



Australian Public Service Commissioner's Directions 2022

I, Peter Woolcott AO, Australian Public Service Commissioner, make the following directions.

Dated 31 January 2022

Peter Woolcott AO
Australian Public Service Commissioner

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Part 1—Preliminary

Division 1—Introduction

1 Name

This instrument is the *Australian Public Service Commissioner's Directions 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	1 February 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsections 11(1), 11A(1) and (2) and 15(6) of the *Public Service Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Division 2—Definitions

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Agency;
- (b) Agency Head;
- (c) APS employee;
- (d) APS Employment Principles;
- (e) APS Values;
- (f) Classification Rules;
- (g) Code of Conduct;
- (h) non-ongoing APS employee;
- (i) ongoing APS employee;
- (j) SES employee.

In this instrument:

Aboriginal person means a person of the Aboriginal race of Australia.

Act means the *Public Service Act 1999*.

broadband has the same meaning as in subrule 9(4) of the Classification Rules.

classification means an approved classification within the meaning of the Classification Rules.

classification group has the same meaning as in the Classification Rules, as in force from time to time.

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

eligible employee: see subsection 25(9).

employment arrangement means any of the following:

- (a) a fair work instrument (within the meaning of the *Fair Work Act 2009*);
- (b) a transitional instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*);
- (c) a determination under subsection 24(1) or (3) of the Act;
- (d) a written contract of employment.

Independent Selection Advisory Committee has the same meaning as in the Regulations.

merit: see subsection 10A(2) of the Act.

ongoing Parliamentary Service employee has the same meaning as in the *Parliamentary Service Act 1999*.

Parliamentary Service employee has the same meaning as in the *Parliamentary Service Act 1999*.

PRC review means review by a Promotion Review Committee under Part 5 of the Regulations.

promotion, for an ongoing APS employee, see section 6.

Promotion Review Committee or **PRC** has the same meaning as in the Regulations.

Public Service Gazette means the Gazette published in electronic form.

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

redundancy benefit: see subsection 66(2).

Regulations means the *Public Service Regulations 1999*.

SES vacancy: see section 8.

sexually harass has the meaning given by section 28A of the *Sex Discrimination Act 1984*.

Note: Other parts of speech and grammatical forms of “sexually harass” (for example, “sexual harassment”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

similar vacancy: see section 9.

Torres Strait Islander means a descendant of an Indigenous inhabitant of the Torres Strait Islands.

Torres Strait Regional Authority means the Authority established by section 142 of the *Aboriginal and Torres Strait Islander Act 2005*.

training classification has the same meaning as in the Classification Rules.

vacancy: see section 7.

work level standards, for a classification, means the work level standards for the classification, as referred to in subrule 9(2A) of the Classification Rules or rule 10 of those Rules (as the case requires).

work-related qualities, in relation to a person, include the following:

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

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6 Meaning of *promotion*

In this instrument, a reference to a *promotion* is a reference to the ongoing assignment of duties to an ongoing APS employee at a classification that is in a higher classification group than the classification group that includes the employee's current classification, in the same or another Agency, other than:

- (a) the allocation of a higher classification within the same broadband in the same Agency; or
- (b) the allocation of an operational classification to a trainee.

Note: The following are not promotions:

- (a) following a voluntary temporary reduction in an ongoing APS employee's classification—the ongoing assignment of duties to the employee at the original classification;
- (b) the temporary assignment of duties to an APS employee at a higher classification than the employee's current classification.

7 Meaning of *vacancy*

In this instrument, a *vacancy* exists in an Agency when a decision has been made that:

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

Note: A vacancy may also be filled by the movement of an APS employee at the employee's current classification.

8 Meaning of *SES vacancy*

In this instrument, *SES vacancy* means a vacancy at an SES classification as set out in the Classification Rules.

9 Meaning of *similar vacancy*

In this instrument, a vacancy is a *similar vacancy* to a vacancy (within the meaning of this instrument or Part 3 of the *Parliamentary Services Determination 2013*) that has been notified in the Public Service Gazette (the *notified vacancy*) if:

- (a) the vacancy and the notified vacancy are:
 - (i) for the same category of employment (ongoing or non-ongoing); and
 - (ii) for similar duties; and
 - (iii) at the same classification or, if the notified vacancy is in a Department of the Parliament established under the *Parliamentary Service Act 1999*, a corresponding classification under rules about classification made under section 23 of that Act; and
 - (iv) for duties to be performed in a similar location; and
- (b) any of the following apply:
 - (i) the vacancy is an SES vacancy;
 - (ii) the vacancy is in a centrally coordinated entry-level program;

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- (iii) the Agency Head of the agency in which the notified vacancy existed and another Agency Head agree, in writing, that the vacancy is a similar vacancy to the notified vacancy;
- (iv) the Secretary of a Department (within the meaning of the *Parliamentary Service Act 1999*) in which the notified vacancy existed and an Agency Head agree, in writing, that the vacancy is a similar vacancy to the notified vacancy.

Part 2—APS Values

10 Purpose of this Part

This Part is made for the purposes of subsection 11(1) of the Act.

11 Overview of this Part

Application of the APS Values

The APS Values, and these Directions, set out standards and outcomes that are required of APS employees and Agency Heads.

The APS Values can overlap, and actions can involve the application of more than one APS Value.

Each of the APS Values is of equal importance.

12 APS to incorporate and uphold APS Values

- (1) The APS must incorporate and uphold the APS Values.
- (2) The following provisions determine the scope or application of the APS Values.

13 Committed to Service:

The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government

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

- (a) engaging effectively with the community and providing responsive, client-focussed service delivery;
- (b) providing appropriate and accessible information to clients and the community about rights and entitlements, and the process for gaining access to them;
- (c) ensuring that decisions and interactions with clients are objective and impartial, and in accordance with Government policy;
- (d) encouraging innovative thought and supporting innovative solutions;
- (e) managing data to enhance evidence-based policy advice, ensuring information is readily available to the community;
- (f) supporting collaboration and teamwork, both within an Agency and with other agencies and the wider community;
- (g) promoting continuous improvement and managing change effectively;
- (h) identifying and managing areas of potential risk;
- (i) pursuing and supporting training and development to improve capability;

- (j) being responsive to Ministers, including being knowledgeable about the Government's policies and understanding the relevant issues and options, the Government's objectives and the environment in which it operates.

