



# Parliamentary Service Determination 2003/2

as amended

made under section 71 of the

*Parliamentary Service Act 1999*

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This compilation was prepared on 15 July 2009 taking into account amendments up to *Parliamentary Service Amendment Determination 2009/1*.

Prepared by the Department of Parliamentary Services, Parliament House, Canberra

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## Part 1 Preliminary

### 1.1 Name of Determination

This Determination is Parliamentary Service Determination 2003/2.

### 1.2 Commencement

This Determination commences on the day it is notified in the *Gazette*.

### 1.3 Definitions — the dictionary

- (1) The dictionary in Schedule 1 defines certain words and expressions, and includes references to certain words and expressions that are defined elsewhere in this Determination (*signpost definitions*).

*Note* The dictionary only includes a signpost definition for a word or expression if the word or expression is used in more than one clause.

- (2) The dictionary includes certain words and expressions relevant to this Determination that are defined in the *Parliamentary Service Act 1999*.

*Note* These definitions are indicated by an asterisk (\*) and have been included for information only to assist readers of the Determination

- (3) A definition in this Determination applies to each use of the word or expression in this Determination, unless the contrary intention appears.

### 1.4 Repeal

Parliamentary Service Determinations 1999/1, 1999/2, 2000/2, 2000/4, 2000/5 and 2003/1 ('the Repealed Determinations') are repealed.

### 1.5 Saving

Anything done or omitted to be done under the Repealed Determinations before the commencement of this Determination is to be treated after the commencement of this Determination as though done or omitted to be done under the equivalent provision of this Determination and as though the equivalent provision was in operation when the thing was done or omitted to be done.

*Note* To assist in the use of this Determination, the heading of each clause contains the clause and determination number of the equivalent provision of the Repealed Determinations.

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## **Part 2                      The ethos of the Parliamentary Service**

### ***Division 2.1                      Obligation of employees to know Act, etc***

#### **2.1.1      Knowledge of Act, Determinations and conduct requirements** *(Clause 2.1 of 1999/1)*

Parliamentary Service employees must inform themselves about the Act, Determinations made under the Act and each conduct requirement applicable to them as employees.

*Note* It is the responsibility of all Parliamentary Service employees to make themselves aware of all provisions in the Act and Determinations affecting them as employees and of all requirements, however they may arise, relating to their conduct as employees.

### ***Division 2.2                      The Parliamentary Service Values***

#### **2.2.1      Duty to incorporate, uphold and promote the Parliamentary Service Values** *(Clause 3 of 2000/4)*

The Secretary of each Parliamentary Service Department, the Parliamentary Librarian and each Parliamentary Service employee must use their best endeavours to incorporate in their Department, and must personally uphold and promote, the Parliamentary Service Values in accordance with this Determination.

*Note* Statutory office holders holding appointments under the Act are also bound by the Code of Conduct by section 14 of the Act. The Code of Conduct is found at section 13 of the Act.

#### **2.2.2      Parliamentary Service Values** *(Clause 4 of 2000/4)*

- (1) The Secretary of each Parliamentary Service Department must use his or her best endeavours to put in place measures to ensure that the Department is managed, is staffed and functions in such a way as to achieve each of the objectives set out in clause 2.2.3 in relation to the Parliamentary Service Values.
- (2) Each Parliamentary Service employee must use his or her best endeavours, taking into account the employee's duties and responsibilities, to help to ensure that the employee's Department is managed, is staffed and functions in such a way as to achieve each of the objectives set out in clause 2.2.3 in relation to the Parliamentary Service Values.

#### **2.2.3      Objectives of Parliamentary Service Values** *(Clause 5 of 2000/4)*

The objectives of each of the Parliamentary Service Values are:

##### **Parliamentary Service Value 1**

***The Parliamentary Service provides professional advice and support for the Parliament independently of the Executive Government of the Commonwealth.***

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In providing advice and support to the Parliament, the Parliamentary Service is independent of the Executive Government and accountable directly to the Parliament.

#### **Parliamentary Service Value 2**

***The Parliamentary Service provides non-partisan and impartial advice and services to each House of the Parliament, to committees of each House, to joint committees of both Houses and to Senators and Members of the House of Representatives.***

In providing advice and services, the Parliamentary Service acts impartially, is independent of the party political system and political influence, and delivers the same high quality professional advice and services, irrespective of party politics and individual political beliefs.

