



Parliamentary Service Determination 2024

We, Senator the Hon Sue Lines, President of the Senate, and the Hon Milton Dick MP, Speaker of the House of Representatives, make the following determination.

Dated 27th of September

2024

Senator the Hon Sue Lines
President of the Senate

The Hon Milton Dick MP
Speaker of the House of Representatives

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Part 1—Preliminary

1 Name

This instrument is the *Parliamentary Service Determination 2024*.

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	1 October 2024.	1 October 2024

Note: This table relates only to the provisions of this instrument as originally made.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 the *Parliamentary Service Act 1999*.

Note: See section 71 of the Act.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

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

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

In this instrument:

Aboriginal person has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

Act means the *Parliamentary Service Act 1999*.

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affected employee has the meaning given by subsection 80(1).

affected former employee has the meaning given by subsection 115(1).

Agency Head has the same meaning as in the *Public Service Act 1999*.

APS agency means an Agency within the meaning of the *Public Service Act 1999*.

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

classification means:

- (a) in relation to a Parliamentary Service employee or Parliamentary Service employment—an approved classification within the meaning of the Parliamentary Service Classification Rules; or
- (b) in relation to an APS employee or employment as an APS employee—an approved classification within the meaning of the *Public Service Classification Rules 2000* as in force on 1 October 2024.

comparable classification or lower, in relation to an APS employee, has the meaning given by section 6.

debtor means a Secretary, or a Parliamentary Service employee, who owes a judgment debt.

discloser has the same meaning as in the *Public Interest Disclosure Act 2013*.

eligible employee: see subsection 23(9).

employer powers, of a Secretary, means the rights, duties and powers of the Secretary under the Act and instruments (including this instrument) made under the Act.

employment means Parliamentary Service employment.

external review body does not include a court or tribunal.

higher classification, in relation to an APS employee, has the meaning given by section 7.

Independent Selection Advisory Committee or ***ISAC*** means an Independent Selection Advisory Committee established under section 102.

intelligence agency means an organisation continued in existence by:

- (a) the *Australian Security Intelligence Organisation Act 1979*; or
- (b) section 16 or 27A of the *Intelligence Services Act 2001*.

ISAC: see ***Independent Selection Advisory Committee***.

judgment debt has the same meaning as in section 67 of the Act.

medical practitioner means a person who is registered, or licensed, as a health practitioner under a law of a State or Territory that provides for the registration or licensing of health practitioners.

Section 5

net salary of a debtor means 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 appointment or engagement as a Secretary or a Parliamentary Service employee; and
 - (ii) is the minimum amount required by law or the rules of the fund.

Parliamentary Service action has the meaning given by subsection 33(7) of the Act.

Parliamentary Service Classification Rules means the *Parliamentary Service Classification Rules 2010* as in force on 1 October 2024.

Parliamentary Service Commissioner means the Parliamentary Service Commissioner appointed under the Act.

paying officer, in relation to a debtor, means a person appointed under section 128 for the purpose of making deductions from the debtor's salary.

personal information has the same meaning as in the *Privacy Act 1988*.

PRC: see *Promotion Review Committee*.

PRC review means review by a Promotion Review Committee under Division 2 of Part 7 of this instrument.

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; but
- (b) does not include:
 - (i) the allocation of a higher classification within the same broadband in the same Department; or
 - (ii) the allocation of a classification to a trainee under rule 11 of the Parliamentary Service Classification Rules.

Note: The following are not promotions:

- (a) following a voluntary temporary reduction in an ongoing Parliamentary Service employee's classification—the ongoing assignment of duties to the employee at the original classification;
- (b) the temporary assignment 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 section 69.

public interest disclosure has the same meaning as in the *Public Interest Disclosure Act 2013*.

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

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Note: The Public Service Gazette is accessible through the APSJobs website (<http://www.apsjobs.gov.au>).

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 Parliamentary Service Classification Rules.

relevant Secretary, for a 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.

reviewable action has the meaning given by section 81.

SES vacancy means a vacancy at an SES classification as set out in the Parliamentary Service Classification Rules.

sexually harass has the same meaning as in 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 has the meaning given by section 8.

statutory office holder has the meaning given by subsection 14(3) of the Act.

Torres Strait Islander has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

total gross salary of a debtor means the total of:

- (a) the amount of the debtor’s gross salary as a Secretary or a Parliamentary Service employee (not including any payment of compensation under the *Safety, Rehabilitation and Compensation Act 1988*); and
- (b) the amount of the allowances, in the nature of salary, that are paid regularly to the debtor in connection with the debtor’s appointment or engagement as a Secretary or a Parliamentary Service employee;

without any reduction for salary sacrifice arrangements or other arrangements with a similar purpose.

training classification means a classification mentioned in column 2 of Schedule 2 to the Parliamentary Service Classification Rules.

tribunal means a tribunal constituted under an enactment.

vacancy: a **vacancy** exists in a Department when a decision has been made that:

- (a) a specified group of duties needs to be performed; and
- (b) it is appropriate to consider:
 - (i) engaging a person to perform the duties; or
 - (ii) promoting a Parliamentary Service employee to perform the duties; or
 - (iii) assigning the duties to a Parliamentary Service employee.

work level standards, for a classification, means the work level standards for the classification, as referred to in rule 10 of the Parliamentary Service Classification Rules.

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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.

6 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 of an item in the following table; and
- (b) immediately before the engagement, the person was engaged as an ongoing APS employee at the classification mentioned in column 2 of that item.

Meaning of *comparable classification or lower*

	Column 1	Column 2
Item	Parliamentary Service Group classification	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

7 Meaning of *higher classification*

A person who is an ongoing APS employee is engaged as an ongoing Parliamentary Service employee at a **higher classification** than the person's classification as an ongoing APS employee immediately before the engagement if:

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

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Meaning of <i>higher classification</i>		
	Column 1	Column 2
Item	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

8 Meaning of *similar vacancy*

- (1) In this instrument, a vacancy is a ***similar vacancy*** to another vacancy that has been notified in the Public Service Gazette (the ***notified vacancy***) if:
- (a) the vacancy and the notified vacancy are for the same category of employment (ongoing or non-ongoing); and
 - (b) the work-related qualities required by a person to perform the duties of the vacancy and the notified vacancy are similar; and
 - (c) the vacancy and the notified vacancy are:
 - (i) at the same classification; or
 - (ii) if the notified vacancy is in an APS agency—at the same corresponding classification under the *Public Service Classification Rules 2000* as in force on 1 October 2024; or
 - (iii) if the notified vacancy is in an intelligence agency—at the same corresponding classification under the agreement about corresponding classifications made between the Director-General of the relevant intelligence agency and the Parliamentary Service Commissioner; and
 - (d) the vacancy and the notified vacancy are for duties to be performed in a similar location; and
 - (e) any of the following apply:
 - (i) the vacancy is an SES vacancy;
 - (ii) the vacancy is in a centrally coordinated entry-level program;
 - (iii) the vacancy and the notified vacancy are in the same Department;
 - (iv) the Secretary of the Department in which the notified vacancy existed and another Secretary agree, in writing, that the vacancy is a similar vacancy to the notified vacancy;
 - (v) the Agency Head of the APS agency in which the notified vacancy existed and a Secretary agree, in writing, that the vacancy is a similar vacancy to the notified vacancy;
 - (vi) the Director-General of the intelligence agency in which the notified vacancy existed and a Secretary agree, in writing, that the vacancy is a similar vacancy to the notified vacancy.

- (2) The notified vacancy mentioned in subsection (1) may be a vacancy that exists in a Department, an APS agency or an intelligence agency.

Part 2 Parliamentary Service Values

Division 1 Preliminary

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Part 2—Parliamentary Service Values

Division 1—Preliminary

9 Purpose of this Part

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

Division 2—Parliamentary Service Values

10 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 providing 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 within a Department and with other Departments and APS agencies and the wider community;
- (e) promoting continuous improvement and managing change effectively;
- (f) identifying and managing areas of potential risk;
- (g) pursuing and supporting training and development to improve capability;
- (h) being responsive to the needs of the Parliament and understanding the environment in which it operates.

11 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) providing leadership in supporting the Parliament;
- (h) supporting systems that give Parliamentary Service employees appropriate opportunities to develop and demonstrate leadership qualities.

12 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) contributing to an inclusive workplace culture;

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- (f) collaborating and being open to ideas in supporting the Parliament;
- (g) complying with all relevant anti-discrimination laws.

13 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.

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

Division 3—Integrity of the Parliamentary Service

15 Mandatory integrity training for Parliamentary Service employees

- (1) A Secretary who engages a person as an ongoing Parliamentary Service employee must make arrangements for the Parliamentary Service employee to:
 - (a) undergo a program of training about integrity; and
 - (b) do so within 6 months of being engaged.
- (2) A Secretary who engages a person as a non-ongoing Parliamentary Service employee must make arrangements for the Parliamentary Service 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 a Parliamentary Service employee; and
 - (b) the person completed a program of training about integrity in relation to that engagement in accordance with this section.

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

A Secretary must consult the Parliamentary Service Commissioner before entering into an agreement that:

- (a) is to be with a person who is or was a Parliamentary Service employee; and
- (b) settles a dispute about a matter that relates to:
 - (i) the person's Parliamentary Service 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.

17 Notifying the Parliamentary Service 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, a Secretary enters into an agreement that:
 - (a) is with a person who is or was a Parliamentary Service employee; and
 - (b) settles a dispute about a matter that relates to the person's Parliamentary Service employment; and
 - (c) limits the person's freedom to disclose information about the matter, the dispute or its settlement.
- (2) The Secretary must notify the Parliamentary Service Commissioner of the number of agreements described in subsection (1) entered into during that financial year.

Part 2 Parliamentary Service Values

Division 3 Integrity of the Parliamentary Service

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- (3) The notification must be given within 31 days after the end of that financial year or within such longer period that the Parliamentary Service Commissioner allows.

Part 3—Parliamentary Service employment

Division 1—Engagement of non-ongoing employees

18 Engagement of SES employees for a specified term

- (1) For the purposes of subsection 22(4) of the Act, this section prescribes circumstances in which a Secretary may engage a person as an SES employee for a specified term.

Note 1: 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 Parliamentary Service employee.

Note 2: Paragraph 10A(1)(c) of the Act requires engagement and promotion decisions to be based on merit. Division 2 of this Part explains how this employment principle is to be applied.

- (2) Subject to subsection (4), a Secretary may engage a person as an SES employee for a specified term if the term does not exceed 5 years.
- (3) For the purposes of subsection 22(5) of the Act and subject to subsection (4) of this section, if a person has been engaged for a specified term of less than 5 years, the engagement may be extended once or more than once, but only to the extent that the total term does not exceed 5 years.
- (4) A Secretary may engage a person under a contract of employment as an SES employee for a specified term only if the Secretary is reasonably satisfied that entering into the contract would not contravene subsection 333E(1) of the *Fair Work Act 2009*.

Note: Subsection 333E(1) of the *Fair Work Act 2009* is about limitations on fixed term contracts.

19 Engagement of non-ongoing non-SES employees

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

Note 1: 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 Parliamentary Service employee.

Note 2: Paragraph 10A(1)(c) of the Act requires engagement and promotion decisions to be based on merit. Division 2 of this Part explains how this employment principle is to be applied.

Engagement for duration of specified task

- (2) A Secretary may engage a person under a contract of employment as a non-ongoing non-SES employee for the duration of a specified task only if the Secretary is reasonably satisfied that entering into the contract would not contravene subsection 333E(1) of the *Fair Work Act 2009*.

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Note: Subsection 333E(1) of the *Fair Work Act 2009* is about limitations on fixed term contracts.

- (3) If a Secretary engages a person as a non-ongoing non-SES employee for the duration of a specified task (whether or not under a contract of employment), 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.