14 Ethical:**The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does**

Having regard to an individual's duties and responsibilities, upholding the APS 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 APS 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 public servants in a fair, timely and effective way;
- (g) providing leadership in policy development, implementation, program management and regulation;
- (h) supporting systems that give APS employees appropriate opportunities to develop and demonstrate leadership qualities.

15 Respectful:**The APS respects all people, including their rights and their heritage**

Having regard to an individual's duties and responsibilities, upholding the APS 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) contributing to an inclusive workplace culture;
- (f) collaborating and being open to ideas in policy development, implementation, program management and regulation;
- (g) complying with all relevant anti-discrimination laws.

16 Accountable:**The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility**

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

- (a) being answerable to Ministers for the exercise of delegated authority, and, through them, to Parliament;

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- (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.

17 Impartial:

The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence

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

- (a) serving the Government of the day with high quality professional support, 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 conclude that the individual could not serve the Government of the day impartially;
- (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 Government and providing it with the best objective, non-partisan advice based on the best evidence available;
- (e) providing advice that is relevant and comprehensive, is not affected by fear of consequences, and does not withhold important facts or bad news;
- (f) providing advice that takes account of the context in which policy needs to be implemented, the broader policy directions set by Government and, where appropriate, implications for the longer term;
- (g) implementing Government policies in a way that is free from bias, and in accordance with the law.

Part 3—Integrity of the APS

Division 1—Purpose of this Part

18 Purpose of this Part

This Part is made for the purposes of subsection 11(1) of the Act.

Division 2—Mandatory integrity training

19 Integrity training for APS employees

- (1) An Agency Head who engages a person as an ongoing APS employee must make arrangements for the APS employee to:
 - (a) undergo a program of training about integrity; and
 - (b) do so within 6 months of being engaged.
- (2) An Agency Head who engages a person as a non-ongoing APS employee must make arrangements for the APS employee to:
 - (a) undergo a program of training about integrity; and
 - (b) do so as soon as practicable after being engaged.
- (3) However, subsections (1) and (2) do not apply if:
 - (a) the person has previously been engaged as an APS employee; and
 - (b) the person completed a program of training about integrity in relation to that engagement in accordance with this section.

Division 3—Consultation and reporting on non-disclosure and confidentiality provisions in agreements settling disputes about employment matters

20 Consulting Commissioner before entering into agreement settling dispute about sexual harassment including non-disclosure or confidentiality provision

An Agency Head must consult the Commissioner before entering into an agreement that:

- (a) is to be with a person who is or was an APS employee; and
- (b) settles a dispute about a matter that relates to:
 - (i) the person's APS employment; and
 - (ii) sexual harassment of or by the person, or an allegation of sexual harassment of or by the person; and
- (c) limits the person's freedom to disclose information about the matter, the dispute or its settlement.

21 Notifying the Commissioner of agreements that are for settling disputes about employment matters and include non-disclosure or confidentiality provisions

- (1) This section applies if, during a financial year, an Agency Head enters into an agreement that:
 - (a) is with a person who is or was an APS employee; and
 - (b) settles a dispute about a matter that relates to the person's APS employment; and
 - (c) limits the person's freedom to disclose information about the matter, the dispute or its settlement.
- (2) The Agency Head must notify the Commissioner of the number of agreements described in subsection (1) entered into during that year.
- (3) The notification must be given within 31 days after the end of that year or within such longer period that the Commissioner allows.

Part 4—Recruitment and selection

Division 1—Upholding APS Employment Principle 10A(1)(c)

Subdivision A—Introduction

22 Purpose of this Division

This Division is made for the purposes of subsection 11A(2) of the Act.

23 How an Agency Head upholds APS Employment Principle 10A(1)(c)

An Agency Head upholds APS Employment Principle 10A(1)(c) when deciding whether to engage or promote a person in the Agency if the Agency Head ensures that the decision is based on a selection process that meets:

- (a) the requirements of Subdivision B (which requires merit-based selection processes); or
- (b) the requirements of a provision set out in Subdivision C (which sets out circumstances in which merit-based selection processes are modified or do not apply).

Note: Paragraph 10A(1)(c) of the Act requires decisions relating to engagement and promotion to be based on merit.

Subdivision B—Merit-based selection processes

24 Merit-based selection process for engagement or promotion

Elements of merit-based selection process

- (1) A selection process meets the requirements of this Subdivision if all of the following apply:
 - (a) the aim and purpose of the selection process is determined in advance;
 - (b) information about the selection process is readily available to candidates;
 - (c) the selection process is applied fairly in relation to each eligible candidate;
 - (d) the selection process is appropriately documented.

Note: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing employees.

Decision-making considerations

- (2) When making a decision in relation to an eligible candidate using a selection process covered by subsection (1):
 - (a) merit is the primary consideration; and
 - (b) if the candidate is otherwise equal on merit with another candidate—secondary considerations may be taken into account if they relate to matters within the control of the candidate.

Note: For paragraph (b), matters within the control of the candidate include the candidate's ability to start by a particular date, willingness to relocate or to meet other reasonable Agency requirements.

25 Notification of vacancy in the Public Service Gazette

Basic requirement for notification of vacancy

- (1) Subject to this section, a selection process for a decision to fill a vacancy meets the requirements of this Subdivision only if:
 - (a) the vacancy:
 - (i) was notified in the Public Service Gazette within the period of 18 months before the written decision to engage or promote the successful candidate for the vacancy; and
 - (ii) the requirements in subsection (2) are met; or
 - (b) the vacancy (the **new vacancy**) is a similar vacancy to another vacancy that was notified in the Public Service Gazette within the period of 18 months before the written decision to engage or promote the successful candidate for the new vacancy.

Note: For the meaning of *similar vacancy*, see section 9.

- (2) For the purposes of paragraph (1)(a), the requirements are the following:
 - (a) the vacancy was notified as open to all eligible members of the community;
 - (b) the vacancy was notified with a closing date for applications of:
 - (i) at least 7 calendar days after the notification; or
 - (ii) if the Agency Head was satisfied that there were special circumstances and the Agency Head approved a shorter period—the end of that shorter period;
 - (c) if the vacancy required approval by the Commissioner under subsection (3) before it could be notified—the Agency Head obtained that approval before the vacancy, or a class of vacancies including the vacancy, was notified.

Commissioner may require notification of vacancy, or class of vacancies, to be approved by Commissioner

- (3) The Commissioner may, by notice in writing, require an Agency Head to obtain the approval of the Commissioner before notifying a specified vacancy, or a specified class of vacancies, in the Public Service Gazette.