#### **Parliamentary Service Value 3**

***The Parliamentary Service has the highest ethical standards.***

- (1) The Parliamentary Service demonstrates and promotes the highest standards of ethical behaviour.
- (2) Parliamentary Service employees use their best endeavours to promote and achieve the highest standards of ethical behaviour through their knowledge and observance of:
  - (a) the Parliamentary Service Values;
  - (b) the Code of Conduct;
  - (c) any other conduct requirement made by either House of the Parliament or by Determination;
  - (d) any department-specific conduct requirement made by the Secretary;
  - (e) the consequences of breaching the Code of Conduct or any other conduct requirement; and
  - (f) the procedures for dealing with a breach of the Code of Conduct or any other conduct requirement.
- (3) Procedures are in place for dealing with whistleblowing reports.
- (4) Parliamentary Service employees are informed of the procedures for dealing with whistleblowing reports, and may make such reports in appropriate circumstances, knowing that they will be protected when they do so.
- (5) Allegations of misconduct are addressed in a fair, timely, systematic and effective way to ensure that the Parliamentary Service retains the highest standards of ethical behaviour.

#### **Parliamentary Service Value 4**

***The Parliamentary Service performs its functions with probity and is openly accountable for its actions to the Parliament.***

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- (1) Parliamentary Service employees act with probity and are aware of their accountability for their behaviour as employees.
  - (2) Each Secretary, the Parliamentary Librarian and each Parliamentary Service employee meet all applicable reporting obligations.

#### **Parliamentary Service Value 5**

##### ***The Parliamentary Service has leadership of the highest quality.***

- (1) The Secretary of each Department provides leadership of the highest quality for the Department and all of its employees.
- (2) Secretaries use their employer powers in ways that develop and maintain the leadership roles and capabilities of the SES.
- (3) Secretaries make full and proper use of the leadership roles of the SES.
- (4) The Secretary and management of each Department clearly articulate and communicate the departmental business plan.
- (5) Parliamentary Service employees assist in communicating the business plan of their Department and recognise their role in implementing the plan.
- (6) Opportunities are provided for Parliamentary Service employees to develop and apply leadership qualities.

#### **Parliamentary Service Value 6**

##### ***Employment decisions in the Parliamentary Service are based on merit.***

- (1) Employment decisions in each Department are based on merit and, in particular, on:
  - (a) an assessment of a person's work-related qualities and the work-related qualities required for efficient and effective organisational performance; and
  - (b) other merit-related assessments as required by subsection 10(2) of the Act; and
  - (c) minimum requirements set out in Division 3.5 of this Determination.
- (2) Information about the requirements of employment in each Department, and the relevant selection processes, are determined in advance and are readily available to candidates.
- (3) Selection processes are applied fairly and consistently to each candidate.

#### **Parliamentary Service Value 7**

##### ***The Parliamentary Service provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community.***

- (1) Each Department and each Parliamentary Service employee complies with all Commonwealth anti-discrimination laws.

Note See, for example, the *Defence Reserve Service (Protection) Act 2001*, the *Disability Discrimination Act 1992*, the *Human Rights and Equal Opportunity Commission Act 1986*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Workplace Relations Act 1996*.

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- (2) Decisions to engage people recognise the value of the diversity of the Australian community in the context of the business goals of the Parliamentary Service and the skills required to meet those goals.
  - (3) The diverse backgrounds of Parliamentary Service employees are utilised effectively in meeting the business goals of each Department.
  - (4) Parliamentary Service employees are helped to balance their work and family responsibilities effectively.

#### **Parliamentary Service Value 8**

***The Parliamentary Service establishes workplace relations that value communication, consultation, cooperation and input from employees on matters that affect their workplace.***

- (1) The Secretary and management of each Department ensure that employees are aware of the existence and importance of departmental business goals and responsibilities and of how the employees' work contributes to the achievement of those goals and responsibilities.
- (2) Parliamentary Service employees have appropriate opportunities and are encouraged to contribute their views on issues affecting their workplace.
- (3) Parliamentary Service employees accept their role in the consultative arrangements in place in each Department and carry them out conscientiously and constructively.
- (4) The consultative arrangements complement the decision-making responsibilities of Secretaries and management.

#### **Parliamentary Service Value 9**

***The Parliamentary Service provides a fair, flexible, safe and rewarding workplace.***

- (1) Employment and workplace arrangements assist Parliamentary Service employees to balance individual needs and the achievement of business goals.
- (2) Each Department complies with Commonwealth Occupational Health & Safety legislation.
- (3) Decisions on employment matters apply equity and procedural fairness.

#### **Parliamentary Service Value 10**

***The Parliamentary Service focuses on achieving results and managing performance.***

- (1) The Parliamentary Service is led, staffed and managed in ways that give it the organisational capacity, flexibility and responsiveness necessary to achieve the results expected by the Parliament.
- (2) Each Department has a culture of high performance and achievement that is supported by each employee.
- (3) Each Department has a fair and open performance management system that:
  - (a) includes all of its employees;
  - (b) links performance to business goals;

- 
- (c) recognises individual and, where appropriate, team performance; and
  - (d) provides each employee with a clear statement of performance expectations and the opportunity to comment on those expectations.