Engagement for specified term

- (4) Subject to subsection (8), a Secretary may engage a person as a non-ongoing non-SES 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
 - (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 Parliamentary Service employment, but prefers to be engaged as a non-ongoing Parliamentary Service employee; or
 - (e) the person is an ongoing APS employee.

Note: For the purposes of paragraph (a), the Department may, for example:

- (a) have a temporary increase in its workload; or
 - (b) have a temporary demand for employees with particular skills; or
 - (c) need to replace an ongoing Parliamentary Service employee who is on leave or who is assigned to other duties.
- (5) Subject to subsection (8), if a Secretary engages a person as a non-ongoing non-SES employee for a specified term as described in subsection (4):
- (a) the period of the engagement must be a period that represents a reasonable estimate of the time required for the performance of the duties; and
 - (b) subject to subsections (6) and (8), the total period of the engagement, including any extensions of the engagement, must not exceed 3 years.
- (6) Subject to subsection (8), the period of 3 years mentioned in paragraph (5)(b) 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 Parliamentary Service Commissioner:
 - (i) is satisfied that special circumstances exist; and
 - (ii) authorises the Secretary to extend the engagement.

- (7) Subject to subsection (8), a Secretary may engage a person as a non-ongoing non-SES employee for a specified term 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, to engage the person as a non-ongoing employee for that term.
- (8) A Secretary may engage a person under a contract of employment as a non-ongoing non-SES employee for a specified term as described in subsection (4) or (7) only if the Secretary is reasonably satisfied that entering into the contract would not contravene subsection 333E(1) of the *Fair Work Act 2009*.

Note: Subsection 333E(1) of the *Fair Work Act 2009* is about limitations on fixed term contracts.

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Division 2—Merit in engagement and promotion

Subdivision A—Preliminary

20 Purpose of this Division

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

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

A Secretary upholds the Parliamentary Service Employment Principle mentioned in paragraph 10A(1)(c) of the Act when deciding whether to engage or promote a person if the Secretary ensures that the decision is based on a selection process that meets the requirements of:

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

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

Note 2: See sections 26 and 26A of the Act for the engagement of an ongoing APS employee as an ongoing or non-ongoing Parliamentary Service employee.

Subdivision B—Merit-based selection processes

22 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: Sections 18 and 19 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

Decision-making considerations

- (2) When making a decision in relation to an eligible candidate using a selection process described in 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 the purposes of 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 Departmental requirements.

23 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) both:
 - (i) the vacancy 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) both:
 - (i) the vacancy (the **new vacancy**) is a similar vacancy to another vacancy (the **other vacancy**); and
 - (ii) the other vacancy 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 8.

- (2) For the purposes of subparagraph (1)(a)(ii), 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 Secretary was satisfied that there were special circumstances and the Secretary approved a shorter period—the end of that shorter period;
 - (c) if the vacancy required approval by the Parliamentary Service Commissioner under subsection (3) before it could be notified—the Secretary obtained that approval before the vacancy, or a class of vacancies including the vacancy, was notified.

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

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

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

- (4) 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 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 Parliamentary Service 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 Department notification

- (6) A Department participating in a multiple Department 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:
- (a) within 4 weeks before or 4 weeks after the Gazette notification; and
 - (b) with the same closing date for applications as the day specified in 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 in relation to a vacancy means a person who:

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

24 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 22 and 23, the following apply:

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

Subdivision C—Selection processes for certain types of engagements and promotions

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

- (1) A Secretary may engage a person to perform duties as a non-ongoing Parliamentary Service employee if:
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- (a) the engagement is for a specified term or the duration of a specified task and the period of employment is 12 months or less; or
 - (b) the engagement is for duties that are irregular or intermittent.
- (2) A Secretary 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 Secretary 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 18 months.

- (3) The Secretary 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 employment registers.

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

Note: Section 18 and 19 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

26 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 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 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.

Note: Sections 18 and 19 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

27 Engagement of ongoing Parliamentary Service employee as non-ongoing Parliamentary Service employee

A Secretary may engage a person who is an ongoing Parliamentary Service employee to perform duties as a non-ongoing Parliamentary Service employee if:

- (a) the person is to be engaged for a specified term or specified task; and
- (b) the person resigns as an ongoing Parliamentary Service 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: Sections 18 and 19 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

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

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

29 Affirmative measure—Aboriginal and Torres Strait Islander employment

- (1) A Secretary may, consistently with Commonwealth law, identify a vacancy as open only to Aboriginal persons and Torres Strait Islanders.
- (2) The Secretary must ensure that for such a vacancy:
 - (a) each candidate is an Aboriginal person or a Torres Strait Islander; and
 - (b) either:
 - (i) the selection process for the vacancy otherwise satisfies the requirements of Subdivision B; or
 - (ii) section 25 (which deals with engaging Parliamentary Service employees on a short-term, irregular or intermittent basis) is satisfied.

Note: Sections 18 and 19 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

30 Affirmative measure—RecruitAbility Scheme

- (1) For the purposes of subsection 22(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:

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- (a) the notification of the vacancy in accordance with section 23 specifies 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 that candidate:
 - (i) has the work-related qualities required to perform the relevant duties for the vacancy; and
 - (ii) meets the 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 candidate 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.

31 Affirmative measure—disability

- (1) A Secretary may, consistently with Commonwealth law, identify a vacancy as open only to persons with disability or a particular type of disability.
- (2) The Secretary 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 25 (which deals with engaging Parliamentary Service employees on a short-term, irregular or intermittent basis) is satisfied;
 - (iii) an organisation that facilitates access to employment for persons with disabilities has assessed each candidate as being likely to be unable to compete successfully on merit in a competitive selection process.

Note: Sections 18 and 19 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

32 Promotion after appointment to a statutory office

- (1) A Secretary may, in writing, request the Parliamentary Service Commissioner to authorise the promotion of an ongoing Parliamentary Service 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 Parliamentary Service Commissioner, or a representative of the Parliamentary Service 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
 - (ii) expired no more than 3 months before the Parliamentary Service Commissioner was asked to authorise the promotion;

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- (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 necessary work-related qualities to perform duties at the classification to which the employee is to be promoted.
- (2) The Parliamentary Service Commissioner may authorise the promotion, and in deciding whether to do so may 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 Parliamentary Service Commissioner considers relevant.
- (3) If the Parliamentary Service Commissioner authorises the promotion, the Secretary may promote the employee.

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

A Secretary may 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.

Note 1: For *comparable classification or lower*, in relation to an APS employee, see section 6.

Note 2: See sections 26 and 26A of the Act for the engagement of an ongoing APS employee as an ongoing or non-ongoing Parliamentary Service employee.

34 Re-engagement of election candidates

Person may apply to be re-engaged as a Parliamentary Service employee

- (1) A Secretary may engage a person as a Parliamentary Service employee if:
- (a) the person is a former Parliamentary Service employee, whose employment ended because they 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
 - (c) the person applies to the Secretary to be engaged as a Parliamentary Service 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 Secretary 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 Secretary:

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- (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 Parliamentary Service Commissioner has made a declaration under subsection (3)—as soon as practicable after receiving notice of the declaration.
- (3) If the Parliamentary Service Commissioner is satisfied that it is appropriate to do so, the Parliamentary Service Commissioner may declare that the person is taken to be a former Parliamentary Service employee for the purposes of paragraph (2)(c).

Example: The Parliamentary Service Commissioner may make a declaration if the Department 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 a Parliamentary Service employee

- (4) If the Secretary engages the person as a Parliamentary Service 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 a Parliamentary Service employee, but that period does not count as service for the purposes of:
- (a) the National Employment Standards; or
 - (b) any of the following that applies to the person:
 - (i) a fair work instrument;
 - (ii) a transitional instrument within the meaning of the transitional Schedules to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;
 - (iii) a determination under subsection 24(1) or (3) of the *Parliamentary Service Act 1999*;
 - (iv) a written contract of employment.

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.

35 Re-engagement of a former Parliamentary Service employee

- (1) The relevant Secretary may engage a person who is a former Parliamentary Service employee as an ongoing or non-ongoing Parliamentary Service employee if:
- (a) the Secretary is satisfied that the person's former employment as a Parliamentary Service employee should not have ended; or
 - (b) the engagement will settle legal action relating to the termination of the person's employment as a Parliamentary Service employee; 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 3—Engagement on probation

36 Purpose of this Division

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

37 Parliamentary Service employees to be engaged on probation

- (1) Subject to subsection (2), a Secretary engaging a Parliamentary Service employee (other than an employee engaged for duties that are irregular or intermittent) must ensure that the employee is engaged on probation.

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

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

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

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Division 4—Assignment of duties and movement between Departments

38 Purpose of this Division

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

39 Moves between Departments not associated with promotion

- (1) This section applies if:
 - (a) a Secretary enters into a written agreement with an ongoing Parliamentary Service employee for the employee to move to the Secretary's Department (the *new Department*) from another Department (the *original Department*); and
 - (b) the movement between Departments is not associated with a promotion.
- (2) The move takes effect:
 - (a) in the case of an ongoing move:
 - (i) if a date of effect has been agreed by the Parliamentary Service employee and the 2 Secretaries—on the agreed date of effect; and
 - (ii) if a date of effect has not been agreed—4 weeks after the Parliamentary Service employee informs the original Secretary in writing; and
 - (b) in the case of a temporary move:
 - (i) if the original Secretary has approved it in writing—on the date of effect specified in the approval; and
 - (ii) if the original Secretary has not approved it in writing—on the date the Parliamentary Service employee begins duties in the new Department. The move has the effect of an ongoing move to the new Department at the Parliamentary Service employee's existing classification.
- (3) In the case of an agreed temporary move, an agreement between the new Secretary and the Parliamentary Service employee to vary the period of the move:
 - (a) if approved by the original Secretary in writing—has effect according to its terms; and
 - (b) if not approved by the original Secretary in writing—has no effect.
- (4) To avoid doubt, an agreement to which this section applies between a Secretary and a Parliamentary Service employee does not constitute an engagement of the employee by the Secretary 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) a Parliamentary Service 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) or 48A(2) of the Act; and
 - (b) the matter to which the suspected breach relates has not yet been resolved;

then, unless the Parliamentary Service employee's current Secretary and the new Secretary agree otherwise, a move by the Parliamentary Service 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 Parliamentary Service employee has breached the Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.

40 Moves between Departments on promotion

- (1) If:
- (a) a decision is taken to promote a Parliamentary Service employee; and
 - (b) the Parliamentary Service employee will need to move to another Department to take up the promotion; and
 - (c) the Parliamentary Service 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) or 48A(2) of the Act; and
 - (d) the matter to which the suspected breach relates is not resolved before the Parliamentary Service employee moves to take up the promotion;
- then, unless the Parliamentary Service employee's current Secretary and the new Secretary agree otherwise, the Parliamentary Service 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 Parliamentary Service employee has breached the Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.

41 Movement from an APS agency in cases of a suspected breach of the APS Code of Conduct

- (1) If:
- (a) an APS employee is suspected of having breached the APS 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 *Public Service Act 1999*; and
 - (b) the matter to which the suspected breach relates is not resolved before the APS employee moves to a Department under section 26 of the Act;
- then, unless the Agency Head of the APS agency in which the employee is employed and the Secretary of the Department to which the employee would be moving agree otherwise, the movement 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 APS Code of Conduct; or

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(b) it is decided that such a determination is not necessary.

