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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Public Service Amendment Bill 2012

No. , 2012

(Prime Minister)

A Bill for an Act to amend the *Public Service Act 1999*, and for related purposes

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1 **A Bill for an Act to amend the *Public Service Act***
2 ***1999*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Public Service Amendment Act 2012*.

6 **2 Commencement**

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

11

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1, 2, 3 and 4	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1
2 **Schedule 1—Amendment of the Public**
3 **Service Act 1999**

4 **Part 1—Secretaries**

5 *Public Service Act 1999*

6 **1 Sections 57, 58, 59 and 60**

7 Repeal the sections, substitute:

8 **57 Roles and responsibilities of Secretaries**

9 *Roles of Secretaries*

- 10 (1) The roles of the Secretary of a Department include, but are not
11 limited to, the following:
- 12 (a) principal official policy adviser to the Agency Minister;
 - 13 (b) manager, ensuring delivery of government programs and
14 collaboration to achieve outcomes within the Agency
15 Minister’s portfolio and, with other Secretaries, across the
16 whole of Government;
 - 17 (c) leader, providing stewardship within the Department and, in
18 partnership with the Secretaries Board, across the APS;
 - 19 (d) any other role prescribed by the regulations.

20 *Responsibilities of Secretaries*

- 21 (2) The responsibilities of the Secretary of a Department are as
22 follows:
- 23 (a) to manage the affairs of the Department efficiently,
24 effectively, economically and ethically;
 - 25 (b) to advise the Agency Minister about matters relating to the
26 Department;
 - 27 (c) to implement measures directed at ensuring that the
28 Department complies with the law;
 - 29 (d) to provide leadership, strategic direction and a focus on
30 results for the Department;

- 1 (e) to maintain clear lines of communication within the Agency
2 Minister's portfolio, as negotiated between the Secretary and
3 the other Agency Heads in the portfolio;
- 4 (f) to engage with stakeholders, particularly in relation to the
5 core activities of the Department;
- 6 (g) to manage the affairs of the Department in a way that is not
7 inconsistent with the policies of the Commonwealth and the
8 interests of the APS as a whole;
- 9 (h) to ensure that the Agency Minister's portfolio has a strong
10 strategic policy capability that can consider complex,
11 whole-of-government issues;
- 12 (i) to assist the Agency Minister to fulfil the Agency Minister's
13 accountability obligations to the Parliament to provide factual
14 information, as required by the Parliament, in relation to the
15 operation and administration of the Department;
- 16 (j) such other responsibilities as are prescribed by the
17 regulations.

- 18 (3) Subsection (2) does not affect a Secretary's responsibilities under
19 any other law.

20 Note: See, for example, the *Financial Management and Accountability Act*
21 *1997*.

22 **58 Appointment**

- 23 (1) The Secretary of a Department is to be appointed by the
24 Governor-General, by written instrument, on the recommendation
25 of the Prime Minister.

26 Note: The Secretary of a Department is eligible for reappointment as the
27 Secretary of that Department (see section 33AA of the *Acts*
28 *Interpretation Act 1901*).

- 29 (2) The Secretary of a Department holds office for the period specified
30 in the instrument of appointment.

- 31 (3) The period of a person's appointment as the Secretary of a
32 Department must be:

- 33 (a) 5 years; or
34 (b) if the person has requested a shorter period—that shorter
35 period.

- 1 (4) Subsection (3) does not apply in relation to a person who is
2 reappointed as the Secretary of a Department. In this case, the
3 person's appointment may be for any period not exceeding 5 years.
- 4 (5) The Secretary of a Department holds office on a full-time basis.
- 5 (6) Before recommending to the Governor-General that a person be
6 appointed as the Secretary of the Prime Minister's Department, the
7 Prime Minister must have received a report about the appointment
8 prepared by the Commissioner.
- 9 (7) Before recommending to the Governor-General that a person be
10 appointed as the Secretary of a Department other than the Prime
11 Minister's Department, the Prime Minister must have received a
12 report about the appointment from the Secretary of the Prime
13 Minister's Department.
- 14 (8) The report from the Secretary of the Prime Minister's Department
15 about the appointment of the Secretary of another Department
16 must:
- 17 (a) be prepared after consultation with:
- 18 (i) the Commissioner; and
- 19 (ii) the person who is expected to be the Agency Minister of
20 the other Department at the time the appointment is
21 made; and
- 22 (b) if the Secretary of the Prime Minister's Department and the
23 Commissioner disagree in relation to the proposed
24 appointment—explain the substance of the disagreement.

25 **59 Termination of appointment**

- 26 (1) The Governor-General may, on the recommendation of the Prime
27 Minister and by notice in writing, terminate the appointment of a
28 Secretary.

29 Note: In *Barratt v Howard* [1999] FCA 1132, the Federal Court of Australia
30 described the basis on which requirements of procedural fairness
31 applied to the termination of an appointment of Secretary under
32 section 37 of the *Public Service Act 1922*.

- 33 (2) Before recommending to the Governor-General that the
34 appointment of the Secretary of the Prime Minister's Department
35 be terminated, the Prime Minister must have received a report
36 about the proposed termination from the Commissioner.

- 1 (3) Before recommending to the Governor-General that the
2 appointment of the Secretary of a Department other than the Prime
3 Minister's Department be terminated, the Prime Minister must
4 have received a report about the proposed termination from the
5 Secretary of the Prime Minister's Department.
- 6 (4) The report from the Secretary of the Prime Minister's Department
7 about the proposed termination of the appointment of the Secretary
8 of another Department must:
- 9 (a) be prepared after consultation with the Commissioner; and
10 (b) if the Secretary of the Prime Minister's Department and the
11 Commissioner disagree in relation to the proposed
12 termination—explain the substance of the disagreement.

13 **60 Engagement of former Secretaries**

- 14 (1) The Prime Minister may, on behalf of the Commonwealth, engage
15 (otherwise than as an APS employee) a person who is a former
16 Secretary on terms and conditions determined by the Prime
17 Minister.
- 18 (2) A person is a *former Secretary* for the purposes of subsection (1)
19 if:
- 20 (a) the office of Secretary to which the person was appointed has
21 been abolished under subsection 56(2); or
22 (b) the person's appointment as Secretary has been terminated
23 under section 59; or
24 (c) the person has resigned his or her appointment as Secretary;
25 or
26 (d) the period of the person's appointment as Secretary has
27 ended.

28 **2 After section 61**

29 Insert:

30 **61A Annual performance review**

31 An annual review of the performance of a Secretary must be
32 carried out in accordance with a framework established by the
33 Secretary of the Prime Minister's Department and the
34 Commissioner.

1

2 **Part 2—Secretaries Board**

3 *Public Service Act 1999*

4 **3 Section 7**

5 Insert:

6 *Secretaries Board* means the Secretaries Board established by
7 section 64.

8 **4 Part 8**

9 Repeal the Part, substitute:

10 **Part 8—Secretaries Board**

11

12 **64 Secretaries Board**

13 (1) The Secretaries Board is established by this section.

14 (2) The Secretaries Board consists of the following members:

- 15 (a) the Secretary of the Prime Minister’s Department, as Chair;
- 16 (b) the Secretary of each other Department;
- 17 (c) the Commissioner;
- 18 (d) such other persons as are nominated in writing by the
19 Secretary of the Prime Minister’s Department.

20 (3) The Secretaries Board has the following functions:

- 21 (a) to take responsibility for the stewardship of the APS and for
22 developing and implementing strategies to improve the APS;
- 23 (b) to identify strategic priorities for the APS and consider issues
24 that affect the APS;
- 25 (c) to set an annual work program, and direct subcommittees to
26 develop strategies to address APS-wide issues and make
27 recommendations to the Secretaries Board;
- 28 (d) to draw together advice from senior leaders in government,
29 business and the community;
- 30 (e) to work collaboratively and model leadership behaviours.

Schedule 1 Amendment of the Public Service Act 1999
Part 2 Secretaries Board

- 1 (4) The Secretaries Board may establish one or more senior leadership
2 groups, consisting of members determined by the Secretaries
3 Board, to assist the Secretaries Board in performing its functions.
4

1

2 **Part 3—Senior Executive Service**

3 *Public Service Act 1999*

4 **5 Subsection 35(2)**

5 Repeal the subsection, substitute:

6 (2) The function of the SES is to provide APS-wide strategic
7 leadership of the highest quality that contributes to an effective and
8 cohesive APS.

9 (3) For the purpose of carrying out the function of the SES, each SES
10 employee:

11 (a) provides one or more of the following at a high level:

12 (i) professional or specialist expertise;

13 (ii) policy advice;

14 (iii) program or service delivery;

15 (iv) regulatory administration; and

16 (b) promotes cooperation within and between Agencies,
17 including to deliver outcomes across Agency and portfolio
18 boundaries; and

19 (c) by personal example and other appropriate means, promotes
20 the APS Values, the APS Employment Principles and
21 compliance with the Code of Conduct.

22 **6 After subsection 37(1)**

23 Insert:

24 (1A) A notice may be given to an SES employee under subsection (1)
25 whether or not the employee has reached the minimum retiring age
26 under section 30.

27 **7 Paragraph 37(2)(b)**

28 Omit “been compulsorily retired”, substitute “retired involuntarily”.
29

1

2 **Part 4—The Australian Public Service Commissioner**

3 *Public Service Act 1999*

4 **8 Paragraph 3(c)**

5 Before “Public”, insert “Australian”.

6 **9 Section 7 (definition of *Commissioner*)**

7 Before “Public”, insert “Australian”.

8 **10 Section 7**

9 Insert:

10 *former APS employee* means a person who was, but is no longer,
11 an APS employee.

12 **11 Section 7**

13 Insert:

14 *special review* means a review conducted by the Commissioner
15 under subsection 41D(1).

16 **12 Section 7**

17 Insert:

18 *systems review* means a review conducted by the Commissioner
19 under subsection 41C(1).

20 **13 Part 5 (heading)**

21 Repeal the heading, substitute:

22 **Part 5—The Australian Public Service**
23 **Commissioner**

24 **14 Section 40 (heading)**

25 Repeal the heading, substitute:

1 **40 Australian Public Service Commissioner**

2 **15 Subsection 40(1)**

3 Omit “a Public”, substitute “an Australian Public”.

4 **16 Section 41**

5 Repeal the section, substitute:

6 **41 Commissioner’s functions**

7 (1) The Commissioner has the following functions:

- 8 (a) to strengthen the professionalism of the APS and facilitate
9 continuous improvement in workforce management in the
10 APS;
11 (b) to uphold high standards of integrity and conduct in the APS;
12 (c) to monitor, review and report on APS capabilities within and
13 between Agencies to promote high standards of
14 accountability, effectiveness and performance.

15 (2) Without limiting subsection (1), the Commissioner’s functions
16 include the following:

- 17 (a) to foster, and contribute to, leadership, high quality learning
18 and development and career management in the APS;
19 (b) to lead the thinking about, provide advice on and drive
20 reforms to workforce management policies so that the APS is
21 ready for future demands;
22 (c) to develop, review and evaluate APS workforce management
23 policies and practices and maintain appropriate databases;
24 (d) to foster an APS workforce that reflects the diversity of the
25 Australian population;
26 (e) to promote the APS Values, the APS Employment Principles
27 and the Code of Conduct;
28 (f) to evaluate the extent to which Agencies incorporate and
29 uphold the APS Values and the APS Employment Principles;
30 (g) to partner with Secretaries in the stewardship of the APS;
31 (h) to provide advice and assistance to Agencies on public
32 service matters;
33 (i) to work with other governments (including foreign
34 governments) on matters relating to public sector workforce
35 management, leadership and career management;
-

- 1 (j) to review any matter relating to the APS;
2 (k) to review any matter relating to the APS referred to the
3 Commissioner by the Public Service Minister, and report on
4 that matter to the Public Service Minister;
5 (l) to evaluate the adequacy of systems and procedures in
6 Agencies for ensuring compliance with the Code of Conduct;
7 (m) to inquire, in accordance with section 41A, into alleged
8 breaches of the Code of Conduct by Agency Heads;
9 (n) to inquire into and determine, in accordance with
10 section 41B, whether an APS employee, or a former APS
11 employee, has breached the Code of Conduct;
12 (o) to inquire, subject to regulations made for the purposes of
13 section 16, into whistleblower reports made to the
14 Commissioner (or a person authorised by the Commissioner)
15 as referred to in that section;
16 (p) such other functions as are conferred on the Commissioner
17 by this Act, the regulations or any other law;
18 (q) such other functions as the Prime Minister, by legislative
19 instrument, directs the Commissioner to perform;
20 (r) to do anything incidental to or conducive to the performance
21 of any of the Commissioner's functions.

