Constitution of ISAC

- (1) An ISAC must comprise:
  - (a) a Convenor nominated by the Merit Protection Commissioner; and
  - (b) a person nominated by the relevant Secretary; and
  - (c) a Parliamentary Service employee nominated by the Merit Protection Commissioner.
- (2) 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.
- (3) The Parliamentary Service employee nominated under paragraph (1)(c) must be made available for the purposes of the ISAC, subject to the operational efficiency of the Department in which he or she is employed.
- (4) 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 (1).
- (5) The reconstituted ISAC must have regard to matters put before, or decided by, the ISAC as previously constituted.
- (6) A person is not subject to direction in carrying out his or her duties as a member of an ISAC, except:
  - (a) by a Court; or
  - (b) by instructions issued under clause 63.

Clause 62

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**62 ISAC procedures—minimum requirements**

- (1) The procedures used by an ISAC in performing its functions under this Part must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;
  - (b) the functions must be carried out in private;
  - (c) the functions of the ISAC must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) 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.

**63 ISAC procedures—Merit Protection Commissioner’s instructions**

- (1) The Merit Protection Commissioner must, as soon as practicable after the commencement of this clause, issue instructions about the procedures to be followed by an ISAC in performing its functions under this Part.
- (2) The Merit Protection Commissioner may 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.
- (3) The instructions must not be inconsistent with the Act or this determination.
- (4) An ISAC, or a Secretary appointed under subclause 65(3) to act on behalf of an ISAC, must comply with the instructions.

**64 Assistance to ISAC**

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.

**65 Assessment and recommendation by ISAC**

- (1) If an ISAC is established in respect of a vacancy, the ISAC must:
    - (a) assess the relative merits of the candidates for the relevant employment on the basis of:
      - (i) the relative suitability of the candidates for the duties; and
      - (ii) the relationship between the candidates’ work-related qualities and the work-related qualities genuinely required for the duties; and
      - (iii) the relative capacity of the candidates to achieve outcomes related to the duties; and
    - (b) report on the assessment to the relevant Secretary; and
    - (c) 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.
  - (2) In conducting an assessment under subclause (1), the ISAC may seek and accept expert opinion about the work-related qualities and capabilities of candidates.
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- (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 (1).
  - (4) The Secretary:
    - (a) must act in accordance with instructions given to the Secretary by the ISAC; and
    - (b) must 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 (3).
  - (5) 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.

### **66 Non-agreement on recommendation by ISAC**

- (1) This clause applies if all members of an ISAC do not agree on a recommendation.
- (2) If 2 members agree on a recommendation, that recommendation is taken to be the recommendation of the ISAC.
- (3) If there is no agreement between any of the members, the Convenor's recommendation is taken to be the recommendation of the ISAC.

### **67 ISAC recommendation not binding**

The recommendation of an ISAC is not binding on a Secretary.

### **68 Effect of acting on ISAC recommendation**

- (1) An engagement, promotion or assignment of duties made in accordance with an ISAC recommendation is not subject to review under Part 9.
- (2) 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.

Note: This subclause also applies to any subsequent engagement, promotion or assignment of duties made by a Secretary in accordance with an ISAC recommendation.

- (3) The engagement, promotion or assignment of duties is not affected by:
  - (a) a defect in the nomination of a member of the ISAC; or
  - (b) a failure to comply with the instructions issued under clause 63.

### **69 Effect of not acting in accordance with ISAC recommendation**

- (1) 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.
- (2) However, subclause (1) does not apply if:

Clause 70

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- (a) either of the following occurs after the ISAC has made its recommendation:
    - (i) 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;
    - (ii) the candidate has lost a qualification which is essential for the candidate's suitability for the vacancy; and  
Example: A security clearance.
  - (b) the Secretary has consulted with the Merit Protection Commissioner about the candidate; and
  - (c) the Secretary acts in accordance with the recommendation of the ISAC in relation to the next suitable candidate.
- (3) The promotion must be notified in the *Public Service Gazette* as a promotion decision that is subject to review under Division 2 of Part 9.

**70 Offence**

- (1) A person commits an offence if the person obstructs an ISAC in carrying out its functions under this Part.  
  
Penalty: 10 penalty units.
- (2) 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 this Part.

## **Part 9—Review of actions**

### **Division 1—Preliminary**

#### **71 General policy about review**

- (1) Parliamentary Departments should achieve and maintain workplaces that encourage productive and harmonious working environments.
- (2) It is intended that this Part 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 this Part 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.

#### **72 Outline of Part**

This Part makes provision in relation to the following matters:

- (a) the entitlement of Parliamentary Service employees to review of certain promotion decisions and other Parliamentary Service actions;
- (b) the entitlement of ongoing APS employees to review of certain promotion decisions;
- (c) the entitlement of Parliamentary Service employees and ongoing APS employees to review of certain engagement decisions;
- (d) the responsibilities and powers of Secretaries and the Merit Protection Commissioner in relation to review of Parliamentary Service actions;
- (e) the role and powers of PRCs constituted for the review of a decision mentioned in this clause.

Note: A reporting power for the Merit Protection Commissioner is set out in subsection 33(6) of the Act.

#### **73 Review of certain promotion and engagement decisions**

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

Note: A decision by a PRC is binding on a Secretary—see subclause 92(1).

#### **74 Review of other Parliamentary Service action**

Division 3 of this Part provides for:

**Clause 75**

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- (a) applications for primary review of other Parliamentary Service actions to be made to the relevant Secretary or, in certain circumstances, to the Merit Protection Commissioner; and
- (b) applications for secondary review of actions that were the subject of primary review by a Secretary to be made to the Merit Protection Commissioner.

Note: A recommendation made on an application to the Merit Protection Commissioner for primary or secondary review is not binding on a Secretary: see clause 104.

**75 Secretary's responsibility**

A Secretary is responsible for ensuring that applications for review can be dealt with in accordance with:

- (a) this Division; and
- (b) the Secretary's responsibility to uphold and promote the Parliamentary Service Values and the Parliamentary Service Employment Principles.

**76 Definition**

In this Part:

PRC decision means a decision by a PRC.

relevant employment means employment as an ongoing Parliamentary Service employee 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.

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

### **77 Application of Division 2**

- (1) This Division applies if:
  - (a) a decision (a *promotion decision*) is made by a Secretary to promote an ongoing Parliamentary Service employee to employment 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); and
  - (b) the promotion decision is not made in accordance with the recommendation of an ISAC; and
  - (c) the promotion decision is not made in accordance with a PRC decision.
- (2) This Division also applies if:
  - (a) an engagement decision is made by a Secretary to engage an ongoing APS employee as an ongoing Parliamentary Service employee 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); and
  - (b) the engagement decision is not made in accordance with the recommendation of an ISAC; and
  - (c) the engagement decision is not made in accordance with a PRC decision.
- (3) In this Division, a decision to engage an ongoing APS employee is an *engagement decision* if the engagement is at a higher classification than the ongoing APS employee's classification as an APS employee, worked out in accordance with clause 2 of Schedule 2.