Restricting applications to eligible employees (other than APS Level 1 and training classifications)

- (4) If the Agency Head 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 an eligible employee, the vacancy may be notified in the Public Service Gazette as open only to persons who are eligible employees at the time of the notification.
- (5) Subsection (4) does not apply in relation to a vacancy at the APS Level 1 classification or a training classification, and these must be notified as open to all eligible members of the community.

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Multiple Agency notification

- (6) An Agency participating in a multiple Agency selection process must ensure as far as practicable that a specified vacancy 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.

External advertising

- (7) A vacancy notified in the Public Service Gazette as open to all eligible members of the community must, if also advertised externally, be advertised within 4 weeks before or 4 weeks after the Gazette notification.

Example: A vacancy may be advertised externally on a recruitment website.

- (8) A vacancy notified in the Public Service Gazette as open only to persons who are eligible employees must, if it is later advertised externally as open to all eligible members of the community, be re-notified in the Public Service Gazette as open to all eligible members of the community.

Eligible employee

- (9) In this instrument:

eligible employee means a person who:

- (a) is either:
- (i) a current ongoing APS employee; or
 - (ii) a current ongoing Parliamentary Service employee; or
- (b) was, at the time of the relevant Public Service Gazette notification, either:
- (i) a non-ongoing APS employee; or
 - (ii) a non-ongoing Parliamentary Service employee (within the meaning of the *Parliamentary Service Act 1999*).

26 Additional requirements for SES engagement or promotion decisions

A selection process for an SES vacancy meets the requirements of this Subdivision if, in addition to the requirements of sections 24 and 25, the following apply:

- (a) the Commissioner, or a representative of the Commissioner, was a full participant in the selection process;
- (b) if a representative of the Commissioner participated in the selection process—the representative certified that the selection process complied with the Act and this instrument.

Subdivision C—Engagement and promotion in certain circumstances

27 Engagement on a short-term, irregular or intermittent basis

- (1) An Agency Head may engage a person to perform duties as a non-ongoing APS employee if:
- (a) the engagement is for a specified term or the duration of a specified task and the period of employment is 18 months or less; or

- (b) the engagement is for duties that are irregular or intermittent.
- (2) An Agency Head may extend or further extend an engagement mentioned in paragraph (1)(a) if:
 - (a) there is a continuing need for the duties to be performed; and
 - (b) the person engaged is performing the duties satisfactorily or better; and
 - (c) the Agency Head is satisfied that:
 - (i) it is still appropriate for the duties to be performed on a non-ongoing basis; and
 - (ii) the extension, or further extension, will contribute to efficient and effective organisational performance.

However, the total period of engagement (including any extension), must not exceed 3 years.

- (3) The Agency Head must ensure as far as practicable that such a vacancy 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.

Example: A vacancy may be brought to the notice of the community by being advertised or access being provided to non-ongoing APS employment registers.

- (4) As a minimum requirement, the Agency Head must be satisfied that the person to be engaged has the work-related qualities genuinely required to perform the relevant duties.

Note 1: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

Note 2: For the meaning of *work-related qualities*, see section 5.

28 Engagement of person from State or Territory jurisdiction

An Agency Head may engage a person as a non-ongoing APS employee for a specified term if:

- (a) the person is an employee of:
 - (i) a State or Territory; or
 - (ii) an authority of a State or Territory; and
- (b) the Agency Head 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.

Note: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

29 Engagement of ongoing APS employee as non-ongoing APS employee

An Agency Head may engage a person who is an ongoing APS employee to perform duties as a non-ongoing APS employee if:

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

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Note: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

30 Engagement of non-ongoing APS employee as ongoing employee in exceptional circumstances

- (1) The Commissioner may authorise the engagement by an Agency Head of a non-ongoing APS employee as an ongoing APS employee if:
 - (a) the Agency Head requests, in writing, such an authorisation in respect of the non-ongoing APS employee; and
 - (b) the Commissioner is satisfied that exceptional circumstances justify such an engagement.
- (2) An Agency Head may only make a request in respect of a non-ongoing APS employee if the Agency Head is satisfied that:
 - (a) the relevant duties are more appropriately undertaken by an ongoing APS employee; and
 - (b) the person to be engaged as an ongoing APS employee has the work-related qualities genuinely required to perform the relevant duties; and
 - (c) the engagement as an ongoing APS employee is at the person's classification (or equivalent) as a non-ongoing APS employee; and
 - (d) the original engagement of the person as a non-ongoing APS employee, or an extension of the engagement of the person as a non-ongoing APS employee, complied with the requirements of Subdivision B; and
 - (e) the engagement is necessary for the Agency's operations.

Note: For the meaning of *work-related qualities*, see section 5.

31 Affirmative measure—Aboriginal and Torres Strait Islander employment

- (1) An Agency Head may, consistently with Commonwealth law, identify a vacancy as open only to Aboriginal persons and/or Torres Strait Islander persons.
- (2) The Agency Head must ensure that for such a vacancy:
 - (a) each eligible applicant:
 - (i) is an Aboriginal person and/or a Torres Strait Islander person; and
 - (ii) identifies as an Aboriginal person and/or a Torres Strait Islander person; and
 - (iii) is accepted by the person's community as being an Aboriginal person and/or a Torres Strait Islander person; and
 - (b) either:
 - (i) the selection process for the vacancy otherwise satisfies the requirements of Subdivision B; or
 - (ii) section 27 (which deals with engaging APS employees on a short-term, irregular or intermittent basis) is satisfied.

Note: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

32 Affirmative measure—RecruitAbility Scheme

- (1) For the purposes of subsection 24(1), a selection process that involves short-listing candidates before deciding to engage or promote any of the short-listed candidates to fill a vacancy is applied fairly in relation to each eligible candidate if:
 - (a) the notification of the vacancy specifies, in accordance with section 25, that the RecruitAbility Scheme applies to the selection process; and
 - (b) a candidate with disability opts into the scheme for the vacancy; and
 - (c) under the scheme, the candidate is short-listed for progression to the next stage of the selection process because the candidate meets the minimum requirements and eligibility requirements (if any) for the vacancy.

Note: The RecruitAbility Scheme is a measure to make arrangements for persons with disability to be considered for engagement or promotion in circumstances where they are assessed as meeting the minimum requirements and eligibility requirements for the vacancy.

- (2) To avoid doubt, this section does not:
 - (a) require that the successful applicant be a person who applied in accordance with the RecruitAbility Scheme; or
 - (b) limit the circumstances in which the selection process is applied fairly in relation to each eligible candidate.