22 Note: Neither section 42 (disallowance) nor Part 6 (sunsetting) of the
23 *Legislative Instruments Act 2003* applies to a direction given under
24 paragraph (2)(q) (see sections 44 and 54 of that Act).

25 *Reports may include recommendations*

- 26 (3) A report made by the Commissioner in the performance of his or
27 her functions may include recommendations.

28 *Fees*

- 29 (4) The regulations may authorise the Commissioner to charge fees
30 (on behalf of the Commonwealth) for the performance, on request,
31 of the Commissioner's functions.

1 **41A Inquiry into alleged breach of Code of Conduct by Agency**
2 **Head**

- 3 (1) The Commissioner may, for the purposes of paragraph 41(2)(m),
4 inquire into an alleged breach of the Code of Conduct by an
5 Agency Head.
- 6 (2) The Commissioner must report on the results of an inquiry under
7 subsection (1) (including, if relevant, recommendations for
8 sanctions) to:
- 9 (a) if the Agency Head is a Secretary—the Prime Minister; or
10 (b) if the Agency Head is the Head of an Executive Agency—the
11 Agency Minister; or
12 (c) if the Agency Head is the Head of a Statutory Agency that is
13 prescribed by the regulations for the purposes of this
14 paragraph—the Presiding Officers; or
15 (d) if the Agency Head is the Head of a Statutory Agency that is
16 not prescribed by the regulations for the purposes of
17 paragraph (c)—the Agency Minister.
- 18 (3) The regulations may prescribe circumstances in which the
19 Commissioner:
- 20 (a) may decline to conduct an inquiry under subsection (1); or
21 (b) may discontinue such an inquiry without making a report
22 under subsection (2).

23 **41B Inquiry into alleged breach of Code of Conduct by APS**
24 **employee or former APS employee**

25 *Request for inquiry*

- 26 (1) The Commissioner may, for the purposes of paragraph 41(2)(n),
27 inquire into and determine whether an APS employee, or a former
28 APS employee, in an Agency has breached the Code of Conduct if:
29 (a) the Agency Head or the Prime Minister requests the
30 Commissioner to do so; and
31 (b) the Commissioner considers it would be appropriate to do so.
- 32 (2) The Prime Minister may make a request under paragraph (1)(a) in
33 relation to an alleged breach of the Code of Conduct of which the
34 Prime Minister has become aware as a result of, or in the course of,
35 a systems review or a special review.

1 *Procedures for inquiry*

- 2 (3) The Commissioner must establish written procedures for inquiring
3 into and determining whether an APS employee, or a former APS
4 employee, in an Agency has breached the Code of Conduct
5 (including by engaging in conduct referred to in subsection
6 15(2A)). The procedures:
7 (a) must comply with basic procedural requirements prescribed
8 by the regulations; and
9 (b) must have due regard to procedural fairness.
- 10 (4) In addition, and without affecting subsection (3), the procedures
11 may be different for:
12 (a) different categories of APS employees or former APS
13 employees; or
14 (b) APS employees, or former APS employees, who:
15 (i) have been convicted of an offence against a
16 Commonwealth, State or Territory law in respect of
17 conduct that is alleged to constitute a breach of the Code
18 of Conduct; or
19 (ii) have been found to have committed such an offence but
20 no conviction is recorded.
- 21 (5) The Commissioner must ensure that the procedures established
22 under subsection (3) are made publicly available.
- 23 (6) Procedures established under subsection (3) are not legislative
24 instruments.

25 *Commissioner's powers*

- 26 (7) For the purposes of inquiring into and determining whether an APS
27 employee, or a former APS employee, in an Agency has breached
28 the Code of Conduct, the Commissioner may exercise the same
29 powers as the Agency Head may exercise in determining whether
30 an APS employee, or a former APS employee, in the Agency has
31 breached the Code of Conduct.

32 *Report on results of inquiry*

- 33 (8) The Commissioner must report on the results of an inquiry and
34 determination under this section (including an inquiry that is

1 discontinued) in relation to an APS employee, or a former APS
2 employee, in an Agency to:

- 3 (a) the Agency Head; and
4 (b) if the Prime Minister requested the inquiry—the Prime
5 Minister.

6 *Recommendation of sanctions*

7 (9) If:

- 8 (a) the Commissioner finds that an APS employee in an Agency
9 has breached the Code of Conduct; and
10 (b) the Commissioner is requested to recommend sanctions in
11 respect of the breach by:
12 (i) the Agency Head; or
13 (ii) if the Prime Minister requested the inquiry—the Prime
14 Minister;

15 the Commissioner may recommend any of the sanctions referred to
16 in subsection 15(1).

17 Note: A sanction referred to in subsection 15(1) would be imposed on the
18 APS employee by the Agency Head, not by the Commissioner.

19 *Discontinuation of inquiry*

- 20 (10) The regulations may prescribe circumstances in which the
21 Commissioner may discontinue an inquiry under this section.

22 **41C Systems reviews**

- 23 (1) The Prime Minister may direct the Commissioner to conduct a
24 review (a *systems review*) of any matter relating to an Agency,
25 including:
26 (a) the management and organisational systems, structures or
27 processes in an Agency; and
28 (b) the functional relationships between 2 or more Agencies.
29 (2) An Agency Minister may request the Prime Minister to make a
30 direction under subsection (1) that relates to an Agency.
31 (3) The Secretary of a Department may request the Prime Minister to
32 make a direction under subsection (1) that relates to the
33 Department or any other Agency in the same portfolio as the
34 Department.

- 1 (4) The Commissioner must give a report on the review to:
2 (a) the Prime Minister; and
3 (b) if the review was conducted because of a request by an
4 Agency Minister or a Secretary—the Agency Minister or the
5 Secretary.
- 6 (5) If a direction under subsection (1) is given in writing, the direction
7 is not a legislative instrument.

8 **41D Special reviews**

- 9 (1) The Prime Minister may direct the Commissioner to conduct a
10 review (a *special review*) of:
11 (a) any matter relating to an Agency; or
12 (b) the functional relationships between 2 or more Agencies.
- 13 (2) The Commissioner must give a report on the review to:
14 (a) the Prime Minister; and
15 (b) the Agency Minister of each Agency to which the review
16 relates.
- 17 (3) If a direction under subsection (1) is given in writing, the direction
18 is not a legislative instrument.

19 **17 Paragraph 43(1)(a)**

20 Omit “paragraph 41(1)(a), (b) or (g)”, substitute “paragraph 41(2)(c), (f)
21 or (l)”.

22 **18 Paragraph 43(1)(b)**

23 Omit “paragraph 41(1)(c) or (f)”, substitute “paragraph 41(2)(m) or
24 (o)”.

25 **19 Paragraph 43(1)(c)**

26 Omit “paragraph 41(1)(d)”, substitute “paragraph 41(2)(k)”.

27 **20 At the end of subsection 43(1)**

28 Add:
29 ; (d) an inquiry that is conducted by the Commissioner for the
30 purposes of a special review.

31 **21 Subsection 49(2)**

1 Before “Public”, insert “Australian”.

2 **22 Subsection 51(3)**

3 Before “Public”, insert “Australian”.

4 **23 After subsection 78(5)**

5 Insert:

6 (5A) The Commissioner may, in writing, delegate to a former senior
7 official any of the Commissioner’s powers or functions under
8 section 38 or paragraph 41(2)(m), (n) or (o).

9 **24 Subsection 78(12)**

10 Insert:

11 *former senior official* means:

- 12 (a) a person who held, but no longer holds, an office or
13 appointment under an Act; or
14 (b) a person who was, but is no longer, an SES employee, and
15 who does not hold an office or appointment under an Act.
16

1

2 **Part 5—Special Commissioners**

3 *Public Service Act 1999*

4 **25 Section 7**

5 Insert:

6 *Special Commissioner* means a Special Commissioner appointed
7 under section 48A.

8 **26 At the end of Part 5**

9 Add:

10 **Division 3—Special Commissioners**

11 **48A Appointment of Special Commissioners**

12 (1) The Governor-General may, by written instrument, on the
13 recommendation of the Prime Minister, appoint one or more
14 Special Commissioners to assist the Commissioner in conducting a
15 specified systems review or special review, or a part of such a
16 review.

17 (2) The Prime Minister must not recommend that a person be
18 appointed as a Special Commissioner unless the Prime Minister
19 has consulted the Commissioner about the appointment.

20 (3) A Special Commissioner may be appointed on a full-time basis or
21 a part-time basis.

22 (4) A Special Commissioner holds office for the period specified in the
23 instrument of appointment.

24 **48B Remuneration and other terms and conditions of appointment**

25 *Remuneration and allowances*

26 (1) A Special Commissioner is to be paid the remuneration that is
27 determined by the Remuneration Tribunal. If no determination of
28 that remuneration by the Tribunal is in operation, a Special

1 Commissioner is to be paid the remuneration that is prescribed by
2 the regulations.

3 (2) A Special Commissioner is to be paid the allowances that are
4 prescribed by the regulations.

5 (3) Subsections (1) and (2) have effect subject to the *Remuneration*
6 *Tribunal Act 1973*.

7 *Leave of absence*

8 (4) A full-time Special Commissioner has the recreation leave
9 entitlements that are determined by the Remuneration Tribunal.

10 (5) The Prime Minister may grant a full-time Special Commissioner
11 leave of absence, other than recreation leave, on the terms and
12 conditions as to remuneration or otherwise that the Prime Minister
13 determines.

14 (6) The Prime Minister may grant leave of absence to a part-time
15 Special Commissioner on the terms and conditions that the Prime
16 Minister determines.

17 *Other terms and conditions*

18 (7) A Special Commissioner holds office on the terms and conditions
19 (if any) in relation to matters not covered by this Act that are
20 determined by the Prime Minister.

21 **48C Termination of appointment**

22 (1) The Governor-General may, by notice in writing, on the
23 recommendation of the Prime Minister, terminate the appointment
24 of a Special Commissioner at any time.

25 (2) The Prime Minister must not recommend that the appointment of a
26 Special Commissioner be terminated unless the Prime Minister has
27 consulted the Commissioner about the termination.
28

1

2 **Part 6—APS Values and APS Employment Principles**

3 *Public Service Act 1999*

4 **27 Section 7**

5 Insert:

6 *APS Employment Principles* means the principles in section 10A.

7 **28 Section 10**

8 Repeal the section, substitute:

9 **10 APS Values**

10 *Committed to service*

11 (1) The APS is professional, objective, innovative and efficient, and
12 works collaboratively to achieve the best results for the Australian
13 community and the Government.

14 *Ethical*

15 (2) The APS demonstrates leadership, is trustworthy, and acts with
16 integrity, in all that it does.

17 *Respectful*

18 (3) The APS respects all people, including their rights and their
19 heritage.

20 *Accountable*

21 (4) The APS is open and accountable to the Australian community
22 under the law and within the framework of Ministerial
23 responsibility.

1 *Impartial*

- 2 (5) The APS is apolitical and provides the Government with advice
3 that is frank, honest, timely and based on the best available
4 evidence.

5 **10A APS Employment Principles**

6 *APS Employment Principles*

- 7 (1) The APS is a career-based public service that:
8 (a) makes fair employment decisions with a fair system of
9 review; and
10 (b) recognises that the usual basis for engagement is as an
11 ongoing APS employee; and
12 (c) makes decisions relating to engagement and promotion that
13 are based on merit; and
14 (d) requires effective performance from each employee; and
15 (e) provides flexible, safe and rewarding workplaces where
16 communication, consultation, cooperation and input from
17 employees on matters that affect their workplaces are valued;
18 and
19 (f) provides workplaces that are free from discrimination,
20 patronage and favouritism; and
21 (g) recognises the diversity of the Australian community and
22 fosters diversity in the workplace.

23 *Decisions based on merit*

- 24 (2) For the purposes of paragraph (1)(c), a decision relating to
25 engagement or promotion is based on merit if:
26 (a) all eligible members of the community were given a
27 reasonable opportunity to apply to perform the relevant
28 duties; and
29 (b) an assessment is made of the relative suitability of the
30 candidates to perform the relevant duties, using a competitive
31 selection process; and
32 (c) the assessment is based on the relationship between the
33 candidates' work-related qualities and the work-related
34 qualities genuinely required to perform the relevant duties;
35 and

- 1 (d) the assessment focuses on the relative capacity of the
2 candidates to achieve outcomes related to the relevant duties;
3 and
4 (e) the assessment is the primary consideration in making the
5 decision.