(3) In this section:

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

Division 5—Notification and date of effect of certain employment decisions

42 Purpose of Division

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

43 Gazettal of employment decisions

Decisions that must be notified

- (1) A Secretary must notify the following employment decisions in the Public Service Gazette:
 - (a) the promotion of an ongoing Parliamentary Service employee;
 - (b) the promotion of an ongoing Parliamentary Service employee, following the decision of a Promotion Review Committee under subparagraph 77(2)(a)(ii) that has not been notified under paragraph (a) of this subsection;
 - (c) the engagement or promotion of a person made in accordance with an Independent Selection Advisory Committee recommendation;
 - (d) the engagement of an ongoing APS employee as an ongoing Parliamentary Service employee at a higher classification than the person's current classification as an APS employee;
 - (e) the termination of the employment of an ongoing Parliamentary Service 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 Parliamentary Service 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 Secretary 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 Secretary decides that including the name is not necessary to ensure public confidence in the integrity of the Parliamentary Service.
- (5) If a notification does not include the employee's name and the Merit Protection Commissioner requests the Secretary to provide the employee's name, the Secretary must advise the Merit Protection Commissioner of the name of the employee as soon as practicable after the request is received.

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- (6) If a notification does not include the employee's name, the Secretary must advise the Parliamentary Service Commissioner of the employee's name as soon as practicable after the notification is published.

Notification relating to a former ongoing APS employee

- (7) If an employment decision is made to engage a person at a higher classification than the person's current classification as an APS employee, the notification 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 7 of the *Parliamentary Service Determination 2024*".

44 Gazettal when decisions previously notified are cancelled

Decisions that must be notified

- (1) A Secretary must notify a decision (a **cancellation decision**) to cancel the following employment decisions in the Public Service Gazette:
- (a) a promotion notified under paragraph 43(1)(a) (in a case where the cancellation decision is made by the Secretary);
 - (b) a promotion notified under paragraph 43(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 43(1)(c);
 - (d) the engagement of an ongoing APS employee as an ongoing Parliamentary Service employee under paragraph 43(1)(d);
 - (e) a termination notified under paragraph 43(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.

45 When promotion and engagement decisions take effect—general case

- (1) Subject to sections 40 and 41, this section applies in respect of a 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.

Note: For **higher classification**, in relation to an APS employee, see section 7.

- (2) If the 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

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(b) otherwise—4 weeks after the day the decision is notified in the Public Service Gazette.

(3) If the decision is subject to PRC review, the decision 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 decisions take effect		
	Column 1	Column 2
Item	If the 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 Secretary 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 Secretary is notified that the application has lapsed—on that date; or (b) 2 weeks after the day the Secretary is notified that the application has lapsed
4	an application for review is made but the Merit Protection Commissioner decides under section 69 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 Secretary is notified of the decision of the Merit Protection Commissioner—on that date; or (b) the later of: (i) the day the Secretary 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 decision	(a) if a date of effect has been agreed by the relevant parties and is after the Secretary is notified of the PRC's decision—on that date; or (b) 4 weeks after the day the Secretary is notified of the PRC's decision
6	an application for review is made and the PRC varies the decision	(a) if a date of effect has been agreed by the relevant parties and is after

Part 3 Parliamentary Service employment

Division 5 Notification and date of effect of certain employment decisions

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When decisions take effect

	Column 1	Column 2
Item	If the decision is subject to PRC review and ...	then the decision takes effect ...
		the Secretary is notified of the PRC's decision—on that date; or (b) 4 weeks after the day the Secretary is notified of the PRC's decision

Division 6—Employer powers of Secretaries

46 Condition of engagement—health clearance

- (1) This section applies to a Parliamentary Service employee whose engagement in a Department is made subject, in accordance with paragraph 22(6)(e) of the Act, to a condition dealing with health clearances.
- (2) For the purposes of subsection 21(2) of the Act, 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 an examination by a medical practitioner nominated by the Secretary to assess the employee’s fitness for duty;
 - (ii) give the Secretary a report of the examination; and
 - (b) the nominated medical practitioner may give the 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.

47 Direction to attend medical examination

- (1) This section applies if:
 - (a) a Secretary believes that the state of health of a Parliamentary Service employee in the relevant Department:
 - (i) may be affecting the employee’s work performance; or
 - (ii) has caused, or may cause, the employee to have an extended absence from work; or
 - (iii) may be a danger to the employee; or
 - (iv) has caused, or may cause, the employee to be a danger to other employees or members of the public; or
 - (v) may be affecting the employee’s standard of conduct; or
 - (b) a Parliamentary Service employee is to be assigned new duties and the Secretary of the Department in which the employee is employed believes the employee’s state of health may affect the employee’s ability to undertake the duties; or
 - (c) a Parliamentary Service employee is to travel overseas as part of the employee’s employment.

Note: Examples of extended absences are:

- (a) an absence from work of at least 4 continuous weeks; and
- (b) a combined total of absences from work, within a 13 week period, whether based on a single or separate illness or injury, of at least 4 weeks.

- (2) For the purposes of subsection 21(2) of the Act, the Secretary of the Department in which the employee is employed may:
 - (a) by written notice, direct the employee to undergo an examination, within the period specified in the notice, by a medical practitioner nominated by the Secretary to assess the employee’s fitness for duty; and

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- (b) if the employee is given a direction under paragraph (a)—by written notice, direct the employee to give the Secretary a report of the examination within the period specified in the notice.
- (3) A direction may be given under paragraph (2)(b) in the same notice as a direction given under paragraph (2)(a) or in a later notice.
- (4) To avoid doubt, subsection (2) does not limit the authority of a Secretary to give any other lawful and reasonable direction.
- (5) The nominated medical practitioner may give the Secretary a report of the examination.

48 Suspension from duties

- (1) This section is made for the purposes of section 28 of the Act.
- (2) A Secretary may suspend a Parliamentary Service employee employed in the Secretary's Department from duties if the Secretary believes on reasonable grounds that:
 - (a) the employee has, or may have, breached the Code of Conduct; and
 - (b) the employee's suspension is in the public, or the Department's, interest.
- (3) The suspension may be with remuneration.
- (4) If the suspension is to be without remuneration, the period without remuneration is to be not more than 30 days unless exceptional circumstances apply.
- (5) The Secretary must review the suspension at reasonable intervals.
- (6) The Secretary must immediately end the suspension if the Secretary no longer believes on reasonable grounds that:
 - (a) the Parliamentary Service employee has, or may have, breached the Code of Conduct; or
 - (b) the Parliamentary Service employee's suspension is in the public, or the Department's, interest.
- (7) The Secretary must immediately end the suspension if a sanction has been imposed on the Parliamentary Service employee for the relevant breach of the Code of Conduct.
- (8) In exercising powers under this section, the Secretary must have due regard to procedural fairness unless the Secretary is satisfied, on reasonable grounds, that this would not be appropriate in the particular circumstances.

49 Termination of employment

- (1) This section is made for the purposes of paragraph 29(3)(h) and subsection 29(4) of the Act.
- (2) It is a ground for the termination of the employment of an ongoing Parliamentary Service employee or a non-ongoing Parliamentary Service employee that an investigation report, within the meaning of the *National Anti-Corruption Commission Act 2022*, includes a recommendation to terminate the employment of the Parliamentary Service employee.

Part 4—Performance management

50 Purpose of this Part

This Part is made for the purposes of subsection 11C(2) of the Act.

51 Achieving effective performance—Secretaries

Achieving effective performance

- (1) A Secretary upholds the Parliamentary Service Employment Principle in paragraph 10A(1)(d) of the Act by ensuring the following:
 - (a) the Department has performance management policies and processes that:
 - (i) support a high performance culture; and
 - (ii) proactively identify, foster and develop Parliamentary Service 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 Parliamentary Service employees;
 - (b) the Department builds the organisational capability necessary to achieve the outcomes of the Department properly expected by the Parliament;
 - (c) each Parliamentary Service employee in the Department is given:
 - (i) a clear statement of the performance and behaviour expected of the employee; and
 - (ii) opportunities to discuss performance;
 - (d) each Parliamentary Service employee in the Department receives feedback from supervisors about their performance consistent with the Department's performance management policies and processes;
 - (e) the Department requires supervisors to manage the performance of Parliamentary Service employees under their supervision effectively, including by engaging in career conversations;
 - (f) the Department supports supervisors to manage the performance of Parliamentary Service employees under their supervision, including by providing appropriate training in performance management;
 - (g) the Department's performance management policies and processes are used to guide salary movement.

Dealing with unsatisfactory performance

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

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- (iii) that if a Parliamentary Service 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 Department'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 a Parliamentary Service employee's performance is considered unsatisfactory.

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

52 Achieving effective performance—supervisors

A supervisor of a Parliamentary Service employee upholds the Parliamentary Service Employment Principle in paragraph 10A(1)(d) of the Act by doing the following:

- (a) promoting and fostering effective performance by the employee;
- (b) conducting, at least annually, career conversations that deal with the employee's performance, potential, aspirations, organisational fit and future opportunities;
- (c) ensuring that the employee has a performance agreement that is consistent with:
 - (i) the corporate plan of the Department in which the employee is employed; and
 - (ii) the work level standards for the employee's classification;
- (d) ensuring that the employee is provided with clear, honest and timely feedback about the employee's performance;
- (e) managing and assessing the employee's performance in accordance with the Department's performance management policies and processes;
- (f) working to improve the supervisor's capability in effectively managing the performance of Parliamentary Service employees, including through appropriate training;
- (g) promptly and actively managing unsatisfactory performance by the employee in accordance with the Department'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 employee and other relevant persons (including the Department'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 Parliamentary Service is a career-based service that requires effective performance from each employee.

53 Achieving effective performance—Parliamentary Service employees

A Parliamentary Service employee upholds the Parliamentary Service Employment Principle in paragraph 10A(1)(d) of the Act by doing the following:

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- (a) striving to perform to the best of their ability, at the work level standard for the employee's classification and consistent with the employee's performance agreement;
 - (b) engaging constructively with their supervisor to clarify work expectations and what is required to perform effectively;
 - (c) participating constructively in the performance management processes (including career conversations) of the Department in which the employee is employed;
 - (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 employee's performance is unsatisfactory, engaging constructively by:
 - (i) cooperating with their supervisor and other relevant persons (including the Department'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 Parliamentary Service is a career-based service that requires effective performance from each employee.

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

A Secretary must have regard to any relevant standards and guidance issued by the Parliamentary Service Commissioner if:

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

Part 5—Employment-related information

55 Purpose of this Part

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

56 Requirement to give information, or documents, about workplace relations to the Parliamentary Service Commissioner

- (1) If the Parliamentary Service Commissioner requires a Secretary to give the Parliamentary Service Commissioner particular information, or documents, about workplace relations relating to Parliamentary Service employees in the Secretary's Department, the Secretary must comply with the requirement.
- (2) However, subsection (1) does not require the Secretary to give the Parliamentary Service Commissioner personal information, whether in a document or otherwise.

57 Prompt, accurate giving of information to the Parliamentary Service Commissioner

- (1) A Secretary must ensure that there are measures in place to ensure that information given to the Parliamentary Service Commissioner in accordance with section 56 is:
 - (a) given promptly; and
 - (b) accurate.
- (2) A Secretary must ensure that, if the Parliamentary Service Commissioner seeks that information in a particular form, there are measures in place to give the Parliamentary Service Commissioner the information in that form.

Part 6—Code of Conduct

58 Allegations of breach of Code of Conduct by Secretary or statutory office holder

- (1) If an allegation, other than a public interest disclosure (within the meaning of the *Public Interest Disclosure Act 2013*), 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 Parliamentary Service 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 Parliamentary Service Commissioner to include recommendations in the report, in accordance with subsection 40(2) of the Act.

59 Duty not to disclose information

- (1) This section is made for the purposes of subsection 13(13) of the Act.
- (2) This section does not affect other restrictions on the disclosure of information.
- (3) A Parliamentary Service employee must not disclose information that the employee obtains or generates in connection with the employee's 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) Subsection (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:

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- (i) is already in the public domain as the result of a disclosure of information that is lawful under this instrument or another law; and
 - (ii) can be disclosed without disclosing, expressly or by implication, other information to which subsection (3) applies.
- (5) Subsection (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 section 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.

