

EXPLANATORY STATEMENT

Issued by the authority of the Presiding Officers

Parliamentary Service Act 1999

Parliamentary Service Amendment Determination 2013 (No.1)

The *Parliamentary Service Act 1999* (the Act) establishes the Parliamentary Service. Subsection 71(1) of the Act provides that the Presiding Officers may make determinations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. Subsection 71(1) specifies that the Presiding Officers may make determinations after consulting the Parliamentary Service Commissioner.

Overview of the amendments

Parliamentary Service Amendment Determination 2013 (No.1) (this Amendment Determination) amends *Parliamentary Service Determination 2013* (the Principal Determination) which came into effect on 1 July 2013.

This Amendment Determination provides for suspension of employees from duties and clarifies arrangements for movement of employees between parliamentary departments. It also corrects minor typographical errors in the Principal Determination.

Regulation Impact Statement

No regulation impact statement is required for the measures contained in this Determination.

Statement of Compatibility with Human Rights

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

Human rights implications

The Amendment Determination engages the right to work. The right to work, including the right of everyone to gain a living by work that is freely chosen and accepted, is contained in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

This Amendment Determination contains a provision for suspension of employees from duties. Suspension may occur only if the Secretary of the employee's department believes, on reasonable grounds, that the employee has, or may have, breached the Parliamentary Service Code of Conduct and that the suspension is in the public, or the department's, interest. The provision is subject to limitations, including requirements for procedural fairness in all but

exceptional circumstances and a right to review of a suspension decision, intended to ensure that the employee's right to employment is not unreasonably restricted.

This Amendment Determination also includes provision for employees to move between Parliamentary Service departments with the employee's written agreement. This provision does not limit any human rights.

Therefore, to the extent that the Amendment Determination engages with human rights, it does so in a reasonable, necessary and proportionate way.

Consultation

This Amendment Determination was made by the Presiding Officers after they had consulted with the Commissioner in accordance with the requirement mentioned above.

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

This Determination commences on the day after it is registered.

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

Notes on clauses

Clause 1—Name of Determination

This clause names the Determination as the *Parliamentary Service Amendment Determination 2013 (No.1)*.

Clause 2—Commencement

This clause provides that the Determination commences on the day after it is registered.

Clause 3—Authority

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

Clause 4—Schedule(s)

This clause provides that the *Parliamentary Service Determination 2013* is amended or repealed as set out in Schedule 1.

Schedule 1—Amendments

Item 1

This item repeals a Note to clause 18 referring the reader to section 26 of the Act for engagement of ongoing Australian Public Service (APS) employees and substitutes a Note that refers to sections 26 and 26A of the Act for the engagement of an ongoing APS employee as an ongoing or non-ongoing Parliamentary Service employee.

Item 2

This item repeals a Note to clause 32 referring the reader to section 26 of the Act for engagement of ongoing APS employees and substitutes a Note that refers to sections 26 and 26A of the Act for the engagement of an ongoing APS employee as an ongoing or non-ongoing Parliamentary Service employee.

Item 3

This item amends clause 35 to clarify that the minimum requirements for assigning duties at or below classification apply to all moves from other departments.

Item 4

This item inserts a new clause 35A which provides for Parliamentary Service employees to move between departments subject to a written agreement between the Secretaries of those departments. The clause is based on, and will operate in essentially the same way as, relevant provisions of subordinate legislation under the *Public Service Act 1999*.

Subclause 35A(1) defines ‘*old department*’ and ‘*new department*’ and provides that clause 35A applies to moves between Parliamentary Service departments that are not associated with promotion.

Subclause 35A(2) provides that a written agreement between an ongoing Parliamentary Service employee and the Secretary of a new department for the employee to move to the new department has effect subject to this clause and clause 55 (which deals with the date of effect of a move where the employee is under investigation for a breach of the Code of Conduct).

Subclause 35A(3) provides that if the Parliamentary Service employee and the Secretaries of the old and new departments agree in writing on a date of effect of an ongoing move, the move takes effect on the agreed date; otherwise the ongoing move takes effect four weeks after the employee informs the Secretary of the old department in writing of the proposed move.

Subclause 35A(4) provides that if the Secretary of the old department has agreed in writing on a date of effect and a date of return to the old department for a temporary move, the move takes effect according to the terms of the agreement. If the Secretary of the old department has not agreed in writing on a date of effect and a date of return and the employee commences duties in the new department, the move takes effect on the date the employee commences duties in the new department, as an ongoing move to the new department at the employee's existing classification.

Subclause 35A(5) provides for a variation of the period of agreement mentioned in paragraph 35A(4)(a) where the Parliamentary Service employee and the Secretary of the new Department agree to vary the period of the move, if the Secretary of the old Department approves the variation in writing. If the Secretary of the old department does not approve the variation in writing, the variation has no effect.

Item 5

This inserts a new clause 45A which provides for the suspension of employees from duties on specified grounds and subject to safeguards. The clause is based on, and will operate in essentially the same way as, relevant provisions of subordinate legislation under the *Public Service Act 1999*.

Subclause 45A(1) provides for the suspension of employees from duties. Suspension may occur if the Secretary of the employee's department believes, on reasonable grounds, that the employee has, or may have, breached the Parliamentary Service Code of Conduct and that the suspension is in the public, or the department's, interest.

Subclause 45A(2) provides that suspension may be with remuneration.

Subclause 45A(3) provides that, if the suspension is to be without remuneration, the period without remuneration is to be not more than 30 days unless exceptional circumstances apply.

Subclause 45A(4) requires the Secretary of the employee's department to review the suspension at reasonable intervals.

Subclause 45A(5) requires the Secretary to end the suspension immediately if the Secretary no longer believes on reasonable grounds that either of the circumstances specified in subclause 45A(1) applies.

Subclause 45A(6) requires the Secretary to end the suspension if a sanction has been imposed on the employee for the relevant breach of the Code of Conduct.

Subclause 45A(7) requires the Secretary, in exercising powers under this clause, to have due regard to procedural fairness unless the Secretary is satisfied, on reasonable grounds, that in the particular circumstances, this would not be appropriate.

Item 6 corrects a typographical error.

Item 7 corrects a typographical error.

Item 8 corrects a typographical error.