6 Note: Commissioner's Directions may determine the scope or application of
7 the APS Employment Principles (see subsections 11A(2) and (3)).

8 **29 Subsection 11(1)**

9 Omit "must issue directions in writing in relation to each", substitute
10 "may issue directions in writing in relation to any".

11 **30 At the end of subsection 11(1)**

12 Add:

13 Note: See section 42 for general provisions relating to Commissioner's
14 Directions.

15 **31 Section 12**

16 Repeal the section, substitute:

17 **12 Agency Heads must promote APS Values and APS Employment**
18 **Principles**

19 An Agency Head must uphold and promote the APS Values and
20 APS Employment Principles.

21 **32 Section 17**

22 Repeal the section.

23 **33 Section 18**

24 Omit "APS Values", substitute "APS Employment Principles".

25 **34 At the end of subsection 22(2)**

26 Add:

27 Note: The usual basis for engagement is as an ongoing APS employee (see
28 paragraph 10A(1)(b)).

29 **35 Subsection 22(3)**

30 Repeal the subsection.

1 **36 At the end of section 39**

2 Add:

3 (3) The APS Employment Principles do not apply to giving, or
4 carrying out, a direction referred to in subsection (2).

1

2 **Part 7—Code of Conduct**

3 ***Public Service Act 1999***

4 **37 Subsections 13(1) to (4)**

5 Omit “the course of”, substitute “connection with”.

6 **38 Subsection 13(11)**

7 Repeal the subsection, substitute:

8 (11) An APS employee must at all times behave in a way that upholds:

9 (a) the APS Values and APS Employment Principles; and

10 (b) the integrity and good reputation of the employee’s Agency
11 and the APS.

12 **39 Section 14 (heading)**

13 Repeal the heading, substitute:

14 **14 Agency Heads and statutory office holders bound by Code of**
15 **Conduct**

16 **40 Subsection 14(2)**

17 Repeal the subsection, substitute:

18 (2) Statutory office holders are bound by the Code of Conduct, subject
19 to any regulations made under subsection (2A).

20 (2A) The regulations may make provision in relation to the extent to
21 which statutory office holders are bound by the Code of Conduct.

22 Note: The regulations may make different provision with respect to different
23 statutory office holders or different classes of statutory office holders
24 (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

25 **41 Before subsection 15(1)**

26 Insert:

1 *Sanctions that may be imposed*

2 **42 Subsection 15(1)**

3 After “subsection (3)”, insert “of this section or subsection 41B(3) or
4 50A(2)”.

5 **43 At the end of subsection 15(1)**

6 Add:

7 Note: See sections 29 and 38 in relation to terminating an APS employee’s
8 employment.

9 **44 Subsections 15(3), (4) and (5)**

10 Repeal the subsections, substitute:

11 *Providing false or misleading information etc. in connection with*
12 *engagement as an APS employee*

13 (2A) A person who is, or was, an APS employee is taken to have
14 breached the Code of Conduct if the person is found (under
15 procedures established under subsection (3) of this section or
16 subsection 41B(3) or 50A(2)) to have, before being engaged as an
17 APS employee:

18 (a) knowingly provided false or misleading information to
19 another APS employee, or to a person acting on behalf of the
20 Commonwealth; or

21 (b) wilfully failed to disclose to another APS employee, or to a
22 person acting on behalf of the Commonwealth, information
23 that the person knew, or ought reasonably to have known,
24 was relevant; or

25 (c) otherwise failed to behave honestly and with integrity;
26 in connection with the person’s engagement as an APS employee.

27 Note: If the person is an APS employee at the time a finding referred to in
28 paragraph (2A)(a), (b) or (c) is made in relation to the person, the
29 Agency Head of the employee’s Agency may impose sanctions on the
30 person as permitted by subsection (1).

31 *Procedures for determining whether APS employee, or former APS*
32 *employee, has breached the Code of Conduct etc.*

33 (3) An Agency Head must establish written procedures in accordance
34 with this section for determining:

- 1 (a) whether an APS employee, or a former APS employee, in the
2 Agency has breached the Code of Conduct (including by
3 engaging in conduct referred to in subsection (2A)); and
4 (b) the sanction (if any) that is to be imposed under
5 subsection (1) on an APS employee in the Agency who is
6 found to have breached the Code of Conduct (including by
7 engaging in conduct referred to in subsection (2A)).
- 8 (4) The procedures:
9 (a) must comply with basic procedural requirements set out in
10 Commissioner's Directions; and
11 (b) must have due regard to procedural fairness.
- 12 (5) In addition, and without affecting subsection (4), the procedures
13 may be different for:
14 (a) different categories of APS employees or former APS
15 employees; or
16 (b) APS employees, or former APS employees, who:
17 (i) have been convicted of an offence against a
18 Commonwealth, State or Territory law in respect of
19 conduct that is alleged to constitute a breach of the Code
20 of Conduct; or
21 (ii) have been found to have committed such an offence but
22 no conviction is recorded.
- 23 (6) The Commissioner must issue directions in writing for the
24 purposes of paragraph (4)(a).
- 25 Note: See section 42 for general provisions relating to Commissioner's
26 Directions.
- 27 (7) An Agency Head must ensure that the procedures established
28 under subsection (3) are made publicly available.
- 29 (8) Procedures established under subsection (3) are not legislative
30 instruments.

31 **45 Section 19**

32 After "under", insert "section 15 or 16 or".

33 **46 After paragraph 50(1)(c)**

34 Insert:

- 1 (ca) to inquire into and determine, in accordance with
2 section 50A, whether an APS employee, or a former APS
3 employee, has breached the Code of Conduct;

4 **47 After section 50**

5 Insert:

6 **50A Inquiry into alleged breach of Code of Conduct by APS**
7 **employee or former APS employee**

8 *Request for inquiry*

- 9 (1) The Merit Protection Commissioner may, for the purposes of
10 paragraph 50(1)(ca), inquire into and determine whether an APS
11 employee, or a former APS employee, has breached the Code of
12 Conduct if:
13 (a) the Agency Head requests the Merit Protection
14 Commissioner to do so; and
15 (b) the Merit Protection Commissioner considers it would be
16 appropriate to do so; and
17 (c) the APS employee, or former APS employee, agrees, in
18 writing, to the Merit Protection Commissioner doing so.

19 Note: A finding by the Merit Protection Commissioner under this section is
20 reviewable under the *Administrative Decisions (Judicial Review) Act*
21 *1977*.

22 *Procedures for inquiry*

- 23 (2) The Merit Protection Commissioner must establish written
24 procedures for inquiring into and determining whether an APS
25 employee, or a former APS employee, has breached the Code of
26 Conduct (including by engaging in conduct referred to in
27 subsection 15(2A)). The procedures:
28 (a) must comply with basic procedural requirements prescribed
29 by the regulations; and
30 (b) must have due regard to procedural fairness.

31 Note: The procedures may make different provision for different classes of
32 APS employees or former APS employees (see subsection 33(3A) of
33 the *Acts Interpretation Act 1901*).

- 34 (3) In addition, and without affecting subsection (2), the procedures
35 may be different for:

- 1 (a) different categories of APS employees or former APS
2 employees; or
3 (b) APS employees, or former APS employees, who:
4 (i) have been convicted of an offence against a
5 Commonwealth, State or Territory law in respect of
6 conduct that is alleged to constitute a breach of the Code
7 of Conduct; or
8 (ii) have been found to have committed such an offence but
9 no conviction is recorded.

10 (4) The Merit Protection Commissioner must ensure that the
11 procedures established under subsection (2) are made publicly
12 available.

13 (5) Procedures established under subsection (2) are not legislative
14 instruments.

15 *Merit Protection Commissioner's powers*

16 (6) For the purposes of inquiring into and determining whether an APS
17 employee, or a former APS employee, in an Agency has breached
18 the Code of Conduct, the Merit Protection Commissioner may
19 exercise the same powers as the Agency Head may exercise in
20 determining whether an APS employee, or a former APS
21 employee, in the Agency has breached the Code of Conduct.

22 *Report on results of inquiry*

23 (7) The Merit Protection Commissioner must report on the results of
24 an inquiry and determination under this section to the Agency
25 Head who requested the inquiry.

26 Note: If the Merit Protection Commissioner finds that an APS employee in
27 an Agency has breached the Code of Conduct, the Agency Head may
28 impose a sanction on the APS employee under subsection 15(1).
29

1

2 **Part 8—Whistleblower reports**

3 *Public Service Act 1999*

4 **48 Section 16 (heading)**

5 Repeal the heading, substitute:

6 **16 Whistleblower reports**

7 **49 Section 16 (after the heading)**

8 Insert:

9 *Protection for whistleblowers*

10 **50 Section 16**

11 Before “A person”, insert “(1)”.

12 **51 Paragraph 16(b)**

13 Omit “Commissioner.”, substitute “Commissioner; or”.

14 **52 At the end of section 16**

15 Add:

16 *Whistleblower reports made to Agency Heads etc.*

17 (2) An Agency Head must establish procedures for:

18 (a) an APS employee to make a report (a *whistleblower report*)
19 of a breach (or an alleged breach) of the Code of Conduct to
20 the Agency Head or to a person authorised for the purposes
21 of this section by the Agency Head; and

22 (b) an Agency Head to deal with a whistleblower report made to
23 the Agency Head or to a person authorised for the purposes
24 of this section by the Agency Head.

25 Note: The procedures may be in a single document.

26 (3) Procedures established under subsection (2) must comply with
27 basic procedural requirements (if any) prescribed by the
28 regulations.

- 1 (4) Procedures established under subsection (2) are not legislative
2 instruments.

3 *Whistleblower reports made to the Commissioner or Merit*
4 *Protection Commissioner etc.*

- 5 (5) The regulations may prescribe either or both of the following:
6 (a) procedures for an APS employee to make a report (also a
7 ***whistleblower report***) of a breach (or an alleged breach) of
8 the Code of Conduct to the Commissioner or the Merit
9 Protection Commissioner or to a person authorised for the
10 purposes of this section by the Commissioner or the Merit
11 Protection Commissioner;
12 (b) basic procedural requirements that the Commissioner and the
13 Merit Protection Commissioner must comply with in dealing
14 with a whistleblower report.

15 *Circumstances for declining to inquire, or discontinuing an*
16 *inquiry, into a whistleblower report*

- 17 (6) The regulations may prescribe circumstances in which the
18 Commissioner, the Merit Protection Commissioner or an Agency
19 Head may:
20 (a) decline to conduct an inquiry into a whistleblower report; or
21 (b) discontinue an inquiry into a whistleblower report.

22 **53 Paragraph 50(1)(a)**

23 Repeal the paragraph, substitute:

- 24 (a) to inquire, subject to regulations made for the purposes of
25 section 16, into whistleblower reports made to the Merit
26 Protection Commissioner (or a person authorised by the
27 Merit Protection Commissioner) as referred to in that section;

28 **54 Subsection 50(2)**

29 Omit "(1)(c)", substitute "(1)(a) or (c)".
30

1

2 **Part 9—Review of actions**

3 ***Public Service Act 1999***

4 **55 Paragraph 33(4)(d)**

5 Repeal the paragraph, substitute:

6 (d) in the case of a review following an application or referral to
7 the Merit Protection Commissioner—must provide for the
8 review to be conducted by:

- 9 (i) the Merit Protection Commissioner; or
10 (ii) a person nominated by the Merit Protection
11 Commissioner; or
12 (iii) a 3 member committee constituted in accordance with
13 the regulations.

14 **56 Subsection 33(7) (definition of *APS action*)**

15 Repeal the definition, substitute:

16 ***APS action*** means:

- 17 (a) action by a person in the capacity of an Agency Head or APS
18 employee; or
19 (b) action by the Commissioner under section 41B (including a
20 finding that an APS employee has breached the Code of
21 Conduct).
22

1

2 **Part 10—Temporary APS employees**

3 *Public Service Act 1999*

4 **57 Section 7 (paragraphs (b) and (c) of the definition of**
5 **category of APS employee)**

6 Repeal the paragraphs, substitute:
7 (b) temporary APS employees.

8 **58 Section 7 (definition of *non-ongoing APS employee*)**

9 Repeal the definition.

10 **59 Section 7**

11 Insert:

12 *temporary APS employee* means a person engaged as a temporary
13 APS employee, as mentioned in paragraph 22(2)(b).