33 Affirmative measure—disability employment

- (1) An Agency Head may, consistently with Commonwealth law, identify a vacancy as open only to persons who have a disability or a particular type of disability.
- (2) The Agency Head must ensure that for such a vacancy:
 - (a) eligible candidates are only persons described in subsection (1); and
 - (b) one of the following applies:
 - (i) the selection process for the vacancy otherwise satisfies the requirements of Subdivision B;
 - (ii) section 27 (which deals with engaging APS employees on a short-term, irregular or intermittent basis) is satisfied;
 - (iii) a disability employment service provider has assessed each candidate as being likely to be unable to compete successfully on merit in a competitive selection process.

Note: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

34 Promotion after appointment to a statutory office

- (1) An Agency Head may, in writing, request the Commissioner to authorise the promotion of an ongoing APS employee 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:
 - (i) has not expired; or

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- (ii) 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 Agency Head as being at an APS classification that is equivalent to, or lower than, the duties of the statutory office;
- (d) the Agency Head is satisfied that the employee has the necessary work-related qualities to perform duties at the APS classification to which the employee is to be promoted.

Note: For the meaning of *work-related qualities*, see section 5.

- (2) The Commissioner may authorise the promotion, and in deciding whether to do so may also take into account:
 - (a) how long the employee was appointed to the statutory office; and
 - (b) the selection process for the appointment to the statutory office; and
 - (c) any other matter the Commissioner considers relevant.
- (3) If the Commissioner authorises the promotion, the Agency Head may promote the employee.

35 Engagement of non-APS employee following a machinery of government change

The requirements of this section are met if the Commissioner acts under paragraph 72(1)(c) or (d) of the Act to engage a person, or determine that a person becomes engaged, in a specified Agency.

36 Engagement of an ongoing Parliamentary Service employee as an ongoing APS employee

An Agency Head may engage a person who is an ongoing Parliamentary Service employee as an ongoing APS employee if the person is to be employed at a comparable classification or lower.

Example: A comparable classification or lower for a person whose Parliamentary Service Group classification is level 5 is APS Group classification level 1, 2, 3, 4 or 5.

37 Re-engagement of election candidates

Person may apply to be re-engaged as an APS employee

- (1) An Agency Head may engage a person as an APS employee if:
 - (a) the person is a former APS employee in the Agency, whose employment ended because the person resigned to contest:
 - (i) an election for a member of a House of the Parliament of the Commonwealth or of a State; or
 - (ii) an election for a member of the Legislative Assembly of the Australian Capital Territory or the Northern Territory; or
 - (iii) an election for a member of the Torres Strait Regional Authority; and
 - (b) section 32 of the Act (right of return for election candidates) applies to the person; and

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- (c) the person applies to the Agency Head to be engaged as an APS employee within the applicable timeframe mentioned in subsection (2) of this section; and
 - (d) if the former employment was non-ongoing:
 - (i) the employment would not have ended except for the resignation; and
 - (ii) the person applies to the Agency Head to be engaged before the employment would have ended if the person had not resigned.
- (2) A person mentioned in paragraph (1)(a) must apply to the relevant Agency Head:
- (a) if the result of the election is not disputed—within 2 months after the declaration of the result of the election; or
 - (b) if the result of the election is disputed—within 2 months after a court of disputed returns decides the petition disputing the result, or the petition is withdrawn or lapses; or
 - (c) if the Commissioner has made a declaration under subsection (3)—as soon as practicable after receiving notice of the declaration.
- (3) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may declare that the person is taken to be a former APS employee of a specified Agency for the purposes of paragraph (2)(c).

Example: The Commissioner may make a declaration if the Agency in which the person was employed no longer exists or is no longer responsible for duties that were previously carried out by the employee.

Basis on which person may be re-engaged as an APS employee

- (4) If the Agency Head engages the person as an APS employee, the person must be:
- (a) engaged on the same basis (ongoing or non-ongoing) as the person's employment before resigning and at the same classification; and
 - (b) assigned duties that are the same as, or similar to, the duties the person had immediately before the resignation or, if such duties are unavailable, other duties at the same classification; and
 - (c) engaged on:
 - (i) the same terms and conditions of employment that applied to the person when the person resigned; or
 - (ii) if the remuneration, or another term or condition, applying to the person's previous classification has changed since the person resigned—the changed terms and conditions.
- (5) The person's continuity of service is taken not to have been broken by the period between the person's resignation and the person's re-engagement as an APS 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 person.

Note: For entitlements to long service leave and paid maternity leave, see the *Long Service Leave (Commonwealth Employees) Act 1976* and the *Maternity Leave (Commonwealth Employees) Act 1973*.

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Specified elections

- (6) For the purposes of paragraph 32(1)(a) of the Act, the elections mentioned in subparagraphs (1)(a)(i), (ii) and (iii) of this section are specified.

38 Re-engagement of a former APS employee

- (1) The relevant Agency Head may engage a former APS employee as an ongoing or non-ongoing APS employee if:
- (a) the Agency Head is satisfied that the person's former employment should not have ended; or
 - (b) the engagement will settle legal action relating to the termination of the employee's employment; or
 - (c) an appropriate authority has recommended or ordered the reinstatement of the person.

Note: An appropriate authority includes, for example, the Federal Court of Australia, the Fair Work Commission or the Australian Human Rights Commission.

- (2) The person must be engaged:
- (a) on the same basis (ongoing or non-ongoing) as the person was when formerly employed; and
 - (b) at the same or a lower classification.

Division 2—Gazettal of certain employment decisions and promotions

39 Purpose of this Division

This Division is made for the purposes of subsection 11A(1) of the Act.

40 Gazettal of employment decisions

Decisions that must be notified

- (1) An Agency Head must notify the following employment decisions in the Public Service Gazette:
 - (a) the promotion of an ongoing APS employee;
 - (b) the promotion of an ongoing APS employee, following the decision of a Promotion Review Committee under subparagraph 5.18(1)(b)(ii) of the Regulations that has not been notified under paragraph (a) of this subsection;
 - (c) the engagement, promotion or assignment of duties of a person made in accordance with an Independent Selection Advisory Committee recommendation;
 - (d) the engagement of an ongoing Parliamentary Service employee as an ongoing APS employee at a higher classification than the person's current classification as a Parliamentary Service employee;
 - (e) the termination of the employment of an ongoing APS employee on the ground mentioned in paragraph 29(3)(g) of the Act (breach of the Code of Conduct).