60 Statutory office holder bound by Code of Conduct

Extent to which statutory office holders are bound by the Code of Conduct

- (1) For the purposes of 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 is assisted by, or deals with, Parliamentary Services employees:
 - (i) in a supervisory capacity; or
 - (ii) in another capacity related to the statutory office holder's day-to-day working relationship with Parliamentary Service employees; and
 - (b) the statutory office holder is not bound by the Code of Conduct to the extent of any inconsistency between the requirements of:
 - (i) the Code of Conduct; and
 - (ii) a law of the Commonwealth, or a State or Territory, that relates to a statutory office holder's office or appointment.

Note: The Code of Conduct requires the upholding of the Parliamentary Service Values and Parliamentary Service Employment Principles, among other things.

- (2) For the purposes of subsection 14(2A) of the Act, a statutory office holder is bound by the Code of Conduct to the extent to which the Code can apply to the statutory office holder if:
- (a) a reference in the Code to a Parliamentary Service employee were taken to include a reference to a statutory office holder; and
 - (b) a reference in the Code to Parliamentary Service employment were taken to include matters related to the statutory office holder's office or appointment.

*Meaning of **statutory office holder**—offices*

- (3) For the purposes of 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 office is held by a person who is assisted by, or has dealings with, Parliamentary Service employees:
 - (i) in a supervisory capacity; or

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- (ii) in another capacity related to the person's day-to-day working relationship with Parliamentary Service employees; and
- (c) the office is not an office of Secretary.

*Meaning of **statutory office holder**—appointments*

- (4) For the purposes of 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 appointment is of a person who is assisted by, or has dealings with, Parliamentary Service employees:
 - (i) in a supervisory capacity; or
 - (ii) in another capacity related to the person's day-to-day working relationship with Parliamentary Service employees; and
 - (c) the appointment is not an appointment as Secretary.

Part 7—Review of actions

Division 1—Statement of intent and outline

61 General policy about review

- (1) Parliamentary Departments should achieve and maintain workplaces that encourage productive and harmonious working environments.
- (2) For the purposes of section 33 of the Act, this Part is intended to provide for a fair system of review of certain Parliamentary Service actions.
- (3) Parliamentary Service employees' concerns 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 if appropriate.

62 Review of Parliamentary Service actions—certain promotion decisions and engagement decisions

Division 2 provides for applications for review of certain promotion decisions and engagement decisions to be made to the Merit Protection Commissioner for review by a Promotion Review Committee.

63 Review of other Parliamentary Service action

Division 3 provides for:

- (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 a Parliamentary Service action if:
 - (i) the relevant Secretary told the employee under section 84 that the action is not a reviewable action; or
 - (ii) the employee is dissatisfied with the outcome of the relevant Secretary's review of the action under section 85.

Note: A recommendation made on an application to the Merit Protection Commissioner for primary or secondary review is not binding on a Secretary (see section 90).

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

64 Application of this Division

- (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 Parliamentary Service Classification Rules; and
 - (b) the promotion decision is not made in accordance with the recommendation of an Independent Selection Advisory Committee; 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 to employment at a classification mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Parliamentary Service Classification Rules; and
 - (b) the engagement decision is not made in accordance with the recommendation of an Independent Selection Advisory Committee; and
 - (c) the engagement decision is not made in accordance with a PRC recommendation.
- (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.

Note: For *higher classification*, in relation to an APS employee, see section 7.

65 Entitlement to review—promotion decisions

- (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 Promotion Review Committee.
- (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) 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 Promotion Review Committee.

Part 7 Review of actions

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

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Note 1: The Merit Protection Commissioner may appoint a Promotion Review Committee under section 69 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.

Note 2: For *promotion decision* and *engagement decision*, see section 64.

66 Entitlement to review—engagement decisions involving APS employees

(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 Promotion Review Committee.

(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 Promotion Review Committee.

Note 1: The Merit Protection Commissioner may appoint a Promotion Review Committee under section 69 to deal with:

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

Note 2: For *promotion decision* and *engagement decision*, see section 64.

67 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 engagement and promotion 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 conditions set out in subsection 10A(2) of the Act are complied with.

68 Application for review

- (1) An application for review of a promotion decision, or an engagement decision, under this Division must be in writing.
- (2) An application for review of a promotion decision, or an engagement decision, under this Division must be received by the Merit Protection Commissioner:
 - (a) within:

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- (i) the period specified in the Public Service Gazette as part of notifying the promotion or the engagement; or
 - (ii) if, before the end of the period mentioned in subparagraph (i), the Merit Protection Commissioner extends the period for a class of employees that includes the applicant—the extended period; and
 - (b) at the place specified in the Public Service Gazette.
- (3) The making of an application for review of a promotion decision or an engagement decision under this Division operates to stay the promotion decision or engagement decision until it takes effect in accordance with Part 3.

69 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 the Merit Protection Commissioner believes that a review of the promotion decision or engagement decision is necessary—appoint a PRC to deal with the application.
- (2) A PRC may be appointed to deal with:
- (a) applications by ongoing Parliamentary Service employees and ongoing APS employees (or both) for review of a promotion decision; and
 - (b) applications by ongoing Parliamentary Service employees and ongoing APS employees (or both) for review of an engagement decision; and
 - (c) applications in relation to more than one promotion decision or engagement decision.

Note: For *promotion decision* and *engagement decision*, see section 64.

70 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.
- (2) The Merit Protection Commissioner must be satisfied that the Parliamentary Service employee nominated under paragraph (1)(c) has the necessary skills and personal qualities to perform the Parliamentary Service employee's duties as a member of the PRC 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 the Parliamentary Service employee is employed.
- (4) If a member of a PRC ceases to act as a member before the PRC makes its recommendation to the relevant Secretary, the PRC must be reconstituted by the

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

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remaining members and another member nominated in accordance with subsection (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 performing the person's duties as a member of a PRC, except:
 - (a) by a court; or
 - (b) in accordance with instructions issued under section 74.

71 Statements by parties

- (1) The Merit Protection Commissioner may, by written notice, invite (as the case requires):
 - (a) an applicant for review of a promotion decision, and the person promoted; or
 - (b) an applicant for review of an engagement decision, and the person engaged;to give the Merit Protection Commissioner a written statement setting out the person's claim for promotion or engagement to the relevant employment.
- (2) A statement under subsection (1) must be given to the Merit Protection Commissioner:
 - (a) within 14 days after the day the notice under subsection (1) was given; or
 - (b) if:
 - (i) within that 14 days, the applicant for review, or the person promoted or engaged, asks the Merit Protection Commissioner for a longer period within which to give the statement; and
 - (ii) the Merit Protection Commissioner agrees to a longer period; within that longer period.
- (3) If the statement is not given within the period required under subsection (2), the PRC may consider and decide the application for review without the statement.
- (4) Subject to paragraph 73(1)(a) (which relates to procedural fairness), neither an applicant for review, nor a person promoted or engaged, as mentioned in paragraph (1)(a) or (b) of this section is entitled to have access to a statement that is given to the Merit Protection Commissioner by someone else under subsection (1) of this section.

72 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.

73 PRC procedures—minimum requirements

- (1) The procedures used by a PRC in conducting a review under this Division must meet the following minimum requirements:

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- (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.

74 PRC procedures—Merit Protection Commissioner’s instructions

- (1) The Merit Protection Commissioner must, as soon as practicable after the commencement of this instrument, 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 instrument.
- (3) A PRC must comply with the instructions.

75 Assistance to PRC

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

76 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 specified 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, specified in the notice.

77 Conduct of review by PRC

Assessment of relative merits

- (1) In conducting a review of a promotion decision or an engagement decision, a PRC must assess the relative merits of the person promoted or engaged, and each applicant for review of the decision, on the basis of:
 - (a) the relative suitability of each person to perform the duties (the **relevant duties**) relating to the relevant employment; and
 - (b) the relationship between each person’s work-related qualities and the work-related qualities genuinely required for the relevant duties; and
 - (c) the relative capacity of each person to achieve outcomes related to the relevant duties.

Decision relating to applicant who is a Parliamentary Service employee

- (2) If the applicant for the review is a Parliamentary Service employee, the PRC must:

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

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- (a) decide, primarily on the basis of the assessment conducted under subsection (1), that:
 - (i) the promotion decision or engagement decision should be upheld; or
 - (ii) the applicant for review should be promoted to the relevant employment; and
- (b) inform the relevant Secretary, in writing, of its decision.

Note: The decision is binding on the Secretary (see subsection 79(1)).

Recommendation relating to applicant who is an APS employee

- (3) If the applicant for the review is an APS employee, the PRC must:
 - (a) recommend, primarily on the basis of the assessment conducted under subsection (1), that:
 - (i) the promotion decision or engagement decision be upheld; or
 - (ii) the applicant for review be engaged to the relevant employment; and
 - (b) inform the relevant Secretary, in writing, of its recommendation.

Note: The recommendation is not binding on the Secretary (see subsection 79(4)).

78 Non-agreement on decision or recommendation by PRC

- (1) This section applies if all members of a PRC do not agree on a decision or a recommendation in relation to an application for review of a promotion decision or an engagement decision.

Decision relating to applicant who is a Parliamentary Service employee

- (2) If 2 members agree on a decision, the decision is taken to be the decision of the PRC.
- (3) If there is no agreement on a decision between any of the members, the Convenor's decision is taken to be the decision of the PRC.

Recommendation relating to applicant who is an APS employee

- (4) If 2 members agree on a recommendation, the recommendation is taken to be the recommendation of the PRC.
- (5) If there is no agreement on a recommendation between any of the members, the Convenor's recommendation is taken to be the recommendation of the PRC.

79 Effect of PRC decision or PRC recommendation

Application for review by a Parliamentary Service employee

- (1) If an application for review of a promotion decision or an engagement decision was made by a Parliamentary Service employee and a PRC conducts a review of the decision under section 77, the decision of the PRC under subsection 77(2) is binding on the relevant Secretary.
- (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 section 74.

- (3) If the PRC decides that the applicant for review should be promoted to the relevant employment, the applicant is taken to have been promoted to the relevant employment.

Note: See section 45 in relation to the date of effect of a decision to promote an ongoing Parliamentary Service employee if the decision is subject to PRC review.

Application for review by an APS employee

- (4) If an application for review of a promotion decision or an engagement decision was made by an APS employee and a PRC conducts a review of the decision under section 77, the recommendation of the PRC under subsection 77(3) is not binding on the relevant Secretary.
- (5) The recommendation 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 section 74.
- (6) If the PRC recommends that the applicant for the review should be engaged to the relevant employment, the Secretary must, as soon as practicable after being informed of the recommendation:
- (a) consider the recommendation; and
 - (b) make a decision about the recommendation; and
 - (c) inform the following persons, in writing, of the decision and the reasons for the decision:
 - (i) the applicant for the review;
 - (ii) the Merit Protection Commissioner;
 - (iii) if the review is of a promotion decision—the person promoted.
- (7) Before the Secretary decides to act otherwise than in accordance with the recommendation, the Secretary must seek the views of:
- (a) the applicant for the review; and
 - (b) if the review is of a promotion decision—the person promoted;
- about the decision the Secretary proposes to make about the recommendation.

Note: See section 45 in relation to the date of effect of a decision to engage an ongoing APS employee as a Parliamentary Service employee at a higher classification than the employee's classification as an ongoing APS employee if the decision is subject to PRC review.

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Division 3—Review of other Parliamentary Service actions

Subdivision A—Reviewable actions

80 Entitlement to review

- (1) For the purposes of subsections 33(1) and (2) of the Act, a non-SES employee (an *affected employee*) is entitled to review under this Division of a Parliamentary Service action that relates to the employee's Parliamentary Service employment if the action is:

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

Note: For *reviewable action*, see section 81.