### **78 Entitlement for review—promotion decision**

- (1) If:
  - (a) an ongoing Parliamentary Service employee applies for promotion to relevant employment; and
  - (b) a promotion decision is made in relation to the relevant employment; the ongoing Parliamentary Service employee is entitled to apply to the Merit Protection Commissioner to have the promotion decision reviewed by a PRC.

Note: A PRC may be appointed to deal with:

- (a) applications from Parliamentary Service employees and APS employees in relation to the same promotion decision; and
  - (b) applications relating to promotion decisions and engagement decisions.
- (2) If:
    - (a) an ongoing APS employee applies for engagement to relevant employment; and
    - (b) 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

## **Part 9** Review of actions

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

#### **Clause 79**

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(c) a promotion decision is made in relation to the relevant employment; the ongoing APS employee is entitled to apply to the Merit Protection Commissioner to have the promotion decision reviewed by a PRC.

Note: A PRC may be appointed to deal with:

- (a) applications from Parliamentary Service employees and APS employees in relation to the same promotion decision; and
- (b) applications relating to promotion decisions and engagement decisions.

#### **79 Entitlement for review—engagement decision**

(1) If:

- (a) an ongoing Parliamentary Service employee applies for promotion to relevant employment; and
- (b) an engagement decision is made in relation to the relevant employment; the ongoing Parliamentary Service employee is entitled to apply to the Merit Protection Commissioner to have the engagement decision reviewed by a PRC.

Note: A PRC may be appointed to deal with:

- (a) applications from Parliamentary Service employees and APS employees in relation to the same promotion decision; and
- (b) applications relating to promotion decisions and engagement decisions.

(2) If:

- (a) an ongoing APS employee applies for engagement to relevant employment; and
- (b) the engagement would be at a higher classification than the APS employee's classification as an APS employee; and
- (c) an engagement decision is made in relation to the relevant employment; the ongoing APS employee is entitled to apply to the Merit Protection Commissioner to have the engagement decision reviewed by a PRC.

Note: A PRC may be appointed to deal with:

- (a) applications from Parliamentary Service employees and APS employees in relation to the same promotion decision; and
- (b) applications relating to promotion decisions and engagement decisions.

#### **80 Grounds for review**

A promotion decision or engagement decision may only be reviewed under this Division on the grounds of merit.

Note: It is a Parliamentary Service Employment Principle that employment decisions are based on merit: see paragraph 10A(1)(c) of the Act. A decision relating to engagement or promotion is based on merit if the matters set out in subsection 10A(2) of the Act are satisfied.

#### **81 Application for review**

- (1) An application for review of a promotion decision under this Division must:
  - (a) be in writing; and
  - (b) be received by the Merit Protection Commissioner:
    - (i) within:



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- (A) the period specified in the *Public Service Gazette* as part of notifying the promotion; or
  - (B) if the Merit Protection Commissioner has given an extension of time to a class of employees before the end of the period mentioned in subsubparagraph (A)—that extension of time; and
- (ii) at the place specified in the *Public Service Gazette*.
- (2) An application for review of an engagement decision under this Division must:
- (a) be in writing; and
  - (b) be received by the Merit Protection Commissioner:
    - (i) within:
      - (A) the period specified in the *Public Service Gazette* as part of notifying the engagement; or
      - (B) if the Merit Protection Commissioner has given an extension of time to a class of employees before the end of the period mentioned in subsubparagraph (A)—that extension of time; and
    - (ii) at the place specified in the *Public Service Gazette*.
- (3) 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.

## **82 Appointment of PRC**

- (1) If the Merit Protection Commissioner receives an application for review of a promotion decision or an engagement decision under this Division, the Merit Protection Commissioner must:
- (a) consider the circumstances in which the application was made; and
  - (b) if he or she believes that a review of the promotion decision or engagement decision is necessary—appoint a PRC to deal with the application.
- (2) A particular PRC may be appointed to deal with:
- (a) applications by ongoing Parliamentary Service employees and ongoing APS employees for review of a promotion decision; and
  - (b) applications by ongoing Parliamentary Service employees and ongoing APS employees for review of an engagement decision; and
  - (c) applications in relation to more than one promotion or engagement decision.

## **83 Constitution of PRC**

- (1) A PRC must comprise:
- (a) a Convenor nominated by the Merit Protection Commissioner; and
  - (b) a Parliamentary Service employee nominated by the relevant Secretary; and
  - (c) a Parliamentary Service employee nominated by the Merit Protection Commissioner.

**Part 9** Review of actions

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

**Clause 84**

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- (2) 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.
- (3) The Parliamentary Service employee nominated under paragraph (1)(c) 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.
- (4) If a member of a PRC ceases to act as a member before the PRC has made its recommendation to the relevant Secretary, the PRC is to be reconstituted by the remaining members and another member nominated in accordance with subclause (1).
- (5) The reconstituted PRC must have regard to matters put before, or decided by, the PRC as previously constituted.
- (6) A person is not subject to direction in carrying out his or her duties as a member of a PRC, except:
  - (a) by a Court; or
  - (b) by instructions issued under clause 87.

**84 Statements by parties**

- (1) An applicant for review of a promotion decision, and the person promoted, must each give the Merit Protection Commissioner a statement in writing setting out his or her claim for promotion or engagement to the relevant employment.
  - (2) An applicant for review of an engagement decision, and the person engaged, must each give the Merit Protection Commissioner a statement in writing setting out his or her claim for promotion or engagement to the relevant employment.
  - (3) The statement must be given within 14 days after the closing date for lodging applications for review of the decision.
  - (4) However if:
    - (a) within that 14 days, the applicant, or the person promoted or engaged, asks the Merit Protection Commissioner for a longer period within which to give the statement; and
    - (b) the Merit Protection Commissioner agrees to allow a longer period; the statement must be given within the longer period allowed.
  - (5) If the statement is not given within the time required under subclause (3) or (4), the PRC may consider and decide the application without the statement.
  - (6) Subject to paragraph 86(1)(a):
    - (a) a person mentioned in subclause (1) is not entitled to have access to a statement mentioned in subclause (1) or (2) given to the Merit Protection Commissioner by another person mentioned in subclause (1) or (2); and
    - (b) a person mentioned in subclause (2) is not entitled to have access to a statement mentioned in subclause (1) or (2) that was given to the Merit Protection Commissioner by another person mentioned in subclause (1) or (2).
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## **85 Frivolous or vexatious applications**

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

## **86 PRC procedures—minimum requirements**

- (1) The procedures used by a PRC in conducting a review under this Division must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;
  - (b) the review must be conducted in private;
  - (c) the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) A person appearing before a PRC 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.