14 **60 Paragraphs 22(2)(b) and (c)**

15 Repeal the paragraphs, substitute:
16 (b) as a temporary APS employee.

17 **61 Subsections 22(4) and (5)**

18 Repeal the subsections, substitute:
19 (4) The regulations may prescribe:
20 (a) the circumstances in which persons may be engaged as
21 temporary APS employees; and
22 (b) the maximum period for which persons may be engaged as
23 temporary APS employees; and
24 (c) limitations on the extension of the period of engagement of
25 persons as temporary APS employees.

26 **62 Subsection 29(4)**

27 Repeal the subsection, substitute:
28 (4) The regulations may prescribe the grounds for the termination of
29 the employment of temporary APS employees.

1 **63 Subsection 29(5)**

2 Omit “for a non-ongoing”, substitute “of the employment of a
3 temporary”.
4

1

2

Part 11—Machinery of government changes

3

Public Service Act 1999

4

64 Paragraph 72(1)(b)

5

Omit “employees of a specified Commonwealth authority”, substitute
6 “non-APS employees of a specified Commonwealth body or
7 Commonwealth authority”.

8

65 Subsection 72(3)

9

Omit “an employee of a Commonwealth authority”, substitute “a
10 non-APS employee of a Commonwealth body or Commonwealth
11 authority”.

12

66 At the end of subsection 72(3)

13

Add:

14

; or (d) a written contract of employment.

15

67 Subsection 72(4)

16

Repeal the subsection, substitute:

17

(4) Subsection (3) ceases to have effect on the next occasion when
18 there is a relevant change in the terms and conditions of
19 employment applicable to the transferred employee or a class of
20 employees that includes the transferred employee. For this purpose,
21 ***relevant change*** means a change that results from:

22

(a) the making, variation or termination of a modern award, an
23 enterprise agreement, a workplace determination or a written
24 contract of employment; or

25

(b) the variation, termination or replacement of a WR Act
26 transitional instrument.

27

68 Subsection 72(5)

28

Omit “remuneration and other”, substitute “terms and”.

29

69 After subsection 72(5)

30

Insert:

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2
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11

(5A) If:

(a) an APS employee is moved from an Agency (the *former Agency*) to another Agency (the *new Agency*) under paragraph (1)(a); and

(b) prescribed circumstances existed in relation to the employee's employment in the former Agency before the employee moved to the new Agency;

the Commissioner may determine the measures (if any) that are to be taken in relation to those circumstances after the employee has moved to the new Agency.

1

2 **Part 12—Confidentiality of information**

3 *Public Service Act 1999*

4 **70 After Part 10**

5 Insert:

6 **Part 10A—Protection of information**

7

8 **72A Protection of information—Commissioner’s functions etc.**

9 *Definitions*

10 (1) In this section:

11 *entrusted person* means any of the following:

- 12 (a) the Commissioner;
- 13 (b) a delegate of the Commissioner;
- 14 (c) a person acting under the direction or authority of the
- 15 Commissioner;
- 16 (d) a Special Commissioner;
- 17 (e) a member of staff assisting the Commissioner or a Special
- 18 Commissioner.

19 *protected information* means information that was obtained by an

20 entrusted person in connection with the performance of his or her

21 functions or duties, or the exercise of his or her powers, under:

- 22 (a) paragraph 41(2)(j), (k), (m), (n) or (o); or
- 23 (b) section 41A, 41B, 41C, 41D or 43; or
- 24 (c) any other provision of this Act or the regulations prescribed
- 25 by the regulations for the purposes of this paragraph.

26 *Prohibition on disclosure or other use of protected information*

27 (2) Except as authorised by this section or the regulations, a person

28 who is, or was, an entrusted person must not, directly or indirectly,

29 make a record of, disclose or otherwise use protected information.

1 Note: Section 70 of the *Crimes Act 1914* creates offences in relation to the
2 disclosure of information by Commonwealth officers.

3 *Authorised disclosure or other use of protected information*

- 4 (3) An entrusted person may make a record of, disclose or otherwise
5 use protected information for the purposes of, or in connection
6 with:
7 (a) the performance of the entrusted person's functions or duties,
8 or the exercise of the entrusted person's powers, under this
9 Act or the regulations; or
10 (b) the performance of the functions, or the exercise of the
11 powers, of the Commissioner under this Act or the
12 regulations.

13 *Authorised disclosure of protected information by the*
14 *Commissioner*

- 15 (4) The Commissioner may disclose protected information in a report
16 prepared for purposes connected with the performance of the
17 functions, or the exercise of the powers, of the Commissioner
18 under this Act or the regulations, if the Commissioner is satisfied
19 that the disclosure is necessary for the purpose of setting out the
20 grounds for the conclusions and recommendations contained in the
21 report.
- 22 (5) Subject to subsection (6), the Commissioner may disclose
23 protected information to a person, or to the public or a section of
24 the public, if the Commissioner is satisfied that:
25 (a) the disclosure:
26 (i) is in the interests of an Agency or a person; or
27 (ii) is in the public interest; and
28 (b) the disclosure is not likely to interfere with a review or
29 inquiry under this Act or the regulations.
- 30 (6) The Commissioner must not disclose the name of an individual, or
31 any other material that would enable an individual to be identified,
32 in protected information that is disclosed under subsection (5),
33 unless the Commissioner is satisfied that the disclosure is fair and
34 reasonable in all the circumstances.

1

Compellability of entrusted persons to give evidence

2

(7) A person who is, or was, an entrusted person is not compellable in any proceeding:

3

4

(a) before a court (whether exercising federal jurisdiction or not); or

5

6

(b) before a person authorised by a law of the Commonwealth or a State or Territory, or by consent of the parties, to hear, receive and examine evidence;

7

8

to disclose protected information that was obtained in connection with the performance of his or her functions or duties, or the exercise of his or her powers, under:

9

10

11

(c) paragraph 41(2)(j), (k), (m) or (o); or

12

13

(d) section 41A, 41C, 41D or 43; or

14

15

(e) any other provision of this Act or the regulations prescribed by the regulations for the purposes of this paragraph.

16

72B Protection of information—Merit Protection Commissioner’s functions etc.

17

18

Definitions

19

(1) In this section:

20

entrusted person means any of the following:

21

(a) the Merit Protection Commissioner;

22

(b) a delegate of the Merit Protection Commissioner;

23

(c) a person acting under the direction or authority of the Merit Protection Commissioner;

24

25

(d) a member of staff assisting the Merit Protection Commissioner;

26

27

(e) a member of a committee established or appointed by the Merit Protection Commissioner under the regulations;

28

29

(f) any other person prescribed by the regulations for the purposes of this paragraph.

30

31

prescribed entrusted person means an entrusted person of a kind prescribed by regulations for the purposes of this definition.

32

1 ***protected information*** means information that was obtained by an
2 entrusted person in connection with the performance of his or her
3 functions or duties, or the exercise of his or her powers, under:

- 4 (a) subsection 50(1) or (2); or
5 (b) section 50A; or
6 (c) any other provision of this Act or the regulations prescribed
7 by the regulations for the purposes of this paragraph.

8 *Prohibition on disclosure or other use of protected information*

- 9 (2) Except as authorised by this section or the regulations, a person
10 who is, or was, an entrusted person must not, directly or indirectly,
11 make a record of, disclose or otherwise use protected information.

12 Note: Section 70 of the *Crimes Act 1914* creates offences in relation to the
13 disclosure of information by Commonwealth officers.

14 *Authorised disclosure or other use of protected information*

- 15 (3) An entrusted person may make a record of, disclose or otherwise
16 use protected information for the purposes of, or in connection
17 with:
18 (a) the performance of the entrusted person's functions or duties,
19 or the exercise of the entrusted person's powers, under this
20 Act or the regulations; or
21 (b) the performance of the functions, or the exercise of the
22 powers, of the Merit Protection Commissioner under this Act
23 or the regulations.

24 *Authorised disclosure of protected information by the Merit
25 Protection Commissioner*

- 26 (4) The Merit Protection Commissioner may disclose protected
27 information in a report prepared for purposes connected with the
28 performance of the functions, or the exercise of the powers, of the
29 Merit Protection Commissioner under this Act or the regulations, if
30 the Merit Protection Commissioner is satisfied that the disclosure
31 is necessary for the purpose of setting out the grounds for the
32 conclusions and recommendations contained in the report.
33 (5) Subject to subsection (6), the Merit Protection Commissioner may
34 disclose protected information to a person, or to the public or a

1 section of the public, if the Merit Protection Commissioner is
2 satisfied that:

- 3 (a) the disclosure:
4 (i) is in the interests of an Agency or a person; or
5 (ii) is in the public interest; and
6 (b) the disclosure is not likely to interfere with a review or
7 inquiry under this Act or the regulations.

8 (6) The Merit Protection Commissioner must not disclose the name of
9 an individual, or any other material that would enable an individual
10 to be identified, in protected information that is disclosed under
11 subsection (5), unless the Merit Protection Commissioner is
12 satisfied that the disclosure is fair and reasonable in all the
13 circumstances.

14 *Compellability of entrusted persons to give evidence*

- 15 (7) A person who is, or was, an entrusted person (other than a
16 prescribed entrusted person) is not compellable in any proceeding:
17 (a) before a court (whether exercising federal jurisdiction or
18 not); or
19 (b) before a person authorised by a law of the Commonwealth or
20 a State or Territory, or by consent of the parties, to hear,
21 receive and examine evidence;
22 to disclose protected information that was obtained in connection
23 with the performance of his or her functions or duties, or the
24 exercise of his or her powers, under:
25 (c) paragraph 50(1)(a), (b), (c), (d) or (e); or
26 (d) any other provision of this Act or the regulations prescribed
27 by the regulations for the purposes of this paragraph.

28 Note: *Prescribed entrusted person* is defined in subsection (1) of this
29 section.

30 *Competence of certain entrusted persons to give evidence*

- 31 (8) A person who is, or was, a prescribed entrusted person is not
32 competent, and cannot be compelled, to disclose protected
33 information in any proceeding:
34 (a) before a court (whether exercising federal jurisdiction or
35 not); or

1 (b) before a person authorised by a law of the Commonwealth or
2 a State or Territory, or by consent of the parties, to hear,
3 receive and examine evidence.

4 Note: *Prescribed entrusted person* is defined in subsection (1) of this
5 section.

6 **72C Giving information or producing documents to Commissioner**
7 **not admissible in evidence etc.**

8 *Application*

9 (1) This section applies if:

10 (a) either:

11 (i) the Commissioner requests a person to give information
12 (including an answer to a question) or produce a
13 document to the Commissioner for purposes connected
14 with the performance of functions or duties, or the
15 exercise of powers, under a provision referred to in
16 subsection (2); or

17 (ii) a person reasonably believes that information or a
18 document is relevant for purposes connected with the
19 performance of functions or duties, or the exercise of
20 powers, under a provision referred to in subsection (2);
21 and

22 (b) the person obtained the information or document lawfully;
23 and

24 (c) the person gives the information or produces the document to
25 the Commissioner.

26 (2) For the purposes of subparagraphs (1)(a)(i) and (ii), the provisions
27 are:

28 (a) paragraphs 41(2)(j), (k), (m), (n) and (o); and

29 (b) sections 41A, 41B, 41C, 41D and 43; and

30 (c) any other provision of this Act or the regulations prescribed
31 by the regulations for the purposes of this paragraph.

32 *Giving information or producing document not admissible in*
33 *evidence in certain proceedings*

34 (3) If, by giving the information or producing the document to the
35 Commissioner, the person:

- 1 (a) contravenes any other law; or
2 (b) might tend to incriminate the person or make the person
3 liable to a penalty; or
4 (c) discloses legal advice given to a Minister or an Agency; or
5 (d) discloses a communication between a person performing
6 functions or duties, or exercising powers, in an Agency and
7 another person or body, being a communication protected
8 against disclosure by legal professional privilege; or
9 (e) otherwise acts contrary to the public interest;
10 the giving of the information or the production of the document is
11 not admissible in evidence against the person in proceedings (other
12 than proceedings for an offence against section 137.1, 137.2 or
13 149.1 of the *Criminal Code* that relates to this Act).

14 *Person not liable to penalty*

- 15 (4) The person is not liable to any penalty under the provisions of any
16 other law by reason of his or her giving the information or
17 producing the document to the Commissioner.

18 *Disclosure of personal information is authorised for purposes of*
19 *Privacy Act*

- 20 (5) To the extent that the giving of the information or the production of
21 the document to the Commissioner involves a disclosure of
22 personal information, the disclosure is taken to be authorised by
23 this Act for the purposes of the *Privacy Act 1988*.