- (2) If an affected employee applies for review under this Division of a Parliamentary Service action, 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; or
- (c) the action ceases to be a reviewable action.

- (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 Subdivision D of Division 2 of Part 10.

81 What Parliamentary Service actions are *reviewable actions*

- (1) A Parliamentary Service action that relates to an affected employee's Parliamentary Service employment is a *reviewable action* if:
- (a) under subsection 33(1) of the Act, the affected employee is entitled to review of the action; and
 - (b) the action is not excluded from being, or has not ceased to be, a reviewable action under any of subsections (2) to (6) of this section.

Note: A Parliamentary Service employee is not entitled to review, under section 33 of the Act, of Parliamentary Service action that consists of the termination of the employee's employment.

- (2) A Parliamentary Service action mentioned in an item in the following table is not, or ceases to be, a *reviewable action*.

Parliamentary Service actions that are not, or that cease to be, reviewable actions—general

Item Non-reviewable Parliamentary Service actions

General

-
- | | |
|---|--|
| 1 | Action about the policy, strategy, nature, scope, resources or direction of the Parliamentary Service or a Department. |
|---|--|
-

Parliamentary Service actions that are not, or that cease to be, reviewable actions—general

Item Non-reviewable Parliamentary Service actions

2 Action taken, or not taken, in accordance with a direction or referral given by the Presiding Officer under the Act or another Act.

Note: A Secretary is not subject to direction by a Presiding Officer in relation to the exercise of powers by the Secretary under section 15 of the Act or Part 4 of the Act in relation to particular individuals (see section 20 of the Act).

3 The issuing of a direction by the Parliamentary Service Commissioner under subsection 15(6) of the Act.

4 Action taken, or not taken, for an inquiry by:
(a) the Parliamentary Service Commissioner under subsection 40(1) of the Act; or
(b) the Merit Protection Commissioner under subsection 48(1) or 48A(1) of the Act.

5 A determination by the Merit Protection Commissioner under section 48A of the Act.

6 Action arising under any of the following Acts:
(a) the *Australian Security Intelligence Organisation Act 1979*;
(b) the *Safety, Rehabilitation and Compensation Act 1988*;
(c) the *Superannuation Act 1976*;
(d) the *Superannuation Act 1990*;
(e) the *Superannuation Act 2005*.

Parliamentary Service actions relating to employment and conditions

7 Action relating to the engagement of a Parliamentary Service employee.

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 determination of the duties of a Parliamentary Service employee, unless the action involves:
(a) a reduction in classification; or
(b) a relocation to another place; or
(c) a promotion that meets the following criteria:
(i) the employee was a candidate for the promotion;
(ii) the promotion was to employment at a classification mentioned in Group 7 or 8 in Schedule 1 to the Parliamentary Service Classification Rules;
(iii) there were serious defects in the selection process; or
(d) the assignment to the employee of duties that the employee could not reasonably be expected to perform.

11 Action relating to a decision by a Secretary, under subsection 43(4), not to include the name of an employee in a notice published in the Public Service Gazette.

- (3) A Parliamentary Service action is not, or ceases to be, a **reviewable action** if:
- (a) the affected employee has applied to have the action reviewed or dealt with by a court or tribunal; and
 - (b) the court or tribunal has jurisdiction to review or deal with the action.
- (4) A Parliamentary Service action is not, or ceases to be, a **reviewable action** if the person who is, 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;
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Division 3 Review of other Parliamentary Service actions

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- (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 external 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: For the purposes of paragraph (e), examples of external review bodies include the Commonwealth Ombudsman, the Australian Information Commissioner and the Australian Human Rights Commission.

Note 2: For the purposes of paragraph (g), a review may not be justified because the applicant did not respond to a request under section 92 for further information about why the review is sought.

- (5) A Parliamentary Service action mentioned in column 1 of an item in the following table is not, or ceases to be, a **reviewable action** if a circumstance mentioned in column 2 of the item applies in relation to the Parliamentary Service action.

Parliamentary Service actions that are not, or that cease to be, reviewable actions in particular circumstances		
Item	Column 1 Parliamentary Service action	Column 2 Circumstance
1	Parliamentary Service action in relation to which an application for primary review was made to an affected employee's Secretary under subsection 82(1)	The application was not made within 120 days of the Parliamentary Service action occurring
2	Parliamentary Service action in relation to which an application for primary review was made to the Merit Protection Commissioner under paragraph 82(2)(a)	The application was not made within 60 days of the determination that the affected employee has breached the Code of Conduct
3	Parliamentary Service action in relation to which an application for primary review was made to the Merit Protection Commissioner under paragraph 82(2)(b)	The application was not made within 60 days of the sanction for breach of the Code of Conduct being imposed
4	Parliamentary Service action in relation to which an application for primary review was made to the Merit Protection Commissioner under subsection 82(3)	The application was not made within 60 days of the Parliamentary Service action occurring
5	Parliamentary Service action in relation to which an application for secondary review was made to the Merit Protection Commissioner under paragraph 87(1)(a)	The application was not made within 60 days of the affected employee being told that the Parliamentary Service action is not a reviewable action

Parliamentary Service actions that are not, or that cease to be, reviewable actions in particular circumstances

Item	Column 1 Parliamentary Service action	Column 2 Circumstance
6	Parliamentary Service action in relation to which an application for secondary review was made to the Merit Protection Commissioner under paragraph 87(1)(b)	The application was not made within 60 days of the affected employee being told of the Secretary's decision
7	Parliamentary Service action in relation to which an application for secondary review was made to the Merit Protection Commissioner	The application for primary review of the action was an application referred to in item 1

- (6) However, a Parliamentary Service action mentioned in column 1 of an item in the table in subsection (5) is a **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 for review of the Parliamentary Service action within the period mentioned in column 2 of the item.

Subdivision B—Primary review

82 Application for primary review

- (1) An affected employee may apply in writing to the relevant Secretary for primary review of a Parliamentary Service 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 affected 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 a Parliamentary Service 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 the purposes of paragraph (4)(b), examples of outcomes that might be sought include reconsideration of the action and reassignment of duties.

83 Referral to Merit Protection Commissioner

- (1) If an affected employee makes an application for review of a Parliamentary Service action to the relevant Secretary under subsection 82(1), the Secretary

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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
 - (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 affected employee in writing.

Note: Section 86 deals with review of applications referred to the Merit Protection Commissioner by a Secretary.

84 Notice that Parliamentary Service action is not a reviewable action

If an affected employee applies for review of a Parliamentary Service action under section 82 and the action is not a reviewable action under any of subsections 81(2) to (6), the person who would have conducted the review must tell the employee in writing:

- (a) that the action is not a reviewable action; and
- (b) the reasons why it is considered that the action is not a reviewable action; 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 section 87 for secondary review of the action.

85 Conduct of review by relevant Secretary

- (1) If an affected employee applies for review of a Parliamentary Service action to the relevant Secretary under subsection 82(1) and the Secretary:
 - (a) does not refer the application to the Merit Protection Commissioner; and
 - (b) considers that 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 the minimum requirements mentioned in subsection 91(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) Subsection (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) the decision made on the application; and

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- (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 section 87 for secondary review of the action.

86 Conduct of review by Merit Protection Commissioner

- (1) This section applies if an application by an affected employee for review of a Parliamentary Service action is:
 - (a) made to the Merit Protection Commissioner under subsection 82(2) or (3); or
 - (b) referred to the Merit Protection Commissioner under subsection 83(1).
- (2) If the Merit Protection Commissioner considers that the affected employee is entitled to review of the action under this Division, the Merit Protection Commissioner:
 - (a) must conduct a de novo review of the action; and
 - (b) may, subject to the minimum requirements mentioned in subsection 91(1), conduct the review in any manner the Merit Protection Commissioner thinks fit; and
 - (c) must make a recommendation to the relevant Secretary, in writing, about the action; and
 - (d) must tell the relevant Secretary, in writing, the reasons for the recommendation; and
 - (e) must tell the affected employee, in writing, of the recommendation and reasons given to the relevant Secretary.

Note: The recommendation is not binding on the Secretary (see section 90).

Subdivision C—Secondary review

87 Application for secondary review

- (1) An affected employee may apply in writing to the Merit Protection Commissioner for secondary review of a Parliamentary Service action if:
 - (a) the relevant Secretary told the employee under section 84 that the action is not a reviewable action; or
 - (b) the employee is dissatisfied with the outcome of the relevant Secretary's review of the action under section 85.
- (2) The application must be made through the relevant Secretary.
- (3) The application must state briefly why the review is sought.

88 Secretary to give documents to Merit Protection Commissioner

- (1) Within 14 days after receiving an application from an affected employee under section 87 for secondary review of a Parliamentary Service action, the relevant Secretary must give to the Merit Protection Commissioner:
 - (a) the application; and
 - (b) any relevant documents relating to the primary review of the action.

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- (2) The Secretary must give to the affected employee a copy of any documents given to the Merit Protection Commissioner under paragraph (1)(b).

89 Conduct of review by Merit Protection Commissioner

If the Merit Protection Commissioner receives an application for secondary review of a Parliamentary Service action under section 88 and the Merit Protection Commissioner considers that the affected employee is entitled to review of the action under this Division, the Merit Protection Commissioner:

- (a) must conduct a de novo review of the action; and
- (b) may, subject to the minimum requirements mentioned in subsection 91(1), conduct the review in any manner the Merit Protection Commissioner thinks fit; and
- (c) must make a recommendation to the relevant Secretary, in writing, about the action; and
- (d) must tell the relevant Secretary, in writing, the reasons for the recommendation; and
- (e) must tell the affected employee, in writing, of the recommendation and reasons given to the relevant Secretary.

Note: The recommendation is not binding on the Secretary (see section 90).

Subdivision D—Action following recommendation to Secretary

90 Action by Secretary

- (1) If a Secretary receives a recommendation under section 86 or 89 following a review of a Parliamentary Service action, the Secretary must, as soon as reasonably practicable after receiving the recommendation:
 - (a) consider the recommendation; and
 - (b) make a decision about the recommendation.
- (2) For the purposes of paragraph (1)(b), the Secretary may:
 - (a) confirm the 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 view of the affected employee before acting on the recommendation.

Note: The views of the affected employee should have been sought by the Merit Protection Commissioner during the review in accordance with the principles of procedural fairness.

- (4) Subsection (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) If, after considering the recommendation:

-
- (a) the Secretary considers making a finding of a breach of the Code of Conduct; and
 - (b) the Secretary had not made the finding before the recommendation was made; and
 - (c) the finding was not mentioned in the recommendation;
- the Secretary must comply with the procedures established under subsection 15(3) of the Act before deciding whether to make the finding.
- (6) If, after considering the recommendation:
- (a) the Secretary considers imposing a sanction for breach of the Code of Conduct that the Secretary had not imposed before the recommendation was made; and
 - (b) the sanction was not mentioned in the recommendation;
- the Secretary must comply with the procedures established under subsection 15(3) of the Act before deciding whether to impose the sanction.
- (7) The Secretary must tell the affected employee and the Merit Protection Commissioner in writing of:
- (a) the decision mentioned in paragraph (1)(b); 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 E—Other provisions about review

91 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.

92 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 conducting a review under this Division and stated in the notice information or documents, relevant to the review, stated 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.

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Division 3 Review of other Parliamentary Service actions

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93 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.

Part 8—Other employment matters

94 Purpose of this Part

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

95 Knowledge of Act and this instrument

Parliamentary Service employees must inform themselves about the Act and this instrument.

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

- (1) A Secretary may engage as a Parliamentary Service employee a person who has received a redundancy benefit only if:
- (a) the Secretary considers that the person's engagement is essential for the relevant Department'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) if the person is to be engaged as an ongoing Parliamentary Service employee (including as an ongoing SES employee) or as a non-ongoing SES employee—the Parliamentary Service Commissioner has approved the person's engagement.