## **87 PRC procedures—Merit Protection Commissioner's instructions**

- (1) The Merit Protection Commissioner must, as soon as practicable after the commencement of this determination, issue instructions about the procedures to be followed by a PRC in performing its functions under this Division.
- (2) The instructions must not be inconsistent with the Act or this determination.
- (3) A PRC must comply with the instructions.

## **88 Assistance to PRC**

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

## **89 Requirement to provide information or documents**

- (1) A PRC may, by written notice given to a Secretary, require the Secretary to give to the PRC stated information or documents relevant to the review.
- (2) The Secretary must give the information or documents in the way, and at or within the time, stated in the notice.

## **90 Conduct of review by PRC**

- (1) In considering an application for review of a promotion decision or an engagement decision, a PRC must:
  - (a) assess the relative merits of the person promoted or engaged, and each applicant for review of the decision, on the basis of:
    - (i) the relative suitability of each person for the duties; and

**Part 9** Review of actions

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

**Clause 91**

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- (ii) the relationship between each person's work-related qualities and the work-related qualities genuinely required for the duties; and
  - (iii) the relative capacity of each person to achieve outcomes related to the duties; and
- (b) decide, primarily on the basis of the assessment, that:
- (i) the promotion or engagement decision should be upheld; or
  - (ii) an applicant for review should be promoted to the relevant employment; or
  - (iii) an applicant for review should be engaged to the relevant employment.
- (2) The PRC must tell the relevant Secretary, in writing, of its decision.

**91 Non-agreement on decision by PRC**

- (1) This clause applies if all members of a PRC do not agree on a decision in relation to an application for review of a promotion decision or engagement decision.
- (2) If 2 members agree on a decision, that decision is taken to be the decision of the PRC.
- (3) If there is no agreement between any of the members, the Convenor's decision is taken to be the decision of the PRC.

**92 Effect of PRC decision**

- (1) The decision of a PRC is binding on the relevant Secretary.  
Note: Clause 41 provides for the date of effect of a PRC decision.
- (2) The decision of a PRC is not affected by:
  - (a) a defect in the nomination of a member of the PRC; or
  - (b) a failure to comply with instructions issued under clause 87.
- (3) 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.
- (4) 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 2 weeks after the Secretary is notified of the review decision.

Note 1: Clause 41 provides for the date of effect of a promotion decision if an application for review has been made to a PRC.

Note 2: Clause 41 provides for the date of effect of an engagement decision if the engagement is at a higher classification than the person's classification as an ongoing APS employee where an application for review has been made to a PRC.

**93 Offence**

- (1) A person commits an offence if the person obstructs a PRC in carrying out its functions under this Division.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element of an offence against subsection (1) that the functions being carried out by the PRC were functions under this Division.

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

#### **Subdivision 1—Reviewable action**

#### **94 Entitlement for review**

- (1) A non-SES employee (an *affected employee*) is entitled to review of Parliamentary Service action under this Division if the action is:
  - (a) action by:
    - (i) a Secretary; or
    - (ii) a Parliamentary Service employee; or
  - (b) reviewable action (including the action of finding that the affected employee has breached the Code of Conduct).
- (2) 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:
  - (a) the employee ceases to be employed; or
  - (b) the employee is promoted to an SES position.
- (3) A former Parliamentary Service employee is not entitled to review under this Division.

Note: For rights of former Parliamentary Service employees to review, see Division 4 of Part 11.

#### **95 What Parliamentary Service action is *reviewable action***

- (1) 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.
- (2) However, the action is not, or ceases to be, reviewable action if:
  - (a) it is action mentioned in Schedule 3; or
  - (b) 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.
- (3) Also, 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.

Note 1: The following are examples of external review bodies for paragraph (e):

- (a) the Commonwealth Ombudsman;
- (b) the Australian Information Commissioner;
- (c) the Australian Human Rights Commission.

Note 2: Example for paragraph (g):

Review may be not justified because the applicant does not respond to a request under clause 106 for further information about why the review is sought.

- (4) Also, an action mentioned in a table item is not, or ceases to be, reviewable action if a circumstance mentioned in the item applies.

<b>Actions that are not, or cease to be reviewable</b>		
<b>Item</b>	<b>Action</b>	<b>Circumstances</b>
1	An application for primary review of a Parliamentary Service action made to an affected employee's Secretary under subclause 96(1)	The application is not made within 120 days of the Parliamentary Service action
2	An application for primary review of a Parliamentary Service action made to the Merit Protection Commissioner under paragraph 96(2)(a)	The application is not made within 60 days of the determination that the affected employee has breached the Code of Conduct
3	An application for primary review of a Parliamentary Service action made to the Merit Protection Commissioner under paragraph 96(2)(b)	The application is not made within 60 days of the sanction for breach of the Code of Conduct being imposed
4	An application for primary review of a Parliamentary Service action made to the Merit Protection Commissioner under subclause 96(3)	The application is not made within 60 days of the Parliamentary Service action
5	An application made 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 Parliamentary Service action is not reviewable	The application is not made within 60 days of the affected employee being told that the Parliamentary Service action is not reviewable
6	An application made to the Merit Protection Commissioner for secondary review of a Parliamentary Service action if: (a) the Secretary has told the affected employee of the Secretary's decision under subclause 99(5); and (b) the affected employee is dissatisfied with the decision	The application is not made within 60 days of the affected employee being told of the Secretary's decision

**Part 9** Review of actions

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

Clause 96

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<b>Actions that are not, or cease to be reviewable</b>		
<b>Item</b>	<b>Action</b>	<b>Circumstances</b>
7	An application made to the Merit Protection Commissioner for secondary review of a Parliamentary Service action	The application for primary review of the action was one to which table item 1 applied

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- (5) However, an action mentioned in an item of the table 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**

**96 Application for primary review**

- (1) An affected employee may apply in writing to the relevant Secretary for primary review of a reviewable action.
- (2) However, the application must be made to the Merit Protection Commissioner if the application is for review of:
- (a) a determination that the affected employee has breached the Code of Conduct; or
  - (b) a sanction imposed for breach of the Code of Conduct.
- (3) Also, the employee may apply in writing to the Merit Protection Commissioner for review of the action if:
- (a) the Secretary was directly involved in the action; or
  - (b) it is not appropriate, because of the seriousness or sensitivity of the action, for the Secretary to deal with the application; or
  - (c) the action is claimed to be victimisation or harassment of the employee for having made a previous application for review of action.
- (4) The application must state briefly:
- (a) why the review is sought; and
  - (b) if a particular outcome is sought—the outcome sought.