#### **Parliamentary Service Value 11**

***The Parliamentary Service uses Commonwealth resources properly and cost-effectively.***

Each Department and its employees use Commonwealth resources in an efficient, effective and ethical way to achieve the results expected by the Parliament.

#### **Parliamentary Service Value 12**

***The Parliamentary Service promotes equity in employment.***

- (1) Employment decisions in each Department are free from political interference and unlawful discrimination.
- (2) Employment decisions in each Department are made in an equitable and procedurally fair way.
- (3) Each Department takes measures to eliminate employment-related disadvantages on the basis of:
  - (a) being an Aboriginal or a Torres Strait Islander within the meaning of the *Racial Discrimination Act 1975*;
  - (b) gender;
  - (c) race or ethnicity; or
  - (d) physical or mental disability.
- (4) Each Department has a workplace diversity program in place.

#### **Parliamentary Service Value 13**

***The Parliamentary Service provides a reasonable opportunity to all eligible members of the community to apply for Parliamentary Service employment.***

Opportunities for employment in each Department are notified in a way that gives eligible members of the community a reasonable opportunity to apply for them.

#### **Parliamentary Service Value 14**

***The Parliamentary Service is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government.***

- (1) The Parliamentary Service Values and Code of Conduct reflect a public interest ethos and share a number of key elements with the Australian Public Service.
- (2) Each Department promotes an understanding among its employees of the ethos of the Parliamentary Service as embodied in the Parliamentary Service Values and Code of Conduct.
- (3) All Parliamentary Service employees are encouraged to value their membership of the Parliamentary Service and the contribution they make to the democratic system of government.

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- (4) Each Department practises and encourages consultation, communication and the sharing of knowledge within the Parliamentary Service and with other Commonwealth agencies and the community.
  - (5) The benefit of mobility of employees between the Parliamentary Service and Commonwealth agencies is recognised.
  - (6) Each Department is staffed and managed on a basis that sustains core knowledge, expertise and the highest standards of professionalism and behaviour.
  - (7) The Secretary of each Department upholds and promotes these objectives both:
    - (a) in respect of his or her Department; and
    - (b) when working with other Secretaries as the collective leadership of the Parliamentary Service.

#### **Parliamentary Service Value 15**

***The Parliamentary Service provides a fair system of review of decisions taken in respect of Parliamentary Service employees.***

- (1) Each Department has a system for the review of decisions affecting its employees.
- (2) The system complies with the Act, the Determinations and the requirements of procedural fairness.

### **Division 2.3      *The Code of Conduct***

#### **2.3.1      **Duty not to disclose information (Act s13)** *(Clause 2.1 of 2000/2)***

- (1) This clause sets out conduct requirements made for subsection 13(13) of the Act.
- (2) This clause does not affect other restrictions on the disclosure of information.
- (3) A Parliamentary Service employee must not disclose information which the employee obtains or generates in connection with his or her employment if the information:
  - (a) was, or is to be, communicated in confidence:
    - (i) to or by the Presiding Officers, a committee of either House or a joint committee, a Senator or a Member of the House of Representatives; or
    - (i) within the Parliamentary Service; or
  - (b) was received in confidence from a person or persons outside the Parliament or the Parliamentary Service who has not, or have not, given permission for the disclosure;

whether or not the disclosure would found an action for breach of confidence.

- (4) Subclause (3) does not prevent a disclosure of information by a Parliamentary Service employee if:
  - (a) the information is disclosed in the course of the employee's duties; or
  - (b) the information is disclosed in accordance with an authorisation given by a Secretary, or by the Parliamentary Librarian in relation to information acquired

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- or created in connection with the functions of the Parliamentary Librarian as set out in section 38B of the *Parliamentary Service Act 1999*; or
- (c) the disclosure is otherwise authorised by law; or
  - (d) the information that is disclosed:
    - (i) is already in the public domain as the result of a disclosure of information that is lawful under this Determination or another law; and
    - (ii) can be disclosed without disclosing, expressly or by implication, other information to which subclause (3) applies.
- (5) Subclause (3) does not limit the authority of a Secretary to give lawful and reasonable directions in relation to the disclosure of information.
- (6) Nothing in this clause affects the provision of advice to a House, a committee or a member of either House by a Parliamentary Service employee for the purpose of the performance of the duties or functions of a House, a committee or a member of either House.