Time within which notification must be made

- (2) A 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) For an employment decision to engage or promote a person that is made on the basis that the person is required to satisfy an eligibility requirement, the 3 month period mentioned in subsection (2) is taken to commence at the time the eligibility requirement is met.

Note: Examples of an eligibility requirement include a security or character clearance.

When a notification may exclude an employee's name

- (4) A notification must include the employee's name unless:
 - (a) the Agency Head decides that the name should not be included because of the person's work-related or personal circumstances; or
 - (b) if the notification is under paragraph (1)(e)—the Agency Head decides that including the name is not necessary to ensure public confidence in the integrity of the APS.
- (5) If a notification does not include the employee's name and relates to a promotion that is subject to review, the Agency Head must:

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- (a) on or before the day the decision is notified, notify all parties eligible to seek review of the promotion of their rights of review; and
 - (b) at the same time as parties are notified, advise the Merit Protection Commissioner that eligible parties have been notified.
- (6) If a notification does not include the employee's name, the Agency Head must advise the Commissioner of the employee's name as soon as practicable after the notification is published.

Notification relating to a former ongoing Parliamentary Service employee

- (7) If an employment decision is made to engage a person at a higher classification than the person's current classification as a Parliamentary Service employee, the notification must include a statement to the following effect: "This engagement of an ongoing Parliamentary Service employee at a higher classification may be subject to review by a Promotion Review Committee in accordance with Part 5 of the *Public Service Regulations 1999*".

41 Gazettal when decisions previously notified are cancelled

Decisions that must be notified

- (1) An Agency Head must notify a decision (a ***cancellation decision***) to cancel the following employment decisions in the Public Service Gazette:
- (a) a promotion notified under paragraph 40(1)(a) (in a case where the cancellation decision is made by the Agency Head);
 - (b) a promotion notified under paragraph 40(1)(a) or (b) (in a case where the cancellation decision is the result of a decision of a Promotion Review Committee);
 - (c) an engagement, promotion or assignment of duties notified under paragraph 40(1)(c);
 - (d) the engagement of an ongoing Parliamentary Service employee as an ongoing APS employee under paragraph 40(1)(d);
 - (e) a termination notified under paragraph 40(1)(e).

Time within which notification must be made

- (2) A cancellation decision must be notified in the Public Service Gazette within 3 months after the cancellation decision is made.

Requirements of notification

- (3) Notification of a cancellation decision must include:
- (a) the date that the cancellation decision took effect; and
 - (b) the person's name, unless this was not included in the original notification.

42 When promotion decisions take effect

- (1) This section applies in respect of a decision (a ***promotion decision***) to:
- (a) promote an ongoing APS employee; or

- (b) engage an ongoing Parliamentary Service employee as an ongoing APS employee at a classification that is higher than the employee's Parliamentary Service classification.

Note: Regulation 5.9 of the Regulations sets out requirements for review applications.

- (2) If a promotion decision is not subject to PRC review, the decision takes effect:
- (a) if a date of effect has been agreed by the relevant parties and is after the day the decision is notified in the Public Service Gazette—on that date; or
 - (b) otherwise—4 weeks after the day the decision is notified in the Public Service Gazette.
- (3) A promotion decision that is subject to PRC review takes effect on the date mentioned in column 2 of an item in the following table in the circumstances mentioned in column 1 of the item:

When promotion decisions take effect		
Column 1	Column 2	
Item	If the promotion decision is subject to PRC review and ...	then, the decision takes effect ...
1	no application for review is made before the end of the period within which an application for PRC review of the decision may be made	(a) if a date of effect has been agreed by the relevant parties and is after the application period ends—on that date; or (b) 2 weeks after the end of the application period
2	an application for review is made but withdrawn before the PRC makes a decision on the application	(a) if a date of effect has been agreed by the relevant parties and is after the application period ends—on that date; or (b) 2 weeks after the day the Agency Head is notified that the application was withdrawn
3	an application for review is made but the application lapses before the PRC completes its review	(a) if a date of effect has been agreed by the relevant parties and is after the Agency Head is notified that the application has lapsed—on that date; or (b) 2 weeks after the day the Agency Head is notified that the application has lapsed
4	an application for review is made but the Merit Protection Commissioner decides under subregulation 5.10(1) of the Regulations that it is unnecessary to appoint a PRC to consider the application	(a) if a date of effect has been agreed by the relevant parties and is after the Agency Head is notified of the decision of the Merit Protection Commissioner—on that date; or (b) the later of: (i) the day the Agency Head is notified; and (ii) 4 weeks after the day the decision is notified in the Public Service Gazette
5	an application for review is made and the PRC upholds the promotion decision	(a) if a date of effect has been agreed by the relevant parties and is after the Agency Head is notified of the PRC's decision—on that date; or (b) 4 weeks after the day the Agency Head is notified of the PRC's decision
6	an application for review is made and the PRC varies the promotion decision	(a) if a date of effect has been agreed by the relevant parties and is after the Agency Head is notified of the PRC's decision—on that date; or

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When promotion decisions take effect		
	Column 1	Column 2
Item	If the promotion decision is subject to PRC review and ...	then, the decision takes effect ...
		(b) 4 weeks after the day the Agency Head is notified of the PRC's decision

- (4) This section is subject to section 47 (which deals with moves between agencies on promotion).

Division 3—Engagement on probation

43 Purpose of this Division

This Division is made for the purposes of subsection 11A(1) of the Act.

44 APS employees to be engaged on probation

- (1) Subject to subsection (2), an Agency Head engaging an APS employee must ensure that the employee is engaged on probation.

Note: Subsection 22(6) of the Act allows the engagement of an APS employee to be made subject to conditions dealing with probation.

- (2) The Agency Head may waive the requirement under subsection (1) if the Agency Head is satisfied that there are reasonable circumstances justifying the waiver.
- (3) If an APS employee is engaged on a period of probation by an Agency Head to perform specified duties, the Agency Head must ensure that, during that period, processes are in place to assess the suitability of the APS employee to perform those duties.

Note: The Commissioner may, from time to time, issue guidance on matters relating to probation.

Part 5—Working in the APS

Division 1—Movement of APS employees between agencies

45 Purpose of this Division

This Division is made for the purposes of subsection 11A(1) of the Act.