Note: For paragraph (4)(b), the following are examples of outcomes:

- (a) reconsideration of the action.
- (b) re-assignment of duties.

**97 Referral to Merit Protection Commissioner**

- (1) 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.
- (2) The Secretary may, for example, refer the application to the Merit Protection Commissioner if:
- (a) the Secretary was directly involved in the action; or



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- (b) 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.
- (3) If the Secretary refers the application to the Merit Protection Commissioner, the Secretary must tell the employee in writing.

Note: Clause 100 deals with review of applications referred to the Merit Protection Commissioner by a Secretary.

## 98 Notice that action not reviewable

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), the person who would have conducted the review must tell the employee in writing:

- (a) that the action is not reviewable; and
- (b) the reasons why it is considered that the action is not reviewable; and
- (c) 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.

## 99 Conduct of review by Secretary

- (1) If a Secretary:
  - (a) does not refer an application for review to the Merit Protection Commissioner; and
  - (b) 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.
- (2) Subject to subclause 105(1), the Secretary may conduct the review in any manner the Secretary thinks fit.
- (3) The Secretary may:
  - (a) confirm the action; or
  - (b) vary the action; or
  - (c) set the action aside and substitute a new action.
- (4) Subclause (3) does not limit the employer powers of the Secretary in relation to the action or the affected employee.

Example: 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.
- (5) The Secretary must tell the employee in writing of:
  - (a) any decision made on the application; and
  - (b) the reasons for the decision; and
  - (c) any action to be taken as a result of the review; and
  - (d) the applicant's right to apply to the Merit Protection Commissioner under clause 101 for secondary review of the action.

Clause 100

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**100 Conduct of review by Merit Protection Commissioner**

- (1) This clause applies if an application for review of a Parliamentary Service action is:
  - (a) made to the Merit Protection Commissioner under subclause 96(2) or (3);  
or
  - (b) referred to the Merit Protection Commissioner under subclause 97(1).
- (2) If the Merit Protection Commissioner considers that the employee is entitled to review under this Division, the Merit Protection Commissioner:
  - (a) must review the action; and
  - (b) may, subject to the minimum requirements mentioned in subclause 105(1), conduct the review in any manner the Merit Protection Commissioner thinks fit.
  - (c) must make a recommendation to the Secretary, in writing about the action; and
  - (d) must tell the Secretary, in writing, of the reasons for the recommendation; and
  - (e) must tell the employee in writing of the recommendation and reasons given to the Secretary.

**Subdivision 3—Secondary review**

**101 Application for secondary review**

- (1) An affected employee may apply in writing to the Merit Protection Commissioner for secondary review of a reviewable action if:
  - (a) the Secretary has told the employee under clause 98 that the action is not a reviewable action; or
  - (b) the employee is dissatisfied with the outcome of the Secretary's review of the action under clause 99.
- (2) The application must be made through the Secretary.
- (3) The application must state briefly why the review is sought.

**102 Secretary to give documents to Merit Protection Commissioner**

- (1) Within 14 days after receiving the application, the Secretary must give to the Merit Protection Commissioner:
  - (a) the application; and
  - (b) any relevant documents relating to the primary review of the action.
- (2) The Secretary must give to the affected employee a copy of any documents given to the Merit Protection Commissioner under paragraph (1)(b).

**103 Conduct of review**

If the Merit Protection Commissioner considers that the employee is entitled to review under this Division, the Merit Protection Commissioner:

- (a) must review the action; and

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

## **Subdivision 4—Action following recommendation to Secretary**

### **104 Action by Secretary**

- (1) If a Secretary receives a recommendation under clause 100 or 103, the Secretary must, as soon as possible:
  - (a) consider the recommendation; and
  - (b) make a decision about the recommendation.
- (2) The Secretary may:
  - (a) confirm the relevant action; or
  - (b) vary the action; or
  - (c) set the action aside and substitute a new action.
- (3) If the Secretary acts in accordance with the recommendation, the Secretary is not required to seek the views of the employee before acting on the recommendation.

Note: 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.
- (4) Subclause (2) does not limit the employer powers of the Secretary in relation to the action or the affected employee.

Example 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.
- (5) The Secretary must tell the employee and the Merit Protection Commissioner in writing of:
  - (a) the decision; and
  - (b) the reasons for the decision.

Note: Subsection 33(6) of the Act 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**

### **105 Review procedures—minimum requirements**

- (1) The procedures used for a review conducted under this Division must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;

**Part 9** Review of actions

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

Clause 106

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- (b) the review must be conducted in private;
  - (c) the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) 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.

**106 Requirement to provide information or documents**

- (1) The Merit Protection Commissioner may, 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.
- (2) The Secretary or employee must give the information or documents in the way, and at or within the time, stated in the notice.

**107 Making of application does not operate as stay**

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

**108 Offence**

- (1) A person commits an offence if the person obstructs a person in carrying out his or her functions under this Division.  
  
Penalty: 10 penalty units.
- (2) Strict liability applies to the physical element of an offence against subclause (1) that the functions being carried out by the person were functions under this Division.

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## Part 10—Other employment matters

### 109 Knowledge obligation

Each Parliamentary Service employee must inform himself or herself about the Act and this determination.

### 110 Restrictions on engaging redundancy benefit recipients

#### *Meaning of redundancy benefit recipient*

- (1) For this clause, a person is a **redundancy benefit recipient** if:
- (a) the person has received a redundancy benefit from a Department or an APS agency; and
  - (b) the redundancy benefit period has not elapsed.

#### *Meaning of redundancy benefit*

- (2) For this clause, subject to subclause (3), each of the following payments is a **redundancy benefit**:
- (a) a severance payment or similar payment made to an employee on the ending of the employee's employment;
  - (b) a payment made to an employee as a result of the shortening of a retention period;
  - (c) an incentive to retire payment under section 37 of the Act or section 37 of the *Public Service Act 1999*.
- (3) Each of the following payments is not a **redundancy benefit**:
- (a) a payment made to an employee as redundancy pay under section 119 of the *Fair Work Act 2009*;  
Note: The amount of the payment mentioned in paragraph (a) is known as the National Employment Standards redundancy amount.
  - (b) a payment made:
    - (i) to a person who was engaged for a specified term or for the duration of a specified task; and
    - (ii) as compensation for the early termination of the person's employment;
  - (c) a payment made to a person if the person's employment ended otherwise than at the initiative of the employer;
  - (d) a payment made to a person in lieu of notice of termination of employment.