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 a Department or an APS agency; 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 *Public Service Act 1999*;

but does not include:

- (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 the purposes of 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 (rounded down to the nearest equivalent whole day):

- (a) beginning on the day after the person's employment ends; and

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- (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):

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

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.

Part 9—The Parliamentary Service Commissioner— functions

Division 1—Inquiries into public interest disclosures relating to alleged breaches of Code of Conduct

97 Inquiries into public interest disclosures relating to alleged breaches of the Code of Conduct

- (1) For the purposes of paragraph 40(1)(c) of the Act, the function of the Parliamentary Service Commissioner to inquire into a public interest disclosure (the *disclosure*), to the extent that the disclosure relates to one or more alleged breaches of the Code of Conduct, is subject to this section.

Inquiry into disclosure

- (2) The Parliamentary Service Commissioner may inquire into the disclosure if the Parliamentary Service Commissioner is satisfied that it would be inappropriate for the discloser to make the disclosure to a Secretary.
- (3) The Parliamentary Service Commissioner may inquire into the disclosure if:
 - (a) the disclosure was made to a Secretary; and
 - (b) the Parliamentary Service Commissioner reasonably believes that the disclosure was not satisfactorily handled by the Secretary.

*Parliamentary Service Commissioner may decline to conduct, or discontinue,
inquiry*

- (4) The Parliamentary Service Commissioner may decide to decline to inquire into the disclosure, or to decline to inquire further, if the Parliamentary Service Commissioner concludes that conducting, or continuing, the inquiry would not be justified in all the circumstances.
- (5) In deciding whether to decline to conduct, or to discontinue, an inquiry into the disclosure, the Commissioner may have regard to the following:
 - (a) whether the disclosure would be more appropriately dealt with by other means;
 - (b) whether the disclosure is vexatious, frivolous, misconceived or lacking in substance;
 - (c) whether sufficient detail about the alleged breaches to which the disclosure relates has been provided;
 - (d) whether the disclosure refers to specific decisions or actions by a Parliamentary Service employee;
 - (e) whether the disclosure identifies conduct which, if proven, would constitute a breach of the Code of Conduct;
 - (f) whether the disclosure relates to a decision properly taken, or to policy properly followed, by a Parliamentary Service employee, with which the discloser disagrees;
 - (g) whether the cost of conducting an inquiry is justified in the circumstances.

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Process of inquiry

- (6) If the Parliamentary Service Commissioner inquires into the disclosure, the Parliamentary Service Commissioner must:
- (a) consider, having regard to all the circumstances, whether to give a person about whom the disclosure has been made an opportunity to be heard in relation to the disclosure; and
 - (b) take reasonable steps to report the outcome of the inquiry to the discloser and the relevant Secretary.

Note: Section 65AA of the Act deals with circumstances in which the Parliamentary Service Commissioner may make a record of, disclose or otherwise use certain information for the purposes of, or in connection with, the performance of the Parliamentary Service Commissioner's functions.

If the Parliamentary Service Commissioner gives a person about whom a disclosure has been made an opportunity to be heard in relation to the disclosure, the Parliamentary Service Commissioner may give the person information identifying the discloser to the extent the Parliamentary Service Commissioner considers appropriate in the circumstances.

Division 2—Other functions

98 Inquiries into Merit Protection Commissioner’s behaviour

- (1) For the purposes of paragraph 40(1)(d) of the Act, it is a function of the Parliamentary Service Commissioner:
 - (a) to inquire into alleged breaches of the Code of Conduct by the Merit Protection Commissioner; and
 - (b) to report to the Presiding Officers on the results of such inquiries (including, if relevant, recommendations for sanctions).

Parliamentary Service Commissioner may decline to conduct, or discontinue, inquiry

- (2) If the Parliamentary Service Commissioner decides that conducting, or continuing, an inquiry under subsection (1) would not be justified in all the circumstances, the Parliamentary Service Commissioner may:
 - (a) decline to conduct the inquiry; or
 - (b) discontinue the inquiry.
- (3) In deciding whether to decline to conduct, or to discontinue, an inquiry under subsection (1), the Parliamentary Service Commissioner may have regard to the following:
 - (a) whether the allegation is vexatious, frivolous, misconceived or lacking in substance;
 - (b) whether sufficient detail about the allegation has been provided;
 - (c) whether the allegation refers to specific decisions or actions by the Merit Protection Commissioner;
 - (d) whether the allegation identifies conduct which, if proven, would constitute a breach of the Code of Conduct;
 - (e) whether the allegation relates to a decision properly taken, or to policy properly adopted, by the Merit Protection Commissioner, with which the person making the allegation disagrees;
 - (f) whether the cost of conducting an inquiry is justified in the circumstances.

99 Inquiries into alleged breaches of Code of Conduct by statutory office holders

- (1) For the purposes of paragraph 40(1)(d) of the Act, it is a function of the Parliamentary Service Commissioner to inquire into an alleged breach of the Code of Conduct by a statutory office holder.

Parliamentary Service Commissioner may decline to conduct, or discontinue, inquiry

- (2) The Parliamentary Service Commissioner may:
 - (a) decline to conduct an inquiry; or
 - (b) discontinue an inquiry under subsection (1).
- (3) In deciding whether to decline to conduct, or to discontinue, an inquiry, the Parliamentary Service Commissioner must have regard to the following:

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- (a) whether the subject matter of the inquiry is addressed in another law relating to the statutory office holder;
- (b) whether the statutory office holder is bound by rules that require behavioural standards similar to those required by the Code of Conduct;
Example: An Act may include provisions for dealing with a conflict of interest relating to a statutory office holder.
- (c) any existing reporting and inquiry mechanisms that apply to the statutory office holder;
- (d) whether sufficient detail about the allegation has been provided;
- (e) whether the allegation refers to specific decisions or actions by the statutory office holder;
- (f) whether the allegation is vexatious, frivolous, misconceived, or lacking in substance.

Process for inquiry

- (4) If the Parliamentary Service Commissioner inquires into an alleged breach of the Code of Conduct, the Parliamentary Service Commissioner may:
 - (a) determine whether a breach of the Code of Conduct has occurred; and
 - (b) make recommendations.
- (5) A determination or recommendation mentioned in subsection (4) forms part of the results of the inquiry.

Results of inquiry

- (6) The Parliamentary Service Commissioner must tell the statutory office holder the results of an inquiry.
- (7) The Parliamentary Service Commissioner must tell the relevant Secretary of the results of an inquiry unless the Parliamentary Service Commissioner is satisfied that it would be inappropriate to do so.
Example: It would be inappropriate to do so if the Secretary is personally involved in the matter.
- (8) If the Parliamentary Service Commissioner is satisfied that the results of the inquiry are sufficiently serious, the Parliamentary Service Commissioner must tell the Presiding Officers the results of the inquiry.
- (9) If the Parliamentary Service Commissioner:
 - (a) has not told the Presiding Officers the results of the inquiry in accordance with subsection (8); and
 - (b) is not satisfied with the statutory office holder's response (if any) to the Parliamentary Service Commissioner;the Parliamentary Service Commissioner may tell the Presiding Officers the results of the inquiry and give an explanation of why the Parliamentary Service Commissioner is not satisfied with the statutory office holder's response.

Part 10—The Merit Protection Commissioner—functions

Division 1—Inquiry functions under the Act

100 Inquiries into public interest disclosures that relate to alleged breaches of the Code of Conduct

- (1) For the purposes of paragraph 48(1)(a) of the Act, the function of the Merit Protection Commissioner to inquire into a public interest disclosure (the *disclosure*), to the extent that the disclosure relates to one or more alleged breaches of the Code of Conduct, is subject to this section.

Inquiry into disclosure

- (2) The Merit Protection Commissioner may inquire into the disclosure if the Merit Protection Commissioner is satisfied that it would be inappropriate for the discloser to make the disclosure to a Secretary.
- (3) The Merit Protection Commissioner may inquire into the disclosure if:
 - (a) the disclosure was made to a Secretary; and
 - (b) the Merit Protection Commissioner reasonably believes that the disclosure was not satisfactorily handled by the Secretary.

Merit Protection Commissioner may decline to conduct, or discontinue, inquiry

- (4) The Merit Protection Commissioner may decide to decline to inquire into the disclosure, or to discontinue an inquiry into the disclosure, if the Merit Protection Commissioner concludes that conducting or continuing the inquiry would not be justified in all the circumstances.
- (5) In deciding whether to decline to conduct, or to discontinue, an inquiry into a disclosure, the Merit Protection Commissioner may have regard to the following:
 - (a) whether the disclosure would be more appropriately dealt with by other means;
 - (b) whether the disclosure is vexatious, frivolous, misconceived or lacking in substance;
 - (c) whether sufficient detail about the alleged breaches to which the disclosure relates has been provided;
 - (d) whether the disclosure refers to specific decisions or actions by a Parliamentary Service employee;
 - (e) whether the disclosure identifies conduct which, if proven, would constitute a breach of the Code of Conduct;
 - (f) whether the disclosure relates to a decision properly taken, or to policy properly followed, by a Parliamentary Service employee, with which the discloser disagrees;
 - (g) whether the cost of conducting an inquiry is justified in the circumstances.

Process for inquiry

- (6) If the Merit Protection Commissioner inquires into the disclosure, the Merit Protection Commissioner must:

Part 10 The Merit Protection Commissioner—functions

Division 1 Inquiry functions under the Act

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- (a) consider, having regard to all the circumstances, whether to give a person about whom the disclosure has been made an opportunity to be heard in relation to the disclosure; and
- (b) take reasonable steps to report the outcome of the inquiry to the discloser and the relevant Secretary.

Note: Section 65AB of the Act deals with circumstances in which the Merit Protection Commissioner may make a record of, disclose or otherwise use certain information for the purposes of, or in connection with, the performance of the Merit Protection Commissioner's functions.

If the Merit Protection Commissioner gives a person about whom a disclosure has been made an opportunity to be heard in relation to the disclosure, the Merit Protection Commissioner may give the person information identifying the discloser to the extent the Merit Protection Commissioner considers appropriate in the circumstances.

Division 2—Other functions

Subdivision A—Purpose of this Division

101 Purpose of this Division

This Division:

- (a) prescribes, for the purposes of paragraph 48(1)(e) of the Act, other functions of the Merit Protection Commissioner; and
- (b) makes other provision in relation to those functions.

Note: The Merit Protection Commissioner also has the functions prescribed by determinations made for the purposes of section 33 of the Act (see paragraph 48(1)(d) of the Act and Part 7 of this instrument).

Subdivision B—Independent Selection Advisory Committees

102 Establishment of ISAC

The Merit Protection Commissioner may establish an ISAC at the request of a Secretary.

103 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 Secretary's Department; or
 - (b) promotion to employment in the Secretary's Department; or
 - (c) assignment to duties in connection with employment in the Secretary's Department.
- (2) The employment must be at a classification mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Parliamentary Service Classification Rules.

104 Constitution of ISAC

- (1) Each ISAC must consist of the following members:
 - (a) a Convenor nominated by the Merit Protection Commissioner;
 - (b) a Parliamentary Service employee nominated by the Merit Protection Commissioner;
 - (c) a person nominated by the relevant Secretary.
- (2) The Merit Protection Commissioner must not nominate a Parliamentary Service employee under paragraph (1)(b) unless the Merit Protection Commissioner is satisfied that the employee will undertake the role independently and impartially.
- (3) The Parliamentary Service employee nominated under paragraph (1)(b) must be made available for the purposes of the ISAC, subject to the operational efficiency of the Department in which the employee is employed.
- (4) The Merit Protection Commissioner may, in writing, reject a Secretary's nomination under paragraph (1)(c) if the Merit Protection Commissioner is not

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satisfied that the person nominated will undertake the role independently and impartially.