46 Moves between agencies not associated with promotion

- (1) This section applies if:
- (a) an Agency Head enters into a written agreement with an ongoing APS employee for the employee to move to the Agency Head's Agency (the **new Agency**) from another Agency (the **original Agency**); and
 - (b) the movement between APS Agencies is not associated with a promotion.

Note: For the power to enter into agreements of this kind, see section 26 of the Act.

- (2) The move takes effect:
- (a) in the case of an ongoing move:
 - (i) if a date of effect has been agreed by the APS employee and the 2 Agency Heads—on the agreed date of effect; and
 - (ii) if a date of effect has not been agreed—4 weeks after the APS employee informs the original Agency Head in writing; and
 - (b) in the case of a temporary move:
 - (i) if the original Agency Head has approved it in writing—on the date of effect specified in the approval; and
 - (ii) if the original Agency Head has not approved it in writing—on the date the APS employee begins duties in the new Agency. The move has the effect of an ongoing move to the new Agency at the APS employee's existing classification.
- (3) In the case of an agreed temporary move, an agreement between the new Agency Head and the APS employee to vary the period of the move:
- (a) if approved by the original Agency Head in writing—has effect according to its terms; and
 - (b) if not approved by the original Agency Head in writing—has no effect.
- (4) To avoid doubt, an agreement to which this section applies between an Agency Head and an APS employee does not constitute an engagement of the employee by the Agency Head for the purposes of section 22 of the Act.

Movement in cases of a suspected breach of the Code of Conduct

- (5) Despite subsection (2), if:
- (a) an APS employee is suspected of having breached the Code of Conduct and is formally advised of the suspected breach in accordance with procedures established under subsection 15(3), 41B(3) or 50A(2) of the Act; and
 - (b) the matter to which the suspected breach relates has not yet been resolved;

then, unless the APS employee's current Agency Head and the new Agency Head agree otherwise, a move by the APS employee does not take effect until the matter to which the suspected breach relates is resolved.

- (6) For the purposes of subsection (5), the matter to which the suspected breach relates is taken to be resolved when:
- (a) a determination is made as to whether the APS employee has breached the Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.

47 Moves between agencies on promotion

- (1) If:
- (a) a decision is taken to promote an APS employee; and
 - (b) the APS employee is suspected of having breached the Code of Conduct and is formally advised of the suspected breach in accordance with procedures established under subsection 15(3), 41B(3) or 50A(2) of the Act; and
 - (c) the matter to which the suspected breach relates is not resolved before the APS employee moves to take up the promotion;

then, unless the APS employee's current Agency Head and the new Agency Head agree otherwise, the APS employee's promotion does not take effect until the matter to which the suspected breach relates is resolved.

- (2) For the purposes of subsection (1), the matter to which the suspected breach relates is taken to be resolved when:
- (a) a determination is made as to whether the APS employee has breached the Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.

Division 2—Performance management and culture

48 Purpose of this Division

This Division is made for the purposes of subsection 11A(2) of the Act.

49 Achieving effective performance—Agency Heads

Achieving effective performance

- (1) An Agency Head upholds APS Employment Principle 10A(1)(d) by ensuring the following:
 - (a) the Agency has performance management policies and processes that:
 - (i) support a high performance culture; and
 - (ii) proactively identify, foster and develop APS employees to fulfil their potential; and
 - (iii) provide for effective performance management; and
 - (iv) are fair, open and effective; and
 - (v) are clearly communicated to APS employees;
 - (b) the Agency builds the organisational capability necessary to achieve the outcomes of the Agency properly expected by the Government;
 - (c) each APS employee in the Agency is given:
 - (i) a clear statement of the performance and behaviour expected of the employee; and
 - (ii) opportunities to discuss performance;
 - (d) each APS employee in the Agency receives feedback from supervisors about their performance consistent with the Agency's performance management policies and processes;
 - (e) the Agency requires supervisors to manage the performance of APS employees under their supervision effectively, including by engaging in career conversations;
 - (f) the Agency supports supervisors to manage the performance of APS employees under their supervision, including by providing appropriate training in performance management;
 - (g) the Agency's performance management policies and processes are used to guide salary movement.

Dealing with unsatisfactory performance

- (2) An Agency Head upholds APS Employment Principle 10A(1)(d) by ensuring the following:
 - (a) the Agency's performance management policies and processes dealing with unsatisfactory performance are available to supervisors and APS employees in the Agency, and include information that clearly sets out:
 - (i) the responsibilities of supervisors; and
 - (ii) the possible outcomes if an APS employee's performance is considered unsatisfactory; and

- (iii) that if an APS employee's performance is considered to be unsatisfactory, the employee has a responsibility to engage constructively with their supervisor and other relevant persons (including the Agency's human resources area) in resolving the performance issues and acting on performance feedback;
- (b) those policies and processes are applied in a timely manner if an APS employee's performance is considered unsatisfactory.

Note: Paragraph 10A(1)(d) of the Act provides that the APS is a career-based public service that requires effective performance from each employee.

50 Achieving effective performance—supervisors

A supervisor of an APS employee upholds APS Employment Principle 10A(1)(d) by doing the following:

- (a) promoting and fostering effective performance by the APS employee;
- (b) conducting, at least annually, career conversations that deal with the APS employee's performance, potential, aspirations, organisational fit and future opportunities;
- (c) ensuring that the APS employee has a performance agreement that is consistent with the Agency's corporate plan and the work level standards for the APS employee's classification;
- (d) ensuring that the APS employee is provided with clear, honest and timely feedback about the employee's performance;
- (e) managing and assessing the APS employee's performance in accordance with the Agency's performance management policies and processes;
- (f) working to improve the supervisor's capability in effectively managing the performance of APS employees, including through appropriate training;
- (g) promptly and actively managing unsatisfactory performance by the APS employee in accordance with the Agency's performance management policies and processes, including by:
 - (i) identifying the nature of the unsatisfactory performance at the earliest opportunity; and
 - (ii) maintaining appropriate records; and
 - (iii) engaging with the APS employee and other relevant persons (including the Agency's human resources area and the supervisor's manager) to discuss the unsatisfactory performance, and facilitate a collective understanding about the nature of the unsatisfactory performance.

Note: Paragraph 10A(1)(d) of the Act provides that the APS is a career-based public service that requires effective performance from each employee.