#### *Meaning of redundancy benefit period*

- (4) For this clause, 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:

Clause 111

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

- (5) In calculating the redundancy benefit period:
- (a) 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
  - (b) treat a fraction of a week as a proportion of 7 days; and
  - (c) round the proportion down to the nearest whole number.

*Engagement restrictions*

- (6) A Secretary may 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.
- (7) In addition to the requirement in subclause (6), a Secretary must also:
- (a) obtain the Commissioner's approval before engaging a redundancy benefit recipient as either:
    - (i) an ongoing Parliamentary Service employee; or
    - (ii) a non-ongoing SES employee; and
  - (b) consult with the Commissioner before engaging a redundancy benefit recipient, if the engagement is:
    - (i) as a non-ongoing Parliamentary Service employee (at a non-SES classification) for a specified term of more than 6 months; or
    - (ii) as a non-ongoing Parliamentary Service employee (at a non-SES classification) 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
  - (c) 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.

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

- (1) This clause sets out procedures applicable to the termination of the employment of a non-ongoing Parliamentary Service employee.
- (2) 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:
  - (a) if the employment arrangement is a fair work instrument—are an unlawful term; or
  - (b) if the employment arrangement is a transitional instrument that is not an award—are prohibited content; or

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- (c) 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.

- Note 1: 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.
- Note 2: The *Fair Work Act 2009* has rules and entitlements that apply to termination of employment.
- Note 3: 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.

### **112 Incentive to retire—SES employee**

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:

- (a) the employee is an ongoing SES employee;
- (b) the employee is advised of possible options for assignment, including assignment to a group of duties at a lower classification;
- (c) the employee is given reasonable access to independent financial advice and career counselling;
- (d) 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.

- Note 1: 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.
- Note 2: 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**

#### **113 Prescribed functions**

- (1) The Merit Protection Commissioner's functions set out in Part 9 are prescribed for the purposes of paragraph 48(1)(d) of the Act.
- (2) For paragraph 48(1)(e) of the Act, the Merit Protection Commissioner's functions set out in Divisions 3, 4, 5 and 6 of this Part are prescribed.

Note: Functions of the Merit Protection Commissioner in relation to whistleblowers reports are set out in Part 12.



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## **Division 2—Basic procedural requirements for Code of Conduct inquiries**

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

- (1) For paragraph 48A(2)(a) of the Act, this clause prescribes basic requirements that the Merit Protection Commissioner's written procedures must comply with.
- (2) 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:
  - (a) 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
  - (b) the Merit Protection Commissioner has taken reasonable steps to tell the employee the sanctions that may be imposed on the employee under subsection 15(1) of the Act; and
  - (c) the employee or former employee has been given a reasonable opportunity to make a statement in relation to the alleged breach.
- (3) 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.
- (4) 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.
- (5) 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**

#### **115 Investigation of complaints by former employees**

- (1) 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.
- (2) The Merit Protection Commissioner may make recommendations to the employee's former Secretary in relation to the complaint.

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

### **116 Entitlement for review**

- (1) A former Parliamentary Service employee who was not an SES employee at the time the employee's employment ceased (the *affected former employee*) 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).
- (2) The affected former employee is not, or ceases to be, entitled to review of the determination mentioned in subclause (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: Examples of external review bodies are:

- (a) the Commonwealth Ombudsman; and
- (b) the Australian Information Commissioner; and
- (c) the Australian Human Rights Commission.

Note 2: 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.

- (3) The affected former employee is not, or ceases to be, entitled to review of the determination mentioned in subclause (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.
- (4) However, 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 (3).

Example: The affected former employee could demonstrate that the affected former employee did not receive notification of the determination.

- (5) The affected former employee:
  - (a) is also entitled to review as mentioned in clause 117; and
  - (b) is not entitled to any other review.

Clause 117

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**117 Application for review**

- (1) An affected former employee mentioned in clause 119 may apply, in writing, to the Merit Protection Commissioner for review of the determination.
- (2) The application must state briefly:
  - (a) why the review is sought; and
  - (b) if a particular outcome is sought—the outcome sought.

**118 Notice that action not reviewable**

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:

- (a) that the determination is not reviewable; and
- (b) the reasons why the determination is not reviewable.

**119 Conduct of review**

If the Merit Protection Commissioner considers that the affected former employee is entitled to review under this division, the Merit Protection Commissioner:

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

**120 Review procedures—minimum requirements**

- (1) The procedures used for a review conducted under this Division must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;
  - (b) the review must be conducted in private;
  - (c) the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) 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.

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**121 Requirement to provide information or documents**

- (1) The Merit Protection Commissioner may, by written notice given to a Secretary or Parliamentary Service employee, require the Secretary or Parliamentary Service employee to give the Merit Protection Commissioner stated information or documents relevant to the review.
- (2) The Secretary or employee must give the information or documents in the way, and at or within the time, stated in the notice.

**122 Making of an application does not operate as stay**

The making of an application for review of a determination under this Division does not operate to stay the determination.

**123 Offence**

- (1) A person commits an offence if the person obstructs the Merit Protection Commissioner in carrying out his or her functions under this Division.  
  
Penalty: 10 penalty units.
- (2) 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**

### **124 Review of actions of statutory office holders who are not Secretaries**

- (1) A non-SES employee may apply to the Merit Protection Commissioner for review of an action of a statutory office holder that:
  - (a) relates to the employee's Parliamentary Service employment; and
  - (b) is not a termination of the employee's employment; and
  - (c) if the statutory office holder were a Secretary, would be reviewable action for Division 3 of Part 9.
- (2) The Merit Protection Commissioner may, by written notice given to the statutory office holder, require the statutory office holder to give the Merit Protection Commissioner:
  - (a) a report about the action; and
  - (b) other stated information or documents relevant to the review.
- (3) The statutory office holder must give the report and other information or documents in the way, and at or within the time, stated in the notice.
- (4) The Merit Protection Commissioner must:
  - (a) review the action; and
  - (b) make a recommendation to the statutory office holder in writing about the action; and
  - (c) tell the statutory office holder in writing of the reasons for the recommendation; and
  - (d) tell the employee in writing of the recommendation and reasons given to the statutory office holder.
- (5) 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.
- (6) In this clause:

***statutory office holder*** means a person who holds any office or appointment under the 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**

### **125 Independence of Merit Protection Commissioner**

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.

### **126 Entrusted person**

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

### **127 Protected information**

For paragraph (c) of the definition of *protected information* in subsection 65AB(1) of the Act, 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.

### **128 Compellability of entrusted persons to give evidence**

For paragraph 65AB(7)(d) of the Act, 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.

### **129 Giving information or producing documents**

For paragraph 65AD(2)(b) of the Act, clause 124 is prescribed.