24 *Legal professional privilege not affected*

- 25 (6) Subsection (3) does not otherwise affect a claim of legal
26 professional privilege that anyone may make in relation to the
27 information or document.

28 **72D Giving information or producing documents to Merit**
29 **Protection Commissioner not admissible in evidence etc.**

30 *Application*

- 31 (1) This section applies if:
32 (a) either:

- 1 (i) the Merit Protection Commissioner requests a person to
2 give information (including an answer to a question) or
3 produce a document to the Merit Protection
4 Commissioner for purposes connected with the
5 performance of functions or duties, or the exercise of
6 powers, under a provision referred to in subsection (2);
7 or
8 (ii) a person reasonably believes that information or a
9 document is relevant for purposes connected with the
10 performance of functions or duties, or the exercise of
11 powers, under a provision referred to in subsection (2);
12 and
13 (b) the person obtained the information or document lawfully;
14 and
15 (c) the person gives the information or produces the document to
16 the Merit Protection Commissioner.
- 17 (2) For the purposes of subparagraphs (1)(a)(i) and (ii), the provisions
18 are:
19 (a) sections 50 and 50A; and
20 (b) any other provision of this Act or the regulations prescribed
21 by the regulations for the purposes of this paragraph.

22 *Giving information or producing document not admissible in*
23 *evidence in certain proceedings*

- 24 (3) If, by giving the information or producing the document to the
25 Merit Protection Commissioner, the person:
26 (a) contravenes any other law; or
27 (b) might tend to incriminate the person or make the person
28 liable to a penalty; or
29 (c) discloses legal advice given to a Minister or an Agency; or
30 (d) discloses a communication between a person performing
31 functions or duties, or exercising powers, in an Agency and
32 another person or body, being a communication protected
33 against disclosure by legal professional privilege; or
34 (e) otherwise acts contrary to the public interest;
35 the giving of the information or the production of the document is
36 not admissible in evidence against the person in proceedings (other
37 than proceedings for an offence against section 137.1, 137.2 or
38 149.1 of the *Criminal Code* that relates to this Act).
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Person not liable to penalty

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- (4) The person is not liable to any penalty under the provisions of any other law by reason of his or her giving the information or producing the document to the Merit Protection Commissioner.

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Disclosure of personal information is authorised for purposes of Privacy Act

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- (5) To the extent that the giving of the information or the production of the document to the Merit Protection Commissioner involves a disclosure of personal information, the disclosure is taken to be authorised by this Act for the purposes of the *Privacy Act 1988*.

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Legal professional privilege not affected

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- (6) Subsection (3) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information or document.

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72E Release of personal information

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The regulations:

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- (a) may authorise the use or disclosure, in specific circumstances, of personal information (within the meaning of the *Privacy Act 1988*); and

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- (b) may impose restrictions on the collection, storage, access, further use or further disclosure of personal information used or disclosed under regulations made for the purposes of paragraph (a).

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

25

71 Section 76

26

Repeal the section.

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2 **Part 13—Immunity from suit**

3 *Public Service Act 1999*

4 **72 After section 78**

5 Insert:

6 **78A Immunity from civil proceedings**

7 *Commissioner's functions*

8 (1) No civil action, suit or proceeding lies against the following
9 persons:

- 10 (a) the Commissioner;
11 (b) a delegate of the Commissioner;
12 (c) a person acting under the direction or authority of the
13 Commissioner;
14 (d) a Special Commissioner;
15 (e) a member of staff assisting the Commissioner or a Special
16 Commissioner;

17 in relation to anything done, or omitted to be done, in good faith by
18 the person in the performance or purported performance of
19 functions or duties, or the exercise or purported exercise of powers,
20 conferred by:

- 21 (f) paragraph 41(2)(j), (k), (m), (n) or (o); or
22 (g) section 41A, 41B, 41C or 41D; or
23 (h) any other provision of this Act or the regulations prescribed
24 by the regulations for the purposes of this paragraph.

25 *Merit Protection Commissioner's functions*

26 (2) No civil action, suit or proceeding lies against the following
27 persons:

- 28 (a) the Merit Protection Commissioner;
29 (b) a delegate of the Merit Protection Commissioner;
30 (c) a person acting under the direction or authority of the Merit
31 Protection Commissioner;

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- (d) a member of staff assisting the Merit Protection Commissioner;
 - (e) a member of a committee established or appointed by the Merit Protection Commissioner under the regulations;
 - (f) any other person prescribed by the regulations for the purposes of this paragraph;
- in relation to anything done, or omitted to be done, in good faith by the person in the performance or purported performance of functions or duties, or the exercise or purported exercise of powers, conferred by this Act or the regulations.

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2 **Part 14—Legislative instruments**

3 *Public Service Act 1999*

4 **73 Section 7 (definition of *Commissioner's Directions*)**

5 Omit “15 or 36”, substitute “11A or 15”.

6 **74 After section 11**

7 Insert:

8 **11A Commissioner’s Directions about employment matters**

9 *General*

10 (1) The Commissioner may issue directions in writing about
11 employment matters relating to APS employees, including the
12 following:

- 13 (a) engagement;
- 14 (b) promotion;
- 15 (c) redeployment;
- 16 (d) mobility;
- 17 (e) training schemes;
- 18 (f) termination.

19 Note: See section 42 for general provisions relating to Commissioner’s
20 Directions.

21 *Directions about APS Employment Principles*

22 (2) The Commissioner may issue directions in writing in relation to
23 any of the APS Employment Principles for the purpose of:

- 24 (a) ensuring that the APS incorporates and upholds the APS
25 Employment Principles; and
- 26 (b) determining where necessary the scope or application of the
27 APS Employment Principles.

28 Note: See section 42 for general provisions relating to Commissioner’s
29 Directions.

1 (3) For the purposes of this Act (other than subsection (2)), the APS
2 Employment Principles have effect subject to any restrictions in
3 directions issued under subsection (2).

4 *Directions of no effect to the extent of inconsistency with Prime*
5 *Minister's direction*

6 (4) A direction issued under this section has no effect to the extent that
7 it is inconsistent with a direction issued by the Prime Minister
8 under section 21.

9 **75 Subsection 21(2)**

10 Repeal the subsection, substitute:

11 (2) A direction issued under subsection (1) is a legislative instrument.

12 Note: Neither section 42 (disallowance) nor Part 6 (sunsetting) of the
13 *Legislative Instruments Act 2003* applies to the direction (see
14 sections 44 and 54 of that Act).

15 **76 Subsection 23(1)**

16 Repeal the subsection, substitute:

17 (1) The Commissioner may, by legislative instrument, make rules
18 about classifications of APS employees.

19 Note: Neither section 42 (disallowance) nor Part 6 (sunsetting) of the
20 *Legislative Instruments Act 2003* applies to the Classification Rules
21 (see sections 44 and 54 of that Act).

22 **77 Paragraph 23(4)(b)**

23 Repeal the paragraph, substitute:

24 (b) in the case of an SES employee—in accordance with
25 Commissioner's Directions issued under subsection 11A(1);

26 **78 Subsection 24(3)**

27 Omit "notice in the *Gazette*", substitute "legislative instrument".

28 **79 At the end of subsection 24(3)**

29 Add:

30 Note: Neither section 42 (disallowance) nor Part 6 (sunsetting) of the
31 *Legislative Instruments Act 2003* applies to the determination (see
32 sections 44 and 54 of that Act).

1 **80 Subsection 26(2)**

2 Omit “the regulations”, substitute “Commissioner’s Directions issued
3 under subsection 11A(1)”.

4 **81 Paragraph 32(1)(a)**

5 Omit “prescribed by the regulations”, substitute “specified in
6 Commissioner’s Directions issued under subsection 11A(1)”.

7 **82 Subsection 32(2)**

8 Omit “the regulations” (first occurring), substitute “Commissioner’s
9 Directions issued under subsection 11A(1)”.

10 **83 Subsection 32(2)**

11 Omit “prescribed by the regulations”, substitute “provided by those
12 Directions”.

13 **84 Section 36**

14 Repeal the section.

15 **85 Paragraph 38(a)**

16 Omit “under section 36”, substitute “made under subsection 11A(1)”.

17 **86 Subsections 42(3) and (4)**

18 Repeal the subsections, substitute:

19 (3) Commissioner’s Directions may apply, adopt or incorporate (with
20 or without modifications) any matter contained in the
21 Classification Rules or a direction issued by the Prime Minister
22 under section 21, either:

23 (a) as in force or existing at a particular time; or

24 (b) as in force or existing from time to time.

25 (4) Commissioner’s Directions are legislative instruments.
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2 **Part 15—Miscellaneous amendments**

3 ***Public Service Act 1999***

4 **87 Subsection 6(2)**

5 Repeal the subsection, substitute:

6 (2) Subsection (1) does not apply to persons engaged on an honorary
7 basis.

8 **88 Subsection 23(4)**

9 Omit all the words before paragraph (a), substitute:

10 (4) An Agency Head may reduce the classification of an APS
11 employee, without the employee’s consent, only in the following
12 circumstances:

13 **89 Subsection 23(5)**

14 After “industrial instrument”, insert “, determination under this Act or
15 written contract of employment”.

16 **90 Section 24 (heading)**

17 Repeal the heading, substitute:

18 **24 Terms and conditions of employment**

19 **91 Subsection 24(1)**

20 Omit “remuneration and other”.

21 **92 Subsection 24(3)**

22 Omit “remuneration and other”.

23 **93 Subsection 29(1) (note)**

24 Omit “Note:”, substitute “Note 1:”.

25 **94 At the end of subsection 29(1)**

26 Add:

1 Note 2: Commissioner's Directions issued under subsection 11A(1) may set
2 out procedures to be followed in terminating the employment of an
3 APS employee.

4 **95 At the end of section 40**

5 Add:

6 (4) The Commissioner may, on behalf of the Commonwealth, engage
7 consultants to assist in the performance of the Commissioner's
8 functions.

9 **96 At the end of section 49**

10 Add:

11 (3) The Merit Protection Commissioner may, on behalf of the
12 Commonwealth, engage consultants to assist in the performance of
13 the Merit Protection Commissioner's functions.

14 **97 Subsection 51(3)**

15 Omit "44(2)", substitute "44(1)".

16 **98 Subsection 73(4)**

17 Omit "of more than \$100,000", substitute "exceeding the amount
18 prescribed by the regulations".

19 **99 Subsection 79(2)**

20 Repeal the subsection, substitute:

21 (2) The regulations may prescribe penalties of not more than 50
22 penalty units for offences against the regulations.
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Schedule 2—Repeal

Public Employment (Consequential and Transitional) Amendment Act 1999

1 The whole of the Act

Repeal the Act.

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Schedule 3—Amendment of other Acts

Australian Federal Police Act 1979

1 Subsection 40F(2)

Before “Public Service Commissioner”, insert “Australian”.

2 Subsection 68A(6) (definition of *transfer time*)

Before “Public Service Commissioner”, insert “Australian”.

Australian Law Reform Commission Act 1996

3 Subsection 26(2A) (note)

After “under”, insert “section 15 or 16 or”.

Family Law Act 1975

4 Subsection 37B(4)

Repeal the subsection, substitute:

- (4) Subject to subsection (4A), action must not be taken in relation to the Principal Registrar, a Registrar or a Deputy Registrar (or a former Principal Registrar, Registrar or Deputy Registrar):
- (a) by an Agency Head under section 15 of the *Public Service Act 1999*; or
 - (b) by the Australian Public Service Commissioner under section 41B of that Act; or
 - (c) by the Merit Protection Commissioner under section 50A of that Act;
- unless the Chief Judge has requested the Agency Head, the Australian Public Service Commissioner or the Merit Protection Commissioner to take such action.

Note: Sections 15, 41B and 50A of the *Public Service Act 1999* make provision for dealing with an alleged breach of the Code of Conduct (within the meaning of that Act) by an APS employee or a former APS employee.

1 (4A) Subsection (4) does not apply if the Prime Minister has requested
2 the Australian Public Service Commissioner to take action under
3 section 41B of the *Public Service Act 1999* in relation to the
4 Principal Registrar, a Registrar or a Deputy Registrar (or a former
5 Principal Registrar, Registrar or Deputy Registrar).