51 Achieving effective performance—APS employees

An APS employee upholds APS Employment Principle 10A(1)(d) by doing the following:

- (a) striving to perform to the best of their ability, at the work level standard for the APS employee's classification and consistent with the APS employee's performance agreement;

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- (b) engaging constructively with their supervisor to clarify work expectations and what is required to perform effectively;
- (c) participating constructively in the Agency's performance management processes, including career conversations;
- (d) being open to receiving feedback and acting on feedback in a timely manner;
- (e) seeking opportunities to improve individual and team performance;
- (f) if informed that the APS employee's performance is unsatisfactory, engaging constructively by:
 - (i) cooperating with their supervisor and other relevant persons (including the Agency's human resources area) to resolve the issues relating to the unsatisfactory performance in a timely manner; and
 - (ii) undertaking any necessary training or remedial or corrective measures as directed.

Note: Paragraph 10A(1)(d) of the Act provides that the APS is a career-based public service that requires effective performance from each employee.

52 Managing performance in cases of a potential breach of the Code of Conduct

An Agency Head must have regard to any relevant standards and guidance issued by the Commissioner if:

- (a) an APS employee in the Agency has engaged in conduct that:
 - (i) may breach the Code of Conduct; and
 - (ii) raises concerns relating to effective performance; and
- (b) the Agency Head is considering whether to initiate an inquiry under procedures established by the Agency Head under subsection 15(3) of the Act.

Note: See also Part 7.

Part 6—Employment-related information

53 Purpose of this Part

This Part is made for the purposes of subsection 11A(1) of the Act.

54 Collection of employment-related information

- (1) An Agency Head must:
 - (a) ensure that there are measures in place to collect from each APS employee in the Agency the information specified in subsection (2); and
 - (b) give that information to the Commissioner.
- (2) For the purposes of subsection (1), the following information is specified:
 - (a) the information required by the data specifications for the database known as the Australian Public Service Employment Database, as set out in the Australian Public Service Employment Database Specifications 2013, as existing at the commencement of this section;
 - (b) the information required by the data specifications for the database known as the Australian Public Service Remuneration Survey, as set out in the Australian Public Service Remuneration Survey Data Specifications 2021, as existing at the commencement of this section.

Note: The Australian Public Service Employment Database Specifications 2013, and the Australian Public Service Remuneration Survey Data Specifications 2021, could in 2022 be viewed on the Commission’s website (www.apsc.gov.au).

- (3) In seeking information specified in paragraph (2)(a), an Agency Head must allow APS employees to provide a response of “choose not to give this information” in relation to:
 - (a) whether the APS employee is:
 - (i) a person with a disability; or
 - (ii) an Aboriginal and/or Torres Strait Islander person; or
 - (iii) from a culturally and linguistically diverse background, including a non-English speaking background; or
 - (b) the APS employee’s educational qualifications or prior employment.

55 Requirement to give information, or documents, about workplace relations to the Commissioner

- (1) If the Commissioner requires an Agency Head to give the Commissioner particular information, or documents, about workplace relations relating to APS employees in the Agency, the Agency Head must comply with the requirement.
- (2) However, subsection (1) does not require the Agency Head to give the Commissioner personal information (within the meaning of the *Privacy Act 1988*), whether in a document or otherwise.

Note: The *Privacy Act 1988* applies to personal information given by an Agency Head under this section.

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56 Prompt, accurate giving of information to the Commissioner

- (1) An Agency Head must ensure that there are measures in place to promptly give the Commissioner accurate information that is:
 - (a) collected as described in subsection 54(1); or
 - (b) described in subsection 55(1).
- (2) An Agency Head must ensure that, if the Commissioner seeks that information in a particular form, there are measures in place to give the Commissioner the information in that form.

Part 7—Handling suspected breaches of the Code of Conduct

Division 1—Introduction

57 Purpose of this Part

For the purposes of paragraph 15(4)(a) of the Act, this Part sets out the basic procedural requirements with which procedures established by an Agency Head under subsection 15(3) of the Act must comply.

Note 1: Subsection 15(3) of the Act requires an Agency Head to establish written procedures for determining:

- (a) whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct; and
- (b) what sanction, if any, should be imposed on an APS employee for a breach of the Code of Conduct.

Note 2: See also section 52 (which deals with managing performance in cases of a potential breach of the Code of Conduct).

58 Application to former APS employees

In Division 2 (other than subparagraph 59(a)(ii) and section 60), a reference to an APS employee in an Agency includes a reference to a former APS employee who is suspected of having breached the Code of Conduct while an employee in the Agency.

Division 2—Basic procedural requirements

59 Employee must be informed that a determination is being considered

A determination may not be made in relation to a suspected breach of the Code of Conduct by an APS employee unless reasonable steps have been taken to:

- (a) inform the APS employee of:
 - (i) the details of the suspected breach (including any subsequent variation of those details); and
 - (ii) the sanctions that may be imposed on the APS employee under subsection 15(1) of the Act; and
- (b) give the APS employee a reasonable opportunity to make a statement in relation to the suspected breach.

60 Employee must be informed before a sanction is imposed

If a determination is made that an APS employee has breached the Code of Conduct, a sanction may not be imposed unless reasonable steps have been taken to:

- (a) inform the APS employee of:
 - (i) the determination; and
 - (ii) the sanction or sanctions that are under consideration; and
 - (iii) the factors that are under consideration in determining any sanction to be imposed; and
- (b) give the APS employee a reasonable opportunity to make a statement in relation to sanctions under consideration.

61 Person making determination to be independent and unbiased

An Agency Head must take reasonable steps to ensure that:

- (a) the person who determines whether an APS employee has breached the Code of Conduct is, and appears to be, independent and unbiased; and
- (b) the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.

62 Determination process to be informal

The process for determining whether an APS employee has breached the Code of Conduct must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

63 Record of determination and sanctions

If a determination is made in relation to a suspected breach of the Code of Conduct by an APS employee, a written record must be made of:

- (a) the suspected breach; and
- (b) the determination; and

- (c) any sanctions imposed as a result of a determination that the APS employee breached the Code of Conduct; and
- (d) if a statement of reasons was given to the APS employee—the statement of reasons.

Note: The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this section.

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Division 3—Additional procedural requirements for SES employees

64 Role of Commissioner

If an SES employee in an Agency is suspected of breaching the Code of Conduct, the Agency Head must:

- (a) consult with the Commissioner on the process for determining whether the employee has breached the Code of Conduct; and
- (b) if considering imposing a sanction—consult with the Commissioner before imposing the sanction.

Note: The Commissioner may, from time to time, issue guidance about matters relating to breaches of the Code of Conduct.