## Part 12—Whistleblower reports

### 130 Basic requirements for procedures—Secretary

- (1) Procedures established by a Secretary for dealing with a whistleblower report made to the Secretary must comply with the requirements set out in subclause (2).
- (2) The procedures must require the Secretary to do the following:
  - (a) accept the whistleblower report;
  - (b) inform the whistleblower that the whistleblower must not be victimised or discriminated against for making the report;  

Note: See subsection 16(1) of the Act.
  - (c) commence an inquiry into the whistleblower report, unless a circumstance mentioned in clause 132 applies;
  - (d) complete the inquiry, unless a circumstance mentioned in clause 132 applies;
  - (e) report the outcome of the inquiry to the whistleblower;
  - (f) ensure that the outcome of the inquiry is dealt with as soon as practicable;
  - (g) 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;
  - (h) 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.

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

- (1) The Commissioner or Merit Protection Commissioner must, in dealing with a whistleblower report, comply with the requirements set out in subclauses (2) to (5).
- (2) The Commissioner or Merit Protection Commissioner must accept the whistleblower report if:
  - (a) 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
  - (b) the whistleblower has made a whistleblower report to the relevant Secretary and is not satisfied with:
    - (i) the Secretary's decision to decline to conduct or discontinue an inquiry into the whistleblower report; or
    - (ii) the outcome of the Secretary's inquiry into the whistleblower report.
- (3) The Commissioner or Merit Protection Commissioner must commence an inquiry into the whistleblower report, unless a circumstance mentioned in clause 132 applies.



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Note: In relation to an inquiry conducted by the Commissioner, see the notification requirement in subsection 40(1A) of the Act.

- (4) The Commissioner or Merit Protection Commissioner must:
  - (a) complete the inquiry into the whistleblower report, unless a circumstance mentioned in clause 132 applies; and
  - (b) report the outcome of the inquiry to the whistleblower and the relevant Secretary.
- (5) The Commissioner or Merit Protection Commissioner must 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.

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

- (1) 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.
- (2) A circumstance is that the Secretary, Commissioner or Merit Protection Commissioner reasonably believes that:
  - (a) the whistleblower report would be dealt with more appropriately by different means; or

Note: For example, if other action is being undertaken under the Act or another Commonwealth law, that action may be considered more appropriate.

  - (b) the whistleblower report is vexatious, frivolous, misconceived, insufficiently detailed or lacking in substance; or
  - (c) conducting the inquiry would not be justified in all the circumstances.
- (3) A circumstance for the Commissioner is that the whistleblower report:
  - (a) has not been considered by the relevant Secretary; or
  - (b) is being, or has already been, considered by the Merit Protection Commissioner.
- (4) A circumstance for the Merit Protection Commissioner is that the whistleblower report:
  - (a) has not been considered by the relevant Secretary; or
  - (b) is being, or has already been, considered by the Commissioner.

## Part 13—Attachment of salaries to satisfy judgement debts

### 133 Definitions

(1) In this Part:

**debtor** means a Secretary or a Parliamentary Service employee who owes a judgement debt.

**net salary** has the meaning given by subclause (2).

**paying officer**, in relation to a debtor, means a person appointed under clause 136 who is responsible for dealing with the debtor.

**total gross salary** has the meaning given by subclause (3).

(2) The **net salary** of a debtor is the debtor's total gross salary, less any amount to be deducted:

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

(3) The **total gross salary** of a debtor is the amount of:

- (a) 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
- (b) 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.

### 134 Application of this Part

This Part does not apply in relation to a debtor:

- (a) whose estate has been sequestrated, either voluntarily or compulsorily, for the benefit of creditors; and
- (b) who has not yet obtained a certificate of discharge.

### 135 Application of State and Territory law

A law of a State or a Territory that deals with satisfying a judgement debt:

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

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**136 Paying officer**

- (1) If a Secretary believes that the making of deductions from a debtor's salary is required, the Secretary must appoint one or more persons as paying officers for the purpose of making those deductions.
- (2) However, if the Secretary is the debtor:
  - (a) the Secretary must not appoint a paying officer under subclause (1); and
  - (b) the Secretary must act under this subclause without considering whether the making of deductions from the Secretary's salary is required; and
  - (c) the Secretary must, in writing, delegate his or her power under subclause (1) to appoint a paying officer to an SES employee in the Department; and
  - (d) the SES employee must:
    - (i) decide whether the making of deductions from the Secretary's salary is required; and
    - (ii) if the SES employee decides that the making of the deductions is required—appoint a person as a paying officer for the purpose of making those deductions; and
  - (e) 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:
    - (i) making the delegation mentioned in paragraph (c); and
    - (ii) if a paying officer is appointed—assisting the paying officer in the repayment of the debt.
- (3) If a person is appointed as a paying officer:
  - (a) the appointment authorises the person to act as a paying officer only in relation to the debtor to whom the appointment relates; and
  - (b) the person is responsible for making deductions from the debtor's salary to satisfy the judgement debt against the debtor.
- (4) A debtor is not authorised to be the paying officer for himself or herself.

**137 Authority to make deductions**

- (1) Deductions from a debtor's salary in order to satisfy a judgement debt may be started only if:
  - (a) the paying officer has received a statutory declaration, made by the judgement creditor, that the judgement debt exists and has not been discharged; and
  - (b) 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
  - (c) the paying officer has received the fee (if any) required under clause 138; and
  - (d) the paying officer has given the debtor a notice in accordance with subclause (2); and

### Clause 138

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- (e) 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.

Note: Clause 139 deals with cases where there are 2 or more judgement debts against a debtor.

- (2) The paying officer must:
  - (a) notify the debtor, as soon as practicable, that it is proposed to make the deductions; and
  - (b) require the debtor to state, in writing, by a time specified in the notice, whether the judgement has been satisfied, and:
    - (i) if the judgement debt has been satisfied—to give the paying officer evidence in support of that fact; and
    - (ii) if the judgement debt has not been satisfied—to state the amount due under the judgement at the time the statement is made.
- (3) 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 (2), the paying officer must deduct from the debtor's salary on each pay day for the debtor an amount equal to:
  - (a) the deduction required under clause 141; or
  - (b) a lesser amount that, in the paying officer's opinion, is needed to satisfy the balance of the judgement debt.
- (4) 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.
- (5) The paying officer must ensure that the amount of each deduction is paid to the judgement creditor.

### 138 Administration fee

- (1) A judgement creditor (other than the Commonwealth) who requests the payment of a judgement debt must pay a fee of \$38 for the making of the deductions.
- (2) 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*.
- (3) 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:
  - (a) the fee is payable for making the deductions; and
  - (b) no deductions will be made unless the fee is paid.