6 ***Ombudsman Act 1976***

7 **5 Subsection 6(9)**

8 Before “Public Service Commissioner” (wherever occurring), insert
9 “Australian”.

10 **6 Paragraphs 6(10)(a), (b) and (c)**

11 Before “Public Service Commissioner”, insert “Australian”.

12 ***Parliamentary Service Act 1999***

13 **7 Section 7**

14 Insert:

15 *Australian Public Service Commissioner* means the Australian
16 Public Service Commissioner appointed under the *Public Service*
17 *Act 1999*.

18 **8 Section 7 (definition of *non-ongoing APS employee*)**

19 Repeal the definition.

20 **9 Section 7 (definition of *Public Service Commissioner*)**

21 Repeal the definition.

22 **10 Section 7**

23 Insert:

24 *temporary APS employee* has the same meaning as in the *Public*
25 *Service Act 1999*.

26 **11 Subsection 26A(1)**

27 Omit “non-ongoing APS employee”, substitute “temporary APS
28 employee”.

1 **12 Paragraph 27(1)(b)**

2 Before “Public Service Commissioner”, insert “Australian”.

3 **13 Subsections 43(2), 44(4) and 46(2)**

4 Before “Public Service Commissioner”, insert “Australian”.

5 ***Privacy Act 1988***

6 **14 Subsection 50(2)**

7 Before “Public Service Commissioner” (wherever occurring), insert
8 “Australian”.

9 **15 Paragraph 50(3)(b)**

10 Before “Public Service Commissioner”, insert “Australian”.

11 ***Remuneration Tribunal Act 1973***

12 **16 Subsection 3(1)**

13 Insert:

14 *Australian Public Service Commissioner* means the Australian
15 Public Service Commissioner appointed under the *Public Service*
16 *Act 1999*.

17 **17 Subsection 3(1) (definition of *Public Service***
18 ***Commissioner*)**

19 Repeal the definition.

20 **18 Subsection 14(3)**

21 Before “Public Service Commissioner”, insert “Australian”.

22 ***Superannuation Act 1976***

23 **19 Paragraph 58(3)(f)**

24 Repeal the paragraph.

1 ***Superannuation Act 1990***

2 **20 Subparagraph 6(1)(h)(i)**

3 After “1999”, insert “, as in force immediately before its repeal”.

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2 **Schedule 4—Application, saving and**
3 **transitional provisions**

4 **Part 1—Preliminary**

5 **1 Definitions**

6 In this Schedule:

7 *commencement time* means the time when Schedule 1 to this Act
8 commences.

9 *new Public Service Act* means the *Public Service Act 1999* as in force
10 after the commencement time.

11 *old Code of Conduct* means the Code of Conduct in the old Public
12 Service Act (including any regulations in force for the purposes of
13 subsection 13(13) of the old Public Service Act).

14 *old Public Service Act* means the *Public Service Act 1999* as in force
15 immediately before the commencement time.

16 **2 Alleged breaches of the Code of Conduct that occur before**
17 **and after commencement time**

18 For the purposes of Parts 4, 6 and 7 of this Schedule, if a breach of the
19 Code of Conduct is alleged to have occurred between 2 dates, one
20 before and one after the commencement time, the breach is alleged to
21 have occurred before the commencement time.
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2 **Part 2—Secretaries**

3 **3 Saving—existing appointments of Secretaries**

- 4 (1) This item applies to a person who, immediately before the
5 commencement time, held office as the Secretary of a Department
6 because of an appointment under subsection 58(1) of the old Public
7 Service Act.
- 8 (2) The person continues to hold office as the Secretary of the Department
9 as if the person had, at the commencement time, been appointed as the
10 Secretary of the Department by the Governor-General, on the
11 recommendation of the Prime Minister, under subsection 58(1) of the
12 new Public Service Act.
- 13 (3) The person continues to hold office as the Secretary of the Department:
14 (a) for the balance of the period of the person’s appointment that
15 remained immediately before the commencement time; and
16 (b) on the same terms and conditions as applied to the person
17 immediately before the commencement time.
- 18 (4) Subsections 58(3) and (6) to (8) of the new Public Service Act do not
19 apply to the person.
- 20 (5) To avoid doubt, section 57 of the new Public Service Act applies to the
21 person.

22 **4 Appointments of Secretaries proposed before**
23 **commencement time**

- 24 (1) If:
25 (a) before the commencement time, the Prime Minister had
26 received a report about a vacancy in the office of the
27 Secretary of the Prime Minister’s Department under
28 subsection 58(2) of the old Public Service Act; and
29 (b) immediately before the commencement time, no appointment
30 to fill that vacancy had been made under subsection 58(1) of
31 the old Public Service Act;

1 then, after the commencement time, the report is taken to have been
2 received by the Prime Minister under subsection 58(6) of the new
3 Public Service Act.

4 (2) If:

5 (a) before the commencement time, the Prime Minister had
6 received a report about a vacancy in the office of the
7 Secretary of a Department other than the Prime Minister's
8 Department under subsection 58(3) of the old Public Service
9 Act; and

10 (b) immediately before the commencement time, no appointment
11 to fill that vacancy had been made under subsection 58(1) of
12 the old Public Service Act;

13 then, after the commencement time:

14 (c) the report is taken to have been received by the Prime
15 Minister under subsection 58(7) of the new Public Service
16 Act; and

17 (d) subsection 58(8) of the new Public Service Act is taken to
18 have been complied with in relation to the report.

19 **5 Terminations of appointments of Secretaries proposed** 20 **before commencement time**

21 (1) If:

22 (a) before the commencement time, the Prime Minister had
23 given notice in writing terminating the appointment of a
24 Secretary under subsection 59(1) of the old Public Service
25 Act; and

26 (b) the termination was to take effect after the commencement
27 time;

28 then the termination takes effect in accordance with the notice as if
29 subsection 59(1) of the old Public Service Act had not been repealed.

30 (2) If:

31 (a) before the commencement time, the Prime Minister had
32 received a report about the proposed termination of the
33 appointment of the Secretary of the Prime Minister's
34 Department under subsection 59(2) of the old Public Service
35 Act; and

36 (b) the appointment had not been terminated before that time;

1 then, after that time, the report is taken to have been received by the
2 Prime Minister under subsection 59(2) of the new Public Service Act.

3 (3) If:

4 (a) before the commencement time, the Prime Minister had
5 received a report about the proposed termination of the
6 appointment of a Secretary of a Department other than the
7 Prime Minister's Department under subsection 59(3) of the
8 old Public Service Act; and

9 (b) the appointment had not been terminated before that time;

10 then, after that time:

11 (c) the report is taken to have been received by the Prime
12 Minister under subsection 59(3) of the new Public Service
13 Act; and

14 (d) subsection 59(4) of the new Public Service Act is taken to
15 have been complied with in relation to the report.

16 **6 Saving—engagements of former Secretaries**

17 A person who, immediately before the commencement time, was
18 engaged under section 60 of the old Public Service Act is taken, at the
19 commencement time, to have been engaged under subsection 60(1) of
20 the new Public Service Act:

21 (a) for the balance of the person's term of engagement that
22 remained immediately before the commencement time; and

23 (b) on the same terms and conditions as applied to the person
24 immediately before the commencement time.
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Part 3—Senior Executive Service

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7 Function of the SES

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To avoid doubt, subsection 35(3) of the new Public Service Act applies to an SES employee who was an SES employee at the commencement time.

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Part 4—The Australian Public Service Commissioner

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8 Public Service Commissioner becomes Australian Public Service Commissioner at commencement time

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(1) The person who held office as the Public Service Commissioner under the old Public Service Act immediately before the commencement time is taken, at the commencement time, to have been appointed as the Australian Public Service Commissioner under section 45 of the new Public Service Act.

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(2) The person holds office as the Australian Public Service Commissioner:

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(a) for the balance of the person's term of appointment that remained immediately before the commencement time; and

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(b) on the same terms and conditions as applied to the person immediately before the commencement time.

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(3) Any act or thing done by, or in relation to, the Public Service Commissioner before the commencement time is to be treated, at and after that time, as if it were an act or thing done by, or in relation to, the Australian Public Service Commissioner.

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(4) A reference to the Public Service Commissioner in an instrument in force immediately before the commencement time is taken, at and after that time, to be a reference to the Australian Public Service Commissioner.

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9 Inquiries in progress for the purposes of Commissioner's evaluation functions

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(1) This item applies if, before the commencement time, the Commissioner had begun, but had not completed, an inquiry for the purpose of paragraph 41(1)(a), (b) or (g) of the old Public Service Act.

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(2) If the inquiry had not been notified by the Commissioner in the *Gazette* under paragraph 43(1)(a) of the old Public Service Act, the Commissioner may continue the inquiry after the commencement time as if:

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(a) it were an inquiry for the purpose of the corresponding provision of the new Public Service Act; and

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1 (b) it had not been notified by the Commissioner in the *Gazette*
2 under paragraph 43(1)(a) of the new Public Service Act.

3 (3) If the inquiry had been notified by the Commissioner in the *Gazette*
4 under paragraph 43(1)(a) of the old Public Service Act, the
5 Commissioner may continue the inquiry after the commencement time
6 as if:

7 (a) it were an inquiry for the purpose of the corresponding
8 provision of the new Public Service Act; and

9 (b) it had been notified by the Commissioner in the *Gazette*
10 under paragraph 43(1)(a) of the new Public Service Act.

11 Note: The inquiry is a special inquiry for the purpose of section 43 of the new Public Service
12 Act.

13 (4) For the purpose of continuing the inquiry after the commencement time,
14 the Commissioner may use any information obtained for the purpose of
15 the inquiry before that time.

16 (5) For the purposes of this item and item 10 of this Schedule, the provision
17 of the new Public Service Act specified in an item of the following table
18 is the ***corresponding provision*** in relation to the provision of the old
19 Public Service Act specified in that item.

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Corresponding provisions

Item	Provision of old Public Service Act	Corresponding provision of new Public Service Act
1	paragraph 41(1)(a)	paragraph 41(2)(f)
2	paragraph 41(1)(b)	paragraph 41(2)(l)
3	paragraph 41(1)(g)	paragraph 41(2)(c)

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22 **10 Inquiries notified in *Gazette* but not begun for the**
23 **purposes of Commissioner's evaluation functions**

24 (1) This item applies if, before the commencement time, the Commissioner
25 had notified in the *Gazette*, under paragraph 43(1)(a) of the old Public
26 Service Act, an inquiry for the purpose of paragraph 41(1)(a), (b) or (g)
27 of the old Public Service Act, but the Commissioner had not begun to
28 conduct the inquiry.

- 1 (2) The notification continues to have effect after the commencement time
2 as if it were a notification in the *Gazette*, under paragraph 43(1)(a) of
3 the new Public Service Act, of an inquiry for the purpose of the
4 corresponding provision (within the meaning of subitem 9(5) of this
5 Schedule) of the new Public Service Act.

6 **11 Matters under consideration by Commissioner at**
7 **commencement time (other than matters referred by**
8 **Public Service Minister)**

- 9 (1) This item applies if, before the commencement time, the Commissioner
10 had begun to consider a matter relating to the APS under paragraph
11 41(1)(d) of the old Public Service Act (other than a matter referred to
12 the Commissioner by the Public Service Minister under that paragraph),
13 but the Commissioner had not reported on the matter to the Public
14 Service Minister.
- 15 (2) The Commissioner may continue to consider the matter after the
16 commencement time and, if the Commissioner does so, the
17 Commissioner is taken to be conducting a review of the matter under
18 paragraph 41(2)(j) of the new Public Service Act.
- 19 (3) To avoid doubt, the Commissioner may, for the purpose of conducting a
20 review of the matter after the commencement time, use any information
21 obtained in considering the matter under paragraph 41(1)(d) of the old
22 Public Service Act before that time.

23 **12 Matters under consideration by Commissioner at**
24 **commencement time—matters referred by Public**
25 **Service Minister**

- 26 (1) This item applies if, before the commencement time, the Commissioner
27 had begun to consider a matter relating to the APS referred to the
28 Commissioner by the Public Service Minister under paragraph 41(1)(d)
29 of the old Public Service Act, but had not reported to the Public Service
30 Minister on the matter.
- 31 (2) If the matter had been referred to the Commissioner under paragraph
32 41(1)(d) of the old Public Service Act, other than by notice in the
33 *Gazette*, the Commissioner must consider the matter and report to the
34 Public Service Minister as if the matter had been referred to the
35 Commissioner under paragraph 41(2)(k) of the new Public Service Act,
36 other than by notice in the *Gazette*.