- (5) If a member of an ISAC ceases to act as a member before the ISAC makes its recommendation to the relevant Secretary, the ISAC must be reconstituted by:
 - (a) the remaining members; and
 - (b) another member nominated in accordance with subsection (1).
- (6) The reconstituted ISAC must have regard to matters put before, or decided by, the ISAC as previously constituted.
- (7) A person is not subject to direction in performing the person's duties as a member of an ISAC, except:
 - (a) by a court; or
 - (b) in accordance with instructions issued under section 106.

105 ISAC procedures—minimum requirements

- (1) The procedures used by an ISAC in performing its functions under this Subdivision must meet the following minimum requirements:
 - (a) the procedures must have due regard to procedural fairness;
 - (b) the functions must be performed 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.

106 ISAC procedures—Merit Protection Commissioner's instructions

- (1) The Merit Protection Commissioner must, as soon as practicable after the commencement of this instrument, issue instructions about the procedures to be followed by an ISAC in performing its functions under this Subdivision.
- (2) The Merit Protection Commissioner may issue instructions, in writing, about the procedures to be followed by a Secretary who is appointed, under subsection 108(3), to act on behalf of an ISAC in performing the functions of the ISAC under this Subdivision.
- (3) The instructions must not be inconsistent with the Act or this instrument.
- (4) An ISAC, or a Secretary appointed under subsection 108(3) to act on behalf of an ISAC, must comply with the instructions.

107 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 perform its functions efficiently and effectively.

108 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 subsection (1), the ISAC may seek and accept expert opinion about the work-related qualities and capabilities of candidates.
- (3) The ISAC may appoint the relevant Secretary to act on behalf of the ISAC in conducting some or all of an assessment under subsection (1).
- (4) A Secretary who is appointed to act on behalf of the ISAC under subsection (3) must:
 - (a) act in accordance with instructions given to the Secretary by the ISAC; and
 - (b) act in accordance with instructions from the Merit Protection Commissioner only to the extent that the Secretary is appointed to act on behalf of the ISAC under subsection (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.

109 Non-agreement on recommendation by ISAC

- (1) This section 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.

110 ISAC recommendation not binding

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

111 Effect of acting in accordance with ISAC recommendation

- (1) A promotion, engagement or assignment of duties made in accordance with an ISAC recommendation is not subject to review under Part 7.

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- (2) The notice of a promotion or engagement published in the Public Service Gazette must state that the promotion or engagement was made in accordance with an ISAC recommendation.

Note: This subsection also applies to any later promotion or engagement made by a Secretary in accordance with an ISAC recommendation.

- (3) The promotion, engagement 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 instructions issued under section 106.

112 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, or engages an APS employee, to the relevant employment, the promotion decision or engagement decision is subject to review under Division 2 of Part 7.
- (2) The notice of the promotion or engagement published in the Public Service Gazette must state that the promotion decision or engagement decision is subject to review under Division 2 of Part 7.
- (3) However, subsections (1) and (2) do not apply if:
- (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 that is essential for the candidate's suitability for the vacancy; and
 - (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.

Note: For the purposes of subparagraph (a)(ii), an example is the loss of a security clearance.

113 Merit Protection Commissioner authorised to charge fees

For the purposes of subsection 48(3) of the Act, the Merit Protection Commissioner is authorised to charge a Secretary a fee (on behalf of the Commonwealth) for performing functions for the Secretary under this Subdivision.

Subdivision C—Investigation of complaints by former employees

114 Investigation of complaints by former employees

- (1) The Merit Protection Commissioner may:
- (a) investigate a complaint by a former Parliamentary Service employee that relates to the employee's entitlements on separation from the Parliamentary Service; and

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- (b) make a recommendation in relation to the complaint to the Secretary of the Department in which the former Parliamentary Service employee was employed immediately before the separation.
- (2) If a Secretary receives a recommendation under subsection (1), the Secretary must, as soon as reasonably practicable after receiving the recommendation:
- (a) consider the recommendation; and
 - (b) make a decision about the recommendation.

Subdivision D—Review of determination of breach of Code of Conduct by former Parliamentary Service employee

115 Review by Merit Protection Commissioner if former Parliamentary Service employee is entitled to review

- (1) This section applies in relation to a person (the *affected former employee*) if:
- (a) a person is a former Parliamentary service employee; and
 - (b) at the time the person’s Parliamentary Service employment ceased, the person was not an SES employee; and
 - (c) after the person’s Parliamentary Service employment ceased, a Secretary determined that the person breached the Code of Conduct.
- (2) The Merit Protection Commissioner may conduct a de novo review of the Secretary’s determination if the affected former employee is entitled review of the determination under this section.
- (3) The affected former employee is not, or ceases to be, entitled to review of the determination if:
- (a) the affected former employee has applied to have the determination reviewed or dealt with by a court or tribunal, and the court or tribunal has jurisdiction to review or deal with the determination; 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 Subdivision;
 - (ii) the affected former employee has applied, or could apply, to have the determination reviewed by an external review body, and review by the external review body would be more appropriate than review under this Subdivision;
 - (iii) review, or further review, of the determination is not otherwise justified in all the circumstances.
- Note: For the purposes of subparagraph (b)(ii), examples of external review bodies include the Commonwealth Ombudsman, the Australian Information Commissioner and the Australian Human Rights Commission.
- (4) The affected former employee is not, or ceases to be, entitled to review of the determination if an application for review of the determination is not made under section 116 within 60 days after the determination was made.
- (5) However, an affected former employee is entitled to review of the determination if the Merit Protection Commissioner considers that there are exceptional

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circumstances explaining the failure to make an application within the period mentioned in subsection (4).

116 Application for review

- (1) An affected former employee may apply, in writing, to the Merit Protection Commissioner for review of a determination mentioned in paragraph 115(1)(c).
- (2) The application must state briefly:
 - (a) why the review is sought; and
 - (b) if a particular outcome is sought—the outcome sought.

117 Notice that action not reviewable

If an affected former employee applies under section 116 for review of a determination, and the affected former employee is not entitled to review of the determination because of paragraph 115(3)(b) or subsection 115(4), the Merit Protection Commissioner must tell the affected former employee in writing:

- (a) that the affected former employee is not entitled to review of the determination; and
- (b) the reasons why the affected former employee is not entitled to review of the determination.

118 Conduct of review

If the Merit Protection Commissioner considers that an affected former employee is entitled to review of a determination under this Subdivision, the Merit Protection Commissioner:

- (a) must conduct a de novo review of the determination; and
- (b) may, subject to the minimum requirements mentioned in subsection 120(1), conduct the review in any manner the Merit Protection Commissioner thinks fit; and
- (c) must make a recommendation to the relevant 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.

119 Action by Secretary

- (1) If a Secretary receives a recommendation in relation to a determination under section 118, the Secretary must, as soon as reasonably practicable after receiving the recommendation:
 - (a) consider the recommendation; and
 - (b) make a decision about the recommendation.
- (2) For the purposes of paragraph (1)(b), the Secretary may:
 - (a) confirm the determination; or
 - (b) vary the determination; or
 - (c) set the determination aside and substitute a new determination.

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- (3) If the Secretary acts in accordance with the recommendation, the Secretary is not required to seek the view of the affected former employee before acting on the recommendation.

Note: The views of the affected former employee should have been sought by the Merit Protection Commissioner during the review in accordance with the principles of procedural fairness.

- (4) Subsection (2) does not limit the employer powers of the Secretary in relation to the determination or the affected former employee.

Example: The Secretary may take other appropriate action to rectify effects of the determination or restore the affected former employee to the position in which the affected former employee would have been if the determination had not been made.

- (5) If, after considering the recommendation:
- (a) the Secretary considers making a finding of a breach of the Code of Conduct; and
 - (b) the Secretary had not made the finding before the recommendation was made; and
 - (c) the finding was not mentioned in the recommendation;
- the Secretary must comply with the procedures established under subsection 15(3) of the Act before deciding whether to make the finding.
- (6) The Secretary must tell the affected former employee and the Merit Protection Commissioner in writing of:
- (a) the decision mentioned in paragraph (1)(b); and
 - (b) the reasons for the decision.

120 Review procedures—minimum requirements

- (1) The procedures used for a review conducted under this Subdivision 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.

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 a review under this Subdivision.
- (2) The Secretary or Parliamentary Service employee must give the information or documents in the way, and at or within the time, stated in the notice.

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122 Making of an application does not operate as stay

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

Subdivision E—Review of actions of statutory office holders

123 Review of actions of statutory office holders other than Secretaries

- (1) A non-SES employee may apply to the Merit Protection Commissioner for review of an action of a statutory office holder (other than a Secretary) 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 a reviewable action.
- (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) conduct a de novo review of 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, 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.

**Division 3—Basic requirements for procedures for determining
alleged breach of Code of Conduct by Parliamentary
Service employee or former Parliamentary Service
employee**

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

- (1) For the purposes of paragraph 48A(2)(a) of the Act, this section prescribes basic requirements that must be complied with by the Merit Protection Commissioner's written procedures for inquiring into and determining whether a Parliamentary Service employee, or a former Parliamentary Service employee, has breached the Code of Conduct.
- (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 employee, or former employee, has been given a reasonable opportunity to make a statement in relation to the alleged breach; and
 - (c) if the alleged breach is by a Parliamentary Service employee—the Merit Protection Commissioner has taken reasonable steps to inform the employee of the sanctions that may be imposed on the employee under subsection 15(1) of the Act.
- (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 the former Parliamentary Service employee has breached the Code of Conduct.

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Division 4—Other provisions

125 Independence of Merit Protection Commissioner

The Merit Protection Commissioner is not subject to direction, except by a court, in performing the Merit Protection Commissioner’s duties under Part 7 (review of actions) or Subdivision B of Division 2 of this Part (Independent Selection Advisory Committees).

Part 11—Attachment of salaries to satisfy judgment debts

126 Application of this Part

- (1) This Part is made for the purposes of section 67 of the Act.
- (2) 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.

Note: For *debtor*, see section 5.

127 Application of State and Territory law

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

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

128 Paying officer

- (1) If a Secretary believes that it is necessary to make deductions from the salary of a debtor in the relevant Department, 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 subsection (1); and
 - (b) the Secretary must act under this subsection without considering whether the making of deductions from the Secretary's salary is required; and
 - (c) the Secretary must, in writing, delegate the function under subsection (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 judgment debt against the debtor.

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- (4) A debtor is not authorised to be the debtor's paying officer.

129 Authority to make deductions

- (1) A paying officer may make deductions from a debtor's salary to satisfy a judgment debt only if:
- (a) the paying officer has received a statutory declaration, made by the judgment creditor, that the judgment debt exists and has not been discharged; and
 - (b) the paying officer has received a copy of the judgment to which the judgment 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 section 130; and
 - (d) the paying officer has given the debtor a notice in accordance with subsection (2); and
 - (e) the debtor does not, within the time specified in the notice given under subsection (2), satisfy the paying officer that the judgment debt has been satisfied.

Note: Section 131 deals with cases where there are 2 or more judgment debts against a debtor.

- (2) The paying officer must:
- (a) notify the debtor, as soon as practicable after receiving the documents mentioned in paragraphs (1)(a) and (b) and the fee (if any) referred to in paragraph (1)(c), that it is proposed to make the deductions to satisfy a judgment debt; and
 - (b) require the debtor to state, in writing, by a time specified in the notice, whether the judgment debt has been satisfied; and
 - (c) either:
 - (i) if the judgment debt has been satisfied—require the debtor to give the paying officer evidence, in writing by the time specified in the notice, to support that fact; or
 - (ii) if the judgment debt has not been satisfied—require the debtor to include in the statement referred to in paragraph (b) the amount due under the judgment at the time the statement is made.
- (3) If the debtor does not give the paying officer evidence that the judgment debt has been satisfied by the time specified in the notice under subsection (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 section 133; or
 - (b) a lesser amount that, in the paying officer's opinion, is needed to satisfy the balance of the judgment 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 judgment debt has been discharged.
- (5) The paying officer must ensure that the amount of each deduction is paid to the judgment creditor.