### 139 More than one judgement debt

- (1) If more than one judgement debt exists against a debtor, the paying officer:
  - (a) must deal with the judgement debts in the order in which requests for deductions were received; and

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- (b) 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.
- (2) If the paying officer receives 2 or more requests at the same time for the payment of judgement debts against a debtor, the paying officer must deal with the judgement debts in the order of the dates and times at which judgement was given for each debt, starting with the earliest judgement.

#### 140 Effect of deductions

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:

- (a) 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
- (b) 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.

#### 141 Rate of deductions

- (1) 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.
- (2) If the paying officer is satisfied that the debtor:
- (a) is suffering serious financial hardship; or
  - (b) 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.
- (3) 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.
- (4) If:
- (a) deductions are being made at a rate greater than 20% of the debtor's net salary; and
  - (b) 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%.

#### 142 Move to another Department

- (1) 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:
- (a) the existence of each judgement debt against the debtor; and
  - (b) the arrangements in Department 1 for making deductions from the debtor's salary; and

**Clause 143**

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- (c) any deductions made for the purposes of each of those judgement debts.
- (2) If more than one judgement debt exists against the debtor:
  - (a) 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
  - (b) the paying officer who is appointed in Department 2 in relation to the debtor must deal with the judgement debts in that order.
- (3) The paying officer in Department 2 is taken:
  - (a) to have received the statutory declaration, and copy of the judgement, mentioned in clause 137; and
  - (b) to have received the fee (if any) required under clause 138; and
  - (c) to have given to the debtor any notice that was given, in respect of the debtor, by a paying officer in another Department.
- (4) The paying officer in Department 2 must notify the judgement creditor of the move, and the deductions that the paying officer will make.
- (5) The judgement creditor is not required to pay another fee for the making of deductions.

**143 Administration of deductions**

- (1) A paying officer in relation to a debtor may:
  - (a) require the judgement creditor to confirm that the judgement debt has not been discharged; and
  - (b) suspend the making of deductions until the paying officer receives the confirmation.
- (2) 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.

**144 Recovery of overpayment**

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

### 145 Delegation by Merit Protection Commissioner

- (1) The Merit Protection Commissioner may, in writing, delegate any of the Merit Protection Commissioner's powers or functions under this determination (other than under this clause) to:
  - (a) an APS employee made available to the Merit Protection Commissioner by an Agency Head (within the meaning of the *Public Service Act 1999*); or
  - (b) a Parliamentary Service employee made available to the Merit Protection Commissioner by the Secretary of the Department in which the employee is employed.
- (2) A person exercising powers or functions under a delegation under this clause must comply with any directions of the Merit Protection Commissioner.

### 146 Delegation by Secretary

- (1) A Secretary may, in writing, delegate to a Parliamentary Service employee any of the Secretary's powers or functions under this determination (other than this clause).
- (2) A Secretary may, in writing, delegate to the Parliamentary Librarian any of the Secretary's powers or functions under this determination (other than this clause).
- (3) A Secretary may, in writing and with the prior written consent of the Commissioner, delegate to a person who is not a Parliamentary Service employee any of the Secretary's powers or functions under this determination (other than this clause).
- (4) If a Parliamentary Service employee (the ***first delegate***) to whom powers or functions are delegated under subclause (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***).
- (5) However, if the first delegate is subject to directions in relation to the exercise of a power or function delegated under subclause (1), the first delegate must give corresponding directions to the second delegate.
- (6) If powers or functions are delegated under subclause (2), the Parliamentary Librarian may, in writing, delegate any of those powers or functions to a Parliamentary Service employee.
- (7) However, if the Parliamentary Librarian is subject to directions in relation to the exercise of a power or function delegated under subclause (2), the Parliamentary Librarian must give corresponding directions to the Parliamentary Service employee to whom a delegation is given under subclause (6).
- (8) A power or function that is exercised or performed by a person under a delegation under subclause (4) or (6) is taken, for the purposes of this

**Part 14** Delegation

**Clause 146**

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determination, to have been exercised or performed by the person who originally delegated the corresponding power or function under subclause (1) or (2).

- (9) 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.



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## Part 15—Miscellaneous

### 147 Use and disclosure of personal information

- (1) 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 the employer powers of the Secretary.
- (2) A Secretary may disclose personal information in the possession, or under the control, of the Secretary if the disclosure is necessary for, or relevant to:
  - (a) the performance or exercise of the employer powers of the Secretary or another Secretary; or
  - (b) the exercise of a power or performance of a function of the Commissioner; or
  - (c) the exercise of a power or performance of a function of the Merit Protection Commissioner; or
  - (d) the performance of a function of an ISAC.
- (3) The Merit Protection Commissioner may disclose personal information in the possession, or under the control, of the Merit Protection Commissioner if:
  - (a) the information was obtained by the Merit Protection Commissioner during the course of a PRC review or review of action; and
  - (b) the disclosure is necessary for, or relevant to, a Secretary's consideration of alleged misconduct by a Parliamentary Service employee.
- (4) The Commissioner may use personal information in the possession, or under the control, of the Commissioner if:
  - (a) the information was obtained as part of the Commissioner's review or inquiry functions; and
  - (b) the use is necessary for, or relevant to, an inquiry relating to the Code of Conduct conducted by the Commissioner.
- (5) The Commissioner may disclose personal information in the possession, or under the control, of the Commissioner if:
  - (a) the information was obtained as part of the Commissioner's review or inquiry functions; and
  - (b) the disclosure is necessary for, or relevant to, a Secretary's consideration of alleged misconduct by a Parliamentary Service employee.
- (6) 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.

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

- (7) 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*.

Clause 147

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- (8) 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*.

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

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## Part 16—Transitional arrangements

### 148 Definitions

In this Division:

***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*.

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

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:

- (a) 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
- (b) 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.

Note: Item 9 of Schedule 2 to the *Parliamentary Service Amendment Act 2013* relates to an investigation, begun before the commencement time, to determine whether a Parliamentary Service employee in the Department had breached the Code of Conduct. (For the definition of ***commencement time***, see item 1 of Part 1 of Schedule 2 to the *Parliamentary Service Amendment Act 2013*.) Item 10 relates to a finding, before the commencement time, that a Parliamentary Service employee in a Department had breached the Code of Conduct, with no sanction having been imposed. Item 11 relates to an allegation, before the commencement time, that a Parliamentary Service employee in a Department had breached the Code of Conduct.

### 150 Review of action lodged before 1 July 2013

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

Note: 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.