1 (3) If the matter had been referred to the Commissioner under paragraph
2 41(1)(d) of the old Public Service Act by notice in the *Gazette*, the
3 Commissioner must consider the matter and report to the Public Service
4 Minister as if the matter had been referred to the Commissioner under
5 paragraph 41(2)(k) of the new Public Service Act by notice in the
6 *Gazette*.

7 Note: An inquiry on the matter is a special inquiry for the purpose of section 43 of the new
8 Public Service Act.

9 (4) For the purpose of considering the matter and reporting to the Public
10 Service Minister after the commencement time, the Commissioner may
11 use any information obtained for the purpose of considering the matter
12 before that time.

13 **13 Matters referred to Commissioner by Public Service** 14 **Minister before commencement time but not yet** 15 **considered**

16 (1) This item applies if, before the commencement time, the Public Service
17 Minister had referred a matter relating to the APS to the Commissioner
18 under paragraph 41(1)(d) of the old Public Service Act, but the
19 Commissioner had not begun to consider the matter.

20 (2) If the matter had been referred to the Commissioner under paragraph
21 41(1)(d) of the old Public Service Act, other than by notice in the
22 *Gazette*, the Public Service Minister is taken to have referred the matter
23 to the Commissioner at the commencement time under paragraph
24 41(2)(k) of the new Public Service Act, other than by notice in the
25 *Gazette*.

26 (3) If the matter had been referred to the Commissioner under paragraph
27 41(1)(d) of the old Public Service Act by notice in the *Gazette*, the
28 Public Service Minister is taken to have referred the matter to the
29 Commissioner at the commencement time under paragraph 41(2)(k) of
30 the new Public Service Act by notice in the *Gazette*.

31 Note: An inquiry on the matter is a special inquiry for the purpose of section 43 of the new
32 Public Service Act.

33 **14 Inquiry in progress into alleged breach of Code of** 34 **Conduct by Agency Head**

35 (1) This item applies if, before the commencement time:

- 1 (a) the Commissioner had begun an inquiry into an alleged
2 breach of the Code of Conduct by an Agency Head for the
3 purpose of paragraph 41(1)(f) of the old Public Service Act,
4 but had not reported on the results of the inquiry; or
5 (b) the Commissioner had decided to conduct an inquiry into an
6 alleged breach of the Code of Conduct by an Agency Head
7 for the purpose of paragraph 41(1)(f) of the old Public
8 Service Act, but had not begun the inquiry.
- 9 (2) The Commissioner may complete the inquiry or begin the inquiry (as
10 the case requires), and report on the results of the inquiry, in accordance
11 with paragraph 41(2)(m) and section 41A of the new Public Service
12 Act.
- 13 Note: The Commissioner may discontinue the inquiry without making a report in the
14 circumstances prescribed by the regulations: see paragraph 41A(3)(b) of the new Public
15 Service Act.
- 16 (3) For the purposes of subitem (2), a reference to the Code of Conduct in
17 paragraph 41(2)(m) and section 41A of the new Public Service Act (or
18 the regulations in force for the purposes of that section) is to be read as
19 a reference to the old Code of Conduct.
- 20 (4) For the purpose of completing the inquiry and reporting after the
21 commencement time, the Commissioner may use any information
22 obtained for the purpose of the inquiry before that time.

23 **15 Allegation of breach of Code of Conduct by Agency Head**
24 **before commencement time**

- 25 (1) This item applies if, before the commencement time, an allegation had
26 been made of a breach of the Code of Conduct by an Agency Head, but
27 the Commissioner had not decided whether to conduct an inquiry into
28 the alleged breach.
- 29 (2) This item also applies if:
30 (a) after the commencement time, an allegation is made of a
31 breach of the Code of Conduct by an Agency Head; and
32 (b) the breach is alleged to have occurred before the
33 commencement time.
- 34 (3) Paragraph 41(2)(m) and section 41A of the new Public Service Act (and
35 the regulations in force for the purposes of that section) apply in relation

1 to the alleged breach as if a reference to the Code of Conduct in those
2 provisions were a reference to the old Code of Conduct.

3 **16 Saving—regulations prescribing Statutory Agencies**

4 Regulations in force for the purposes of paragraph 41(3)(c) of the old
5 Public Service Act continue in force at and after the commencement
6 time as if they were regulations in force for the purposes of paragraph
7 41A(2)(c) of the new Public Service Act.

8 **17 Inquiries into alleged breaches of Code of Conduct by**
9 **APS employees or former APS employees**

- 10 (1) Paragraph 41(2)(n) and section 41B of the new Public Service Act (and
11 the regulations and procedures in force for the purposes of that section)
12 apply in relation to an alleged breach of the Code of Conduct by a
13 person who:
14 (a) is an APS employee at the commencement time; or
15 (b) becomes an APS employee, or a former APS employee, after
16 that time;
17 whether the breach is alleged to have occurred before or after that time.
- 18 (2) If the breach of the Code of Conduct is alleged to have occurred before
19 the commencement time, paragraph 41(2)(n) and section 41B of the
20 new Public Service Act (and the regulations and procedures in force for
21 the purposes of that section) apply in relation to the alleged breach as if
22 a reference to the Code of Conduct in those provisions were a reference
23 to the old Code of Conduct.
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2 **Part 5—APS Values and APS Employment Principles**

3 **18 Saving—workplace diversity programs**

- 4 (1) This item applies to a workplace diversity program that was in effect
5 under section 18 of the old Public Service Act.
- 6 (2) Despite the amendment of that section made by item 33 of Schedule 1
7 to this Act, the workplace diversity program continues to have effect, at
8 and after the commencement time, as if it had been established under
9 section 18 of the new Public Service Act, to the extent that the program
10 assists in giving effect to the APS Employment Principles.
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2 **Part 6—Code of Conduct**

3 **19 Application—amendment of Code of Conduct**

4 The amendments of section 13 of the *Public Service Act 1999* made by
5 items 37 and 38 of Schedule 1 to this Act apply in relation to conduct
6 that occurs after the commencement time.

7 **20 Application—procedures etc. for dealing with alleged**
8 **breaches of Code of Conduct**

9 Subject to item 22, the amendments of section 15 of the *Public Service*
10 *Act 1999* made by items 41 to 44 of Schedule 1 to this Act apply in
11 relation to an alleged breach of the Code of Conduct by a person who:

- 12 (a) is an APS employee at the commencement time; or
13 (b) becomes an APS employee, or a former APS employee, after
14 that time;

15 whether the breach is alleged to have occurred before or after that time.

16 **21 Saving—procedures and directions for determining**
17 **whether Code of Conduct has been breached**

- 18 (1) Procedures in effect for the purposes of subsection 15(3) of the old
19 Public Service Act continue in effect at and after the commencement
20 time as if they were procedures in effect for the purposes of subsection
21 15(3) of the new Public Service Act.
- 22 (2) Commissioner’s Directions in force for the purposes of subsection 15(3)
23 of the old Public Service Act continue in effect at and after the
24 commencement time as if they were Commissioner’s Directions in
25 force for the purposes of paragraph 15(4)(a) of the new Public Service
26 Act.

27 **22 Investigation in progress by Agency Head into alleged**
28 **breach of Code of Conduct**

- 29 (1) This item applies if, before the commencement time:
30 (a) an Agency Head had begun an investigation to determine
31 whether an APS employee in the Agency had breached the
32 Code of Conduct, but no finding had been made; or

- 1 (b) an Agency Head had decided to begin an investigation to
2 determine whether an APS employee in the Agency had
3 breached the Code of Conduct, but had not begun the
4 investigation.
- 5 (2) Subject to subitem (3), the old Public Service Act (and the regulations
6 and procedures in force for the purposes of that Act) continue to apply
7 at and after the commencement time in relation to the investigation and
8 determination.
- 9 (3) If the APS employee is found to have breached the Code of Conduct,
10 the Agency Head must determine the sanction (if any) to be imposed on
11 the APS employee in accordance with the procedures established under
12 paragraph 15(3)(b) of the new Public Service Act. For that purpose, a
13 reference to the Code of Conduct in those procedures is to be read as a
14 reference to the old Code of Conduct.

15 **23 Finding by Agency Head of breach of Code of Conduct but**
16 **no sanction imposed**

- 17 (1) This item applies if, before the commencement time, an Agency Head
18 had found that an APS employee in the Agency had breached the Code
19 of Conduct, but no sanction had been imposed.
- 20 (2) The Agency Head must determine the sanction (if any) to be imposed
21 on the APS employee in accordance with the procedures established
22 under paragraph 15(3)(b) of the new Public Service Act. For that
23 purpose, a reference to the Code of Conduct in those procedures is to be
24 read as a reference to the old Code of Conduct.

25 **24 Allegation of breach of Code of Conduct by APS employee**
26 **before commencement time**

- 27 (1) This item applies if, before the commencement time, an allegation had
28 been made that an APS employee in an Agency had breached the Code
29 of Conduct, but the Agency Head had not decided whether to begin an
30 investigation to determine whether the APS employee had breached the
31 Code of Conduct.
- 32 (2) This item also applies if:
33 (a) after the commencement time, an allegation is made that:
34 (i) an APS employee has breached the Code of Conduct; or

- 1 (ii) a person who became a former APS employee after the
2 commencement time has breached the Code of Conduct;
3 and
4 (b) the breach is alleged to have occurred before the
5 commencement time.
- 6 (3) The new Public Service Act (and the regulations and procedures in
7 force for the purposes of that Act) apply in relation to the alleged breach
8 as if a reference to the Code of Conduct in those provisions were a
9 reference to the old Code of Conduct.

10 **25 Inquiry in progress into alleged breach of Code of** 11 **Conduct by Commissioner**

- 12 (1) This item applies if, before the commencement time:
13 (a) the Merit Protection Commissioner had begun an inquiry into
14 an alleged breach of the Code of Conduct by the
15 Commissioner for the purpose of paragraph 50(1)(b) of the
16 old Public Service Act, but had not reported on the results of
17 the inquiry; or
18 (b) the Merit Protection Commissioner had decided to conduct
19 an inquiry into an alleged breach of the Code of Conduct by
20 the Commissioner for the purpose of paragraph 50(1)(b) of
21 the old Public Service Act, but had not begun the inquiry.
- 22 (2) The old Public Service Act (and the regulations in force for the
23 purposes of that Act) continue to apply at and after the commencement
24 time in relation to the inquiry.

25 **26 Allegation of breach of Code of Conduct by Commissioner** 26 **before commencement time**

- 27 (1) This item applies if, before the commencement time, an allegation had
28 been made of a breach of the Code of Conduct by the Commissioner,
29 but the Merit Protection Commissioner had not decided whether to
30 conduct an inquiry into the alleged breach.
- 31 (2) This item also applies if:
32 (a) after the commencement time, an allegation is made of a
33 breach of the Code of Conduct by the Commissioner; and
34 (b) the breach is alleged to have occurred before the
35 commencement time.

- 1 (3) The new Public Service Act (and the regulations in force for the
2 purposes of that Act) apply in relation to the alleged breach as if a
3 reference to the Code of Conduct in those provisions were a reference to
4 the old Code of Conduct.

5 **27 Inquiries by Merit Protection Commissioner into alleged**
6 **breaches of Code of Conduct by APS employees or**
7 **former APS employees**

- 8 (1) Paragraph 50(1)(ca) and section 50A of the new Public Service Act
9 (and the regulations and procedures in force for the purposes of those
10 provisions) apply in relation to an alleged breach of the Code of
11 Conduct by a person who:
12 (a) is an APS employee at the commencement time; or
13 (b) becomes an APS employee, or a former APS employee, after
14 that time;
15 whether the breach is alleged to have occurred before or after that time.
- 16 (2) Paragraph 50(1)(ca) and section 50A of the new Public Service Act
17 (and the regulations and procedures in force for the purposes of those
18 provisions) apply in relation to a breach of the Code of Conduct by an
19 APS employee, or a former APS employee, that is alleged to have
20 occurred before the commencement time as if a reference to the Code of
21 Conduct in those provisions were a reference to the old Code of
22 Conduct.
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2 **Part 7—Whistleblower reports**

3 **28 Inquiries in progress into whistleblower reports**

4 (1) This item applies if, before the commencement time, the Commissioner,
5 the Merit Protection Commissioner or an Agency Head, or a person
6 authorised by the Commissioner, the Merit Protection Commissioner or
7 an Agency Head, had begun, but had not completed, an inquiry into a
8 report of a breach (or an alleged breach) of the Code of Conduct made
9 as referred to in section 16 of the old Public Service Act.

10 (2) The old Public Service Act (and the regulations and procedures in force
11 for the purposes of that Act, to the extent that they are not inconsistent
12 with that Act) continue to apply at and after the commencement time in
13 relation to the inquiry.