130 Administration fee

- (1) A judgment creditor (other than the Commonwealth) who requests the payment of a judgment 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 judgment creditor (other than the Commonwealth) requests the payment of a judgment debt, but does not pay the fee when making the request, the paying officer must notify the judgment creditor that:
 - (a) the fee is payable for making the deductions; and
 - (b) no deductions will be made unless the fee is paid.

131 More than one judgment debt

- (1) If more than one judgment debt exists against a debtor, the paying officer:
 - (a) must deal with the judgment debts in the order in which requests for deductions were received; and
 - (b) must not make a deduction for the purposes of a particular judgment debt until all judgment 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 judgment debts against a debtor, the paying officer must deal with the judgment debts in the order of the dates and times at which judgment was given for each debt, starting with the earliest judgment.

132 Effect of deductions

If an amount is paid to a judgment 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 judgment creditor for the purposes of the judgment debt.

133 Rate of deductions

- (1) For the purposes of paragraph 129(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 subsection (2), (3) or (4) of this section applies.
- (2) The paying officer may reduce the rate at which deductions are to be made 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.
- (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 after receiving the request.

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- (4) If:
- (a) deductions are being made at a rate greater than 20% of the debtor's net salary; and
 - (b) the debtor asks the paying officer, in writing, to reduce the rate of the deductions;
- the paying officer must reduce the rate as soon as practicable after receiving the request, but is not required to reduce the rate to less than 20%.

134 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 judgment debt against the debtor; and
 - (b) the arrangements in Department 1 for making deductions from the debtor's salary; and
 - (c) any deductions already made for the purposes of each of those judgment debts.
- (2) If more than one judgment debt exists against the debtor:
- (a) the debtor's paying officer in Department 1 must advise the Secretary of the order in which the judgment debts were to have been dealt with in accordance with section 131; and
 - (b) the paying officer who is appointed in Department 2 in relation to the debtor must deal with the judgment debts in that order.
- (3) The debtor's paying officer in Department 1 must transfer the following to the paying officer in Department 2:
- (a) the statutory declaration mentioned in paragraph 129(1)(a);
 - (b) a copy of the judgment mentioned in paragraph 129(1)(b);
 - (c) each notice in respect of the debtor that was given to the debtor's paying officer in Department 1 by a paying officer in another Department.
- (4) The paying officer in Department 2 is taken:
- (a) to have received the fee (if any) required under section 130; and
 - (b) to have given to the debtor any notice that was given, in respect of the debtor, by a paying officer in another Department.
- (5) The paying officer in Department 2 must notify the judgment creditor of the move, and the deductions that the paying officer will make.
- (6) The judgment creditor is not required to pay another fee for the making of deductions.

135 Administration of deductions

- (1) A paying officer in relation to a debtor may:
- (a) require the judgment creditor to confirm that the judgment 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 judgment creditor of the cessation or termination as soon as practicable.

136 Recovery of overpayment

If a payment made to a judgment creditor for the purposes of a judgment debt exceeds the amount due under the judgment, the excess is repayable by the judgment creditor to the debtor.

Part 12—Protection of information

137 Parliamentary Service Commissioner’s functions etc.

For the purposes of paragraph (c) of the definition of *protected information* in subsection 65AA(1) of the Act, the following provisions of this instrument are prescribed:

- (a) section 98 (inquiries into Merit Protection Commissioner’s behaviour);
- (b) section 99 (inquiries into alleged breaches of Code of Conduct by statutory office holders).

138 Merit Protection Commissioner’s functions etc.

Prescribed entrusted person

- (1) For the purposes of the definition of *prescribed entrusted person* in subsection 65AB(1) of the Act, an entrusted person who is a member of a committee established or appointed by the Merit Protection Commissioner under this instrument is prescribed.

Protected information

- (2) For the purposes of paragraph (c) of the definition of *protected information* in subsection 65AB(1) of the Act, section 123 of this instrument (review of actions of statutory office holders other than Secretaries) is prescribed.

Compellability of entrusted persons to give evidence

- (3) For the purposes of paragraph 65AB(7)(d) of the Act, section 123 of this instrument (review of actions of statutory office holders other than Secretaries) is prescribed.

139 Giving information or producing documents to Parliamentary Service Commissioner not admissible in evidence etc.

For the purposes of paragraph 65AC(2)(c) of the Act, the following provisions of this instrument are prescribed:

- (a) section 98 (inquiries into Merit Protection Commissioner’s behaviour);
- (b) section 99 (inquiries into alleged breaches of Code of Conduct by statutory office holders).

140 Giving information or producing documents to Merit Protection Commissioner not admissible in evidence etc.

For the purposes of paragraph 65AD(2)(b) of the Act, section 123 of this instrument (review of actions of statutory office holders other than Secretaries) is prescribed.

141 Use and disclosure of personal information

- (1) This section is made for the purposes of paragraph 65AE(a) of the Act.

Use or disclosure by Secretary

- (2) A Secretary may use personal information that is in the possession, or under the control, of the Secretary, if the use is necessary for, or relevant to, the exercise of the employer powers of the Secretary.
- (3) A Secretary may disclose personal information that is in the possession, or under the control, of the Secretary if the disclosure is necessary for, or relevant to:
- (a) the 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 Parliamentary Service 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.

Use or disclosure by Parliamentary Service Commissioner

- (4) The Parliamentary Service Commissioner may use personal information that is in the possession, or under the control, of the Parliamentary Service Commissioner if:
- (a) the information was obtained as part of the Parliamentary Service 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 Parliamentary Service Commissioner.
- (5) The Parliamentary Service Commissioner may disclose personal information in the possession, or under the control, of the Parliamentary Service Commissioner if:
- (a) the information was obtained as part of the Parliamentary Service 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.

Disclosure by Merit Protection Commissioner

- (6) The Merit Protection Commissioner may disclose personal information that is in the possession, or under the control, of the Merit Protection Commissioner if:
- (a) the information was obtained by the Merit Protection Commissioner:
 - (i) during a review of an action conducted by a PRC or the Merit Protection Commissioner under this instrument; or
 - (ii) in the performance of the Merit Protection Commissioner's inquiry functions; and
 - (b) the disclosure is necessary for, or relevant to, a Secretary's consideration of alleged misconduct by a Parliamentary Service employee.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Part 13—Miscellaneous

142 Delegation by Parliamentary Service Commissioner

- (1) The Parliamentary Service Commissioner may, in writing, delegate any of the Parliamentary Service Commissioner's powers or functions under this instrument (other than this section or section 97) to an SES employee.
- (2) The Parliamentary Service Commissioner must not delegate a power or function to an SES employee unless the Parliamentary Service Commissioner is reasonably satisfied that the SES employee has the appropriate work-related qualities to exercise the power or perform the function (as the case requires).
- (3) A person exercising powers or functions under a delegation under this section must comply with any directions of the Parliamentary Service Commissioner.

143 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 instrument (other than this section) to:
 - (a) an APS employee made available to the Merit Protection Commissioner by an Agency Head; 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) The Merit Protection Commissioner must not delegate a power or function to an APS employee or a Parliamentary Service employee unless the Merit Protection Commissioner is reasonably satisfied that the employee has the appropriate work-related qualities to exercise the power or perform the function (as the case requires).
- (3) A person exercising powers or functions under a delegation under this section must comply with any directions of the Merit Protection Commissioner.

144 Delegation by Secretary

Delegations by Secretary

- (1) A Secretary may, in writing, delegate to a Parliamentary Service employee any of the Secretary's powers or functions under this instrument (other than this section).
- (2) A Secretary may, in writing, delegate to the Parliamentary Librarian any of the Secretary's powers or functions under this instrument (other than this section).
- (3) A Secretary may, in writing and with the prior written consent of the Parliamentary Service Commissioner, delegate to a person who is not a Parliamentary Service employee any of the Secretary's powers or functions under this instrument (other than this section).

Subdelegations

- (4) If a Parliamentary Service employee (the **first delegate**) to whom powers or functions are delegated under subsection (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 subsection (1), the first delegate must give corresponding directions to the second delegate.
- (6) If powers or functions are delegated under subsection (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 subsection (2), the Parliamentary Librarian must give corresponding directions to the Parliamentary Service employee to whom a delegation is given under subsection (6).
- (8) A power or function that is exercised or performed by a person under a delegation under subsection (4) or (6) is taken, for the purposes of this instrument, to have been exercised or performed by the person who originally delegated the corresponding power or function under subsection (1) or (2).

Appropriate work-related qualities

- (9) A person (the **delegator**) must not delegate under this section a power or function to another person unless the delegator is reasonably satisfied that the other person has the appropriate work-related qualities to exercise the power or perform the function (as the case requires).

Directions

- (10) A person exercising powers or functions under a delegation under this section must comply with any directions of the person who delegated the power or function.

145 Immunity from civil proceedings in relation to Parliamentary Service Commissioner's functions

For the purposes of paragraph 70A(1)(f) of the Act, the following provisions of this instrument are prescribed:

- (a) section 98 (inquiries into Merit Protection Commissioner's behaviour);
- (b) section 99 (inquiries into alleged breaches of Code of Conduct by statutory office holders).

Part 14—Transitional arrangements

Division 1—Transitional arrangements in relation to the commencement of this instrument

146 Definitions

In this Division:

old determination means the *Parliamentary Service Determination 2013*, as in force immediately before 1 October 2024.

Note: This instrument commenced, and the old determination was repealed, on 1 October 2024.

147 Instruments made and other things done under the old determination

- (1) If:
- (a) an instrument (the **subordinate instrument**) was made for a particular purpose under a provision of the old determination; and
 - (b) the subordinate instrument was in effect or in force immediately before 1 October 2024; and
 - (c) the subordinate instrument could be made for that purpose under a provision of this instrument;

then, despite the repeal of the old determination by this instrument, the subordinate instrument continues in effect or in force, on and after 1 October 2024, as if it were made for that purpose under that provision of this instrument.

Example: A delegation by a Secretary under clause 146 of the old determination that was in force immediately before the commencement of this instrument continues in force after that commencement as if it were made under section 144 of this instrument.

- (2) If:
- (a) any other thing was done for a particular purpose under the old determination; 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.
- (3) Without limiting subsection (2), a reference in that subsection to a thing being done includes a reference to a notice being given and an investigation being undertaken.

148 Conduct, event, circumstances occurring before commencement

- (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 1 October 2024.

Example: Deductions may be made under Part 11 in relation to judgment debts arising before commencement.

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- (2) This section does not limit anything in 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*).

149 Notification of employment decisions

Division 5 of Part 3 of this instrument applies in relation to:

- (a) an employment decision made on or after 1 October 2024; and
- (b) an employment decision made, but not notified under Division 5 of Part 3 of the old determination, before 1 October 2024.

150 Review of promotion notified before commencement

- (1) Subsection (2) applies if, before 1 October 2024, a promotion was notified in accordance with the old determination.
- (2) Despite the repeal of the old determination by this instrument, the old determination continues to apply, on and after 1 October 2024, 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;as if the repeal had not happened.

151 Review of actions where application for review made before commencement day

- (1) This section applies if:
 - (a) before 1 October 2024, a Parliamentary Service employee applied under Division 3 of Part 9 of the old determination for review of Parliamentary Service action; and
 - (b) the review had not been completed in accordance with that Division before 1 October 2024.

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 the Secretary.

- (2) Despite the repeal of the old determination by this instrument, the old determination continues to apply, on and after 1 October 2024, in relation to the review, as if the repeal had not happened.

Schedule 1—Repeals

Parliamentary Service Determination 2013

1 The whole of the instrument

Repeal the instrument.