- (2) The old Parliamentary Service Determination continues to apply, on and after 1 July 2013, in relation to the review.
- (3) Subclause (4) applies if:

Clause 151

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

**151 Conduct of ISAC and recommendation by ISAC**

- (1) Subclause (2) applies if:
- (a) before 1 July 2013, an ISAC was established in relation to an employment opportunity; and
  - (b) immediately before 1 July 2013:
    - (i) the ISAC was still in existence and had not made a recommendation; or
    - (ii) a recommendation by the ISAC, made within 12 months after the date of notification of the employment opportunity, was in force.
- (2) The new Parliamentary Service Determination applies, on and after 1 July 2013, in relation to the ISAC and the recommendation.
- (3) However, if:
- (a) 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
  - (b) 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.

Example: 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.

**152 Review of promotion notified before 1 July 2013**

- (1) Subclause (2) applies if before 1 July 2013, a promotion was notified in accordance with the old Parliamentary Service Determination.
- (2) The old Parliamentary Service Determination continues to apply, on and after 1 July 2013, in relation to:
- (a) the promotion; and
  - (b) any entitlement to have access to a statement given as part of a review of the promotion.

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**153 Notification of employment opportunities, employment decisions and cancellation decision***Employment opportunities notified before 1 July 2013*

- (1) 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:
- (a) clause 39 does not apply in relation to that action; and
  - (b) the relevant provisions of Part 3 of the old Parliamentary Service Determination continue to apply in relation to that action.

*Employment decisions and cancellation decisions not notified before 1 July 2013*

- (2) If:
- (a) 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
  - (b) 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.

Note: 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.

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## Schedule 1—Dictionary

Note: See clause 4.

In this determination:

*Act* means the *Parliamentary Service Act 1999*.

**classification** means an approved classification within the meaning of the Classification Rules, as in force immediately before 1 July 2013.

**classification group** means a group of classifications mentioned in Schedule 1 to the Classification Rules, as in force immediately before 1 July 2013.

**disability employment service provider** means an organisation that facilitates access to employment for persons with disabilities.

**employer powers**, for a Secretary, means the rights, duties and powers of the Secretary under the Act.

**employment** (other than in clauses 109 and 112) means Parliamentary Service employment.

**employment arrangement** means any of the following:

- (a) a fair work instrument;
- (b) a transitional instrument;
- (c) a determination under subsection 24(1) or (3) of the Act;
- (d) a written contract of employment.

**external review body** does not include a Court or Tribunal.

**fair work instrument** has the same meaning as in the *Fair Work Act 2009*.

**higher classification level**, for a Parliamentary Service employee, means a classification that is in a higher classification group in Schedule 1 to the Classification Rules (as in force immediately before 1 July 2013) than the employee's current classification.

Note: To determine whether an APS employee will be engaged at a **higher classification** in the Parliamentary Service, see clause 2 of Schedule 2.

**ISAC** means an Independent Selection Advisory Committee established under clause 59.

**lower classification**, for a Parliamentary Service employee, means a classification that is in a lower classification group than the employee's current classification.

**prohibited content** has the same meaning as in section 356 of the *Workplace Relations Act 1996*, as in force immediately before 30 June 2009.

**promotion**:

- (a) means the ongoing assignment of duties to an ongoing Parliamentary Service employee at a higher classification than the employee's current classification, in the same or another Department; and

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- (b) does not include:
- (i) the allocation of a higher classification in a broadband to an ongoing Parliamentary Service employee who is already within the same broadband in the same Department; or
  - (ii) the allocation of a classification to a trainee under rule 11 of the Classification Rules (as in force immediately before 1 July 2013); or
  - (iii) following a voluntary temporary reduction in the classification of an ongoing Parliamentary Service employee—the assignment, on an ongoing basis, of duties to the employee at the classification that the employee had before the reduction; or
  - (iv) the assignment, on a temporary basis, of duties to a Parliamentary Service employee at a higher classification than the employee’s current classification.

**Promotion Review Committee** (or **PRC**) means a Promotion Review Committee appointed under clause 82.

**Public Service Gazette** means the *Gazette* published in electronic form.

Note: The Public Service *Gazette* may be accessed at <http://www.apsjobs.gov.au>.

**relevant Secretary**, for review of a Parliamentary Service action, means:

- (a) if the action is action by a Secretary—that Secretary; or
- (b) if the action is action by a Parliamentary Service employee—the Secretary of the Department in which the employee was employed at the time of the action.

**training classification** means a classification mentioned in column 2 of Schedule 2 to the Classification Rules, as in force immediately before 1 July 2013.

**transitional instrument** has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

**Tribunal** means a Tribunal constituted under an enactment.

**unlawful term** has the same meaning as in the *Fair Work Act 1999*.

**whistleblower** means an APS employee who reports breaches (or alleged breaches) of the Code of Conduct as described in subsection 16(1) of the Act.

**whistleblower report** means a report made by a person about a breach (or alleged breach) of the Code of Conduct mentioned in subsection 16(1) of the Act.

**workplace diversity program** means a program established by a Secretary under section 18 of the Act.

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## Schedule 2—Comparison with Public Service Classifications

Note: See clauses 32, 39, 41, 77 and 78.

### 1 Meaning of comparable classification or lower

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

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

<b>Comparable classification or lower</b>		
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

### 2 Meaning of higher classification

A person who is an ongoing APS employee is engaged as an ongoing Parliamentary Service employee at a **higher classification** if:

- (a) 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
- (b) immediately before the engagement, the person was engaged as an ongoing APS employee at the corresponding classification mentioned in column 2 of the item.



<b>Higher classification</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	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

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## Schedule 3—Non-reviewable actions

Note: See clause 95.

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<b>Non-reviewable actions</b>	
<b>Item</b>	
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: <ul style="list-style-type: none"><li>(a) the Commissioner under subsection 40(1) of the Act; or</li><li>(b) the Merit Protection Commissioner under subsection 48(1) or 48A(1) of the Act</li></ul>
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: <ul style="list-style-type: none"><li>(a) the Australian Security Intelligence Organisation Act 1979;</li><li>(b) the Safety, Rehabilitation and Compensation Act 1988;</li><li>(c) the Superannuation Act 1976;</li><li>(d) the Superannuation Act 1990;</li><li>(e) the Superannuation Act 2005</li></ul>
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: <ul style="list-style-type: none"><li>(a) a reduction in classification; or</li><li>(b) a relocation to another place; or</li><li>(c) a promotion that meets all of the following criteria:<ul style="list-style-type: none"><li>(i) the affected employee was an applicant for the promotion;</li><li>(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;</li></ul></li></ul>

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**Non-reviewable actions**

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**Item**

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- (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
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11 Action relating to a decision by a Secretary, under subclause 39(4), not to include the name of an employee in the *Public Service Gazette*

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Note: In relation to item 2, see section 20 of the Act. Under that section, 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.