Part 8—Other employment matters

65 Purpose of this Part

This Part is made for the purposes of subsection 11A(1) of the Act.

66 Restrictions on engaging a person who has received a redundancy benefit

- (1) An Agency Head may engage as an APS employee a person who has received a redundancy benefit only if:
- (a) the Agency Head considers the person's engagement is essential for the Agency's operations, having regard to:
 - (i) the nature of the duties to be performed; and
 - (ii) the work-related qualities of the person; and
 - (b) the Commissioner has approved the person's engagement if the person is to be engaged as an ongoing APS employee (including as an ongoing SES employee) or as a non-ongoing SES employee.

Note: For the meaning of *work-related qualities*, see section 5.

- (2) In this section:

person who has received a redundancy benefit means a person who has received a redundancy benefit:

- (a) from an APS agency or the Australian Parliamentary Service; and
- (b) for which the redundancy benefit period has not ended.

redundancy benefit means:

- (a) a severance payment, or similar payment, made to an employee on the ending of the employee's employment; or
- (b) a payment made to an employee as a result of the shortening of a retention period; or
- (c) an incentive to retire payment under section 37 of the Act or section 37 of the *Parliamentary Service Act 1999*;

but not:

- (d) a payment made to an employee as redundancy pay under section 119 of the *Fair Work Act 2009*; or
- (e) a payment made to a person in lieu of notice of termination of employment.

Note: For paragraph (d), the amount of the payment mentioned in that paragraph is known as the National Employment Standards redundancy amount.

redundancy benefit period, relating to a person's redundancy benefit, means the period:

- (a) beginning on the day after the person's employment ends; and
- (b) ending on the last day at the end of the relevant number of weeks, where the relevant number is worked out using the following formula (rounded down to the nearest whole number):

Section 67

$$\frac{\text{Gross amount of employee's redundancy benefit}}{\text{Weekly salary}}$$

where:

weekly salary means:

- (a) for a person who has periods of full-time and part-time service and whose redundancy benefit is calculated on the basis of a part-time weekly salary—the full-time equivalent of the part-time weekly salary; or
- (b) in any other case—the weekly salary used to calculate the redundancy benefit.

67 Matters relating to leave without pay

- (1) An Agency Head must grant leave without pay to an ongoing APS employee who applies for the leave to undertake or continue employment:
 - (a) for the purposes of section 13 of the *Governor-General Act 1974*; or
 - (b) for the purposes of section 13 or 20 of the *Members of Parliament (Staff) Act 1984*.
- (2) If an APS employee who has been granted leave without pay to undertake or continue employment for the purposes mentioned in paragraph (1)(a) or (b) notifies the employee's Agency Head, in writing, that the employee wishes to return to the Agency to undertake duties:
 - (a) the Agency Head must arrange for the APS employee to return to the Agency as soon as practicable; and
 - (b) the Agency Head must arrange for the APS employee to undertake duties at the employee's classification immediately before the employee was granted leave without pay or, if the classification no longer exists, at an equivalent classification determined by the Agency Head.

Note 1: The right of return under subsection (2) applies in relation to leave without pay whether granted before or after the commencement of these provisions.

Note 2: APS employees also have certain rights of return from leave granted under the *Australian Civilian Corps Act 2011* and these are provided in the *Prime Minister's Australian Civilian Corps Directions 2012*.

Part 9—Delegation

68 Delegation by the Commissioner

- (1) The Commissioner may delegate, in writing, any of the Commissioner's powers or functions under this instrument (other than under this section) to:
 - (a) a person who holds any office or appointment under an Act; or
 - (b) an SES employee or acting SES employee.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

- (2) A person (the **first delegate**) to whom powers or functions are delegated under subsection (1) may, in writing, delegate any of those powers or functions to another person (the **second delegate**).
- (3) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subsection (2), the first delegate must give corresponding directions to the second delegate.
- (4) A person exercising powers or functions under a delegation under this section must comply with any directions given by the Commissioner.

69 Delegation by Agency Head

- (1) An Agency Head may delegate, in writing, any of the Agency Head's powers or functions under this instrument (other than under this section) to a person.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

- (2) However, an Agency Head cannot delegate powers or functions to an outsider, being a person other than:
 - (a) an APS employee; or
 - (b) a person appointed to an office by the Governor-General, or by a Minister, under a law of the Commonwealth;without the prior written consent of the Commissioner.
- (3) A person (the **first delegate**) to whom powers or functions are delegated under subsection (1) may, in writing delegate any of the powers or functions to another person (the **second delegate**).
- (4) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subsection (3), the first delegate must give corresponding directions to the second delegate.
- (5) A person exercising powers or functions under a delegation under this section must comply with any directions of the Agency Head who delegated the power or function.

Part 10—Application and transitional provisions

Division 1—Provisions for this instrument as originally made

70 Definitions

In this Division:

commencement time means the time this section commences.

old directions means the *Australian Public Service Commissioner's Directions 2016*.

71 Things done under the old directions

- (1) If:
 - (a) a thing was done for a particular purpose under the old directions before the commencement time; and
 - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

72 Conduct, event or circumstance occurring before commencement time

- (1) To avoid doubt, a function or duty may be performed, or a power exercised, under this instrument in relation to conduct engaged in, an event that occurred, or a circumstance that arose, before the commencement time.
- (2) This section does not limit this Division or section 7 of the *Acts Interpretation Act 1901* (as that Act applies in relation to this instrument because of paragraph 13(1)(a) of the *Legislation Act 2003*).

73 Integrity of the APS

- (1) Division 2 of Part 3 applies in relation to APS employees engaged after the commencement time.
- (2) Division 3 of Part 3 applies in relation to agreements entered into after the commencement time (whether the dispute to which the agreement relates arose before or after the commencement time).

74 Recruitment and selection

- (1) Part 4 applies in relation to selection processes for vacancies that first exist after the commencement time.

- (2) Despite the repeal of the old directions by this instrument, Part 3 of the old directions continues to apply, as if the repeal had not happened, in relation to selection processes for vacancies that first exist before the commencement time.

75 Delegations

- (1) A delegation made under section 51 of the old directions that was in force immediately before the commencement time continues in force (and may be dealt with) as if it had been made under section 68 of this instrument.
- (2) A delegation made under section 52 of the old directions that was in force immediately before the commencement time continues in force (and may be dealt with) as if it had been made under section 69 of this instrument.

Schedule 1—Repeals

Australian Public Service Commissioner's Directions 2016

1 The whole of the instrument

Repeal the instrument.