14 **29 Whistleblower report made or referred before**
15 **commencement time but no inquiry begun before that**
16 **time**

17 (1) This item applies if, before the commencement time, a report of a
18 breach (or an alleged breach) of the Code of Conduct had been made or
19 referred to a person referred to in paragraph 16(a), (b) or (c) of the old
20 Public Service Act, but an inquiry into the report had not begun.

21 (2) The new Public Service Act (and the regulations and procedures in
22 force for the purposes of that Act) apply in relation to the report as if:
23 (a) the report had been made to the person in accordance with
24 section 16 of the new Public Service Act; and
25 (b) a reference to the Code of Conduct in the new Public Service
26 Act (or the regulations and procedures in force for the
27 purposes of that Act) were a reference to the old Code of
28 Conduct.

29 Note: See section 16 and paragraphs 41(2)(o) and 50(1)(a) of the new Public Service Act in
30 relation to whistleblower reports.

31 **30 Whistleblower report made after commencement time in**
32 **relation to breach (or alleged breach) occurring before**
33 **that time**

Schedule 4 Application, saving and transitional provisions

Part 7 Whistleblower reports

- 1 (1) This item applies if:
2 (a) after the commencement time, a report of a breach (or an
3 alleged breach) of the Code of Conduct is made to a person
4 referred to in paragraph 16(1)(a), (b) or (c) of the new Public
5 Service Act; and
6 (b) the breach (or alleged breach) occurred before the
7 commencement time.
- 8 (2) The new Public Service Act (and the regulations and procedures in
9 force for the purposes of that Act) apply in relation to the report as if a
10 reference to the Code of Conduct in that Act (or the regulations and
11 procedures in force for the purposes of that Act) were a reference to the
12 old Code of Conduct.
- 13 Note: See section 16 and paragraphs 41(2)(o) and 50(1)(a) of the new Public Service Act in
14 relation to whistleblower reports.
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2 **Part 8—Review of actions**

3 **31 Saving—regulations providing for review of APS action**

4 Regulations in force for the purposes of paragraph 33(4)(d) of the old
5 Public Service Act continue in force at and after the commencement
6 time as if they were regulations in force for the purposes of paragraph
7 33(4)(d) of the new Public Service Act.
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2 **Part 9—Temporary APS employees**

3 **32 Non-ongoing APS employees become temporary APS**
4 **employees at commencement time**

- 5 (1) This item applies to a person if:
- 6 (a) the person had been engaged as a non-ongoing APS
7 employee under paragraph 22(2)(b) or (c) of the old Public
8 Service Act; and
 - 9 (b) the engagement was in effect immediately before the
10 commencement time; and
 - 11 (c) the engagement was to continue to have effect after the
12 commencement time.
- 13 (2) The person becomes a temporary APS employee at the commencement
14 time as if the person had been engaged under paragraph 22(2)(b) of the
15 new Public Service Act on the same terms and conditions (including the
16 period (if any) of the person’s engagement) as applied to the person
17 immediately before the commencement time.

18 **33 Engagement processes in progress before**
19 **commencement time**

- 20 (1) If:
- 21 (a) before the commencement time, an Agency Head had
22 engaged a person as a non-ongoing APS employee for the
23 purposes of the Agency under paragraph 22(2)(b) or (c) of
24 the old Public Service Act; and
 - 25 (b) the engagement was to take effect after the commencement
26 time;
- 27 the engagement takes effect as if the Agency Head had engaged the
28 person as a temporary APS employee for the purposes of the Agency
29 under paragraph 22(2)(b) of the new Public Service Act on the same
30 terms and conditions as would have applied to the person if the person
31 had been engaged as a non-ongoing APS employee for the purposes of
32 the Agency under paragraph 22(2)(b) or (c) of the old Public Service
33 Act.

- 34 (2) If:

- 1 (a) before the commencement time, a process had begun to
2 engage a person as a non-ongoing APS employee for the
3 purposes of an Agency under paragraph 22(2)(b) or (c) of the
4 old Public Service Act; and
5 (b) the process was in progress immediately before that time;
6 the process continues after the commencement time as if it were a
7 process to engage a person as a temporary APS employee for the
8 purposes of the Agency under paragraph 22(2)(b) of the new Public
9 Service Act.

10 **34 Saving—circumstances for engagement of non-ongoing**
11 **APS employees**

- 12 (1) This item applies in relation to a person who:
13 (a) becomes a temporary APS employee because of item 32 of
14 this Schedule; or
15 (b) is engaged as a temporary APS employee because of subitem
16 33(1) of this Schedule.
- 17 (2) Despite the repeal of subsection 22(4) of the old Public Service Act by
18 item 61 of Schedule 1 to this Act, that subsection (and the regulations in
19 force for the purposes of that subsection) continue to apply, at and after
20 the commencement time, in relation to the person's engagement.
- 21 (3) Paragraphs 22(4)(a) and (b) of the new Public Service Act (and the
22 regulations in force for the purposes of those paragraphs) do not apply
23 in relation to the person's engagement.
- 24 (4) Paragraph 22(4)(c) of the new Public Service Act (and the regulations
25 in force for the purposes of that paragraph) apply in relation to the
26 person's engagement.
- 27 (5) If the person is a person who becomes a temporary APS employee
28 because of item 32 of this Schedule, then, for the purpose of applying
29 regulations in force for the purposes of paragraph 22(4)(c) of the new
30 Public Service Act in relation to the person's engagement, the period of
31 the person's engagement as a temporary APS employee is taken to
32 include the period of the person's engagement as a non-ongoing APS
33 employee referred to in that item.

34 **35 Termination of employment of non-ongoing APS**
35 **employee in progress before commencement time**

- 1 (1) This item applies if:
2 (a) before the commencement time, an Agency Head had
3 terminated the employment of a non-ongoing APS employee
4 in the Agency under subsection 29(1) of the old Public
5 Service Act; and
6 (b) the termination was to take effect after the commencement
7 time.
- 8 (2) Despite the amendments made by items 62 and 63 of Schedule 1 to this
9 Act, the old Public Service Act (and the regulations in force for the
10 purposes of that Act) continue to apply, at and after the commencement
11 time, in relation to the termination.

12 **36 Procedures for termination of temporary APS employees**
13 **after commencement time**

- 14 (1) The procedures prescribed in regulations (the *termination regulations*)
15 in force for the purposes of subsection 29(4) of the old Public Service
16 Act apply to the termination of the employment of a temporary APS
17 employee after the commencement time.
- 18 (2) For the purposes of subitem (1), a reference in the termination
19 regulations to a non-ongoing APS employee is to be read as a reference
20 to a temporary APS employee.
- 21 (3) This item ceases to have effect on the commencement of
22 Commissioner's Directions issued for the purposes of paragraph
23 11A(1)(f) of the new Public Service Act.
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Part 10—Machinery of government changes

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37 Determinations that APS employees become non-APS employees of Commonwealth authority

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(1) This item applies if:

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(a) before the commencement time, the Commissioner had determined, under paragraph 72(1)(b) of the old Public Service Act, that an APS employee ceases to be an APS employee and becomes an employee of a specified Commonwealth authority; and

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(b) the determination was to take effect after the commencement time.

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(2) The determination is taken, after the commencement time, to be a determination under paragraph 72(1)(b) of the new Public Service Act that the APS employee ceases to be an APS employee and becomes a non-APS employee of the Commonwealth authority.

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2 **Part 11—Confidentiality of information**

3 **38 Protected information obtained at or after commencement**
4 **time**

- 5 (1) Section 72A of the new Public Service Act applies to protected
6 information obtained at or after the commencement time.
- 7 (2) Section 72B of the new Public Service Act applies to protected
8 information obtained at or after the commencement time.

9 **39 Saving—regulations providing for protection of**
10 **information obtained before commencement time**

- 11 (1) This item applies to regulations that were in force for the purposes of
12 paragraph 79(2)(a) of the old Public Service Act.
- 13 (2) Despite the repeal of that paragraph made by item 99 of Schedule 1 to
14 this Act, the regulations continue to apply, at and after the
15 commencement time, to the extent that they provide for confidentiality
16 of information obtained, before the commencement time, by persons
17 performing, or assisting in the performance of, functions referred to in
18 that paragraph before its repeal.

19 **40 Saving—regulations providing for release of personal**
20 **information**

- 21 Regulations in force for the purposes of section 76 of the old Public
22 Service Act continue in force at and after the commencement time as if
23 they were regulations in force for the purposes of section 72E of the
24 new Public Service Act.
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2 **Part 12—Immunity from suit**

3 **41 Immunity from civil proceedings for acts or omissions at**
4 **or after commencement time**

5 Section 78A of the new Public Service Act applies in relation to
6 anything done, or omitted to be done, at or after the commencement
7 time.

8 **42 Saving—regulations providing for immunity from civil**
9 **proceedings**

- 10 (1) This item applies to regulations that were in force for the purposes of
11 paragraph 79(2)(b) of the old Public Service Act.
- 12 (2) Despite the repeal of that paragraph made by item 99 of Schedule 1 to
13 this Act, the regulations continue to apply, at and after the
14 commencement time, to the extent that they provide for immunity from
15 civil action in respect of acts or omissions, before the commencement
16 time, of persons performing, or assisting in the performance of,
17 functions referred to in that paragraph before its repeal.
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Part 13—Legislative instruments

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43 Saving—Classification Rules

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The Classification Rules in force for the purposes of subsection 23(1) of the old Public Service Act continue in force at and after the commencement time as if they were Classification Rules in force for the purposes of subsection 23(1) of the new Public Service Act.

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44 Saving—agreements for APS employees to move between Agencies

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The amendment of subsection 26(2) of the *Public Service Act 1999* made by item 80 of Schedule 1 to this Act does not affect the continuity of an agreement made under subsection 26(1) of that Act.

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45 Saving—right of return for election candidates

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(1) This item applies to a person (and section 32 of the new Public Service Act does not apply to the person) if:

- (a) before the commencement time, the person resigned as an APS employee in order to contest an election prescribed by regulations in force for the purposes of paragraph 32(1)(a) of the old Public Service Act; and
- (b) the resignation took effect not earlier than 6 months before the closing date for nominations; and
- (c) the person was a candidate in the election but failed to be elected.

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(2) The person is entitled to be again engaged as an APS employee, in accordance with regulations in force for the purposes of subsection 32(2) of the old Public Service Act and within the time limits prescribed by those regulations.

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46 Saving—Commissioner’s Directions on SES matters

1 Despite the repeal of section 36 of the old Public Service Act by item 84
2 of Schedule 1 to this Act, Commissioner’s Directions in force for the
3 purposes of that section continue in force at and after the
4 commencement time as if they were Commissioner’s Directions about
5 employment matters relating to SES employees issued for the purposes
6 of paragraphs 11A(1)(a), (b), (c), (d) and (f) of the new Public Service
7 Act.
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Part 14—Miscellaneous

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47 Reduction in classification of APS employee

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The amendment of subsection 23(5) of the *Public Service Act 1999* made by item 89 of Schedule 1 to this Act applies in relation to a reduction in the classification of an APS employee that occurs at or after the commencement time.

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48 Determinations of terms and conditions of employment

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(1) The amendment of subsection 24(1) of the *Public Service Act 1999* made by item 91 of Schedule 1 to this Act does not affect the continuity of a determination that was in force under that subsection immediately before the commencement time.

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(2) The amendment of subsection 24(3) of the *Public Service Act 1999* made by item 92 of Schedule 1 to this Act does not affect the continuity of a determination that was in force under that subsection immediately before the commencement time.

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49 Engagement of consultants

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(1) The amendment of section 40 of the *Public Service Act 1999* made by item 95 of Schedule 1 to this Act does not affect the engagement of a consultant by the Commissioner before the commencement time.

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(2) The amendment of section 49 of the *Public Service Act 1999* made by item 96 of Schedule 1 to this Act does not affect the engagement of a consultant by the Merit Protection Commissioner before the commencement time.

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50 Saving—regulations prescribing penalties for offences against the regulations

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Regulations in force for the purposes of paragraph 79(2)(c) of the old Public Service Act continue in force at and after the commencement time as if they were regulations in force for the purposes of subsection 79(2) of the new Public Service Act.

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2 **Part 15—Regulations**

3 **51 Regulations may deal with transitional etc. matters**

4 The Governor-General may make regulations dealing with matters of a
5 transitional, saving or application nature relating to amendments and
6 repeals made by this Act.