*Note* Under section 70 of the *Crimes Act 1914*, it is an offence for a Parliamentary Service employee to publish or communicate any fact or document which comes to the employee's knowledge, or into the employee's possession, by virtue of being a Commonwealth officer, and which it is the employee's duty not to disclose.

### **2.3.2 Statutory office holders bound by the Code of Conduct (Act s14)** (Clause 2.2 of 2000/2)

- (1) For the purposes of the definition of *statutory office holder* in subsection 14(3) of the Act, an office or appointment is a prescribed office or appointment, if it:
- (a) is not an office of Secretary or an appointment to an office of Secretary; and
  - (b) is held by or relates to a non-Parliamentary Service employee who is:
    - (i) acting in relation to the exercise of his or her direct or indirect supervisory duties in relation to Parliamentary Service employees; and
    - (ii) engaged, employed, or appointed under an Act.

### **2.3.3 Alleged breaches of the Code of Conduct by Secretaries or the Parliamentary Librarian (Act s14)**

- (1) Where an allegation, other than a whistleblower's report, is made about conduct by a Secretary or the Parliamentary Librarian amounting to a breach of the Code of Conduct, the allegation must be referred to the Presiding Officers.
- (2) If the Presiding Officers consider that the matter may warrant investigation, they will refer the matter to the Commissioner
- (a) for advice and/or
  - (b) for inquiry and a report in accordance with paragraph 40(1)(b) of the Act.
- (3) The Presiding Officers may request the Commissioner to include recommendations in the report, in accordance with subsection 40(2) of the Act.

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### **2.3.4 Limitation on sanctions for breaches of the Code (Act s15) (Clause 2.3 of 2000/2)**

Where the sanction of a deduction from salary by way of fine is imposed on a Parliamentary Service employee under subsection 15(1) of the Act, the deduction must not be more than 2% of the employee's annual salary.

## **Division 2.4 Whistleblowers' reports**

### **2.4.1 Application of Division 2.4 (Clause 2.4 of 2000/2)**

This Division relates to whistleblowers' reports.

*Note* Section 16 of the Act prohibits victimisation or discrimination by anyone in a Department against an employee who has reported a breach, or alleged breach, of the Code of Conduct to the Commissioner, the Merit Protection Commissioner or a Secretary or another person authorised for the purposes of section 16.

### **2.4.2 Office holders (Subclause 2.8 (1) of 2000/2)**

In this Division, **office holder** means a Secretary, the Commissioner or the Merit Protection Commissioner.

### **2.4.3 Office holders to whom whistleblowers' reports may be made (Act s16)**

- (1) A whistleblower's report may be made to an office holder as follows:
  - (a) if the report concerns a non-SES Parliamentary Service employee - to the Secretary of the employee's Department;
  - (b) if the report concerns an SES Parliamentary Service employee or the Commissioner - to the Merit Protection Commissioner; or
  - (c) if the report concerns a Secretary or a person who is a statutory office holder within the meaning of section 14 of the Act (other than the Commissioner) - to the Commissioner.

*Note* Where an office holder has authorised another person under clause 2.4.7 to receive whistleblowers' reports on the office holder's behalf, a report may be made to the authorised person. That person may then deal with it on behalf of the office holder in accordance with the authorisation.

- (2) A person who receives a whistleblower's report and is not the office holder mentioned in relation to the report in subclause (1) must refer the report to the office holder.
- (3) If an office holder has received a whistleblower's report under subclause (1) or (2), and considers on reasonable grounds that the report would be more appropriately dealt with by another office holder, he or she may refer the report to that other office holder.
- (4) Office holders may consult with each other about a whistleblower's report for the purposes of this clause.
- (5) A whistleblower's report referred under this clause is taken to have been made to the person to whom it is last referred.

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#### **2.4.4 Handling of whistleblowers' reports** *(part of clause 2.6 of 2000/2)*

- (1) Subject to subclause (2), where a whistleblower's report is made to the Commissioner, the Commissioner must refer the matter to the Presiding Officers and act in accordance with any request made by them.
- (2) Where a whistleblower's report is made to the Commissioner and the report is covered by a standing request issued to the Commissioner by the Presiding Officers about the handling of reports, the Commissioner must handle the report in accordance with that request.

*Note* Where a report relates only to the Department of the Senate or the Department of the House of Representatives, the Commissioner must refer the report to the President of the Senate or the Speaker respectively. Where a report relates to any other department, the Commissioner must refer it to the President of the Senate and the Speaker jointly.

- (3) An office holder, other than the Commissioner, to whom a whistleblower's report is made must investigate it or authorise another person to investigate it and report back to the office holder.
- (4) A person authorised by an office holder to investigate a whistleblower's report should not be someone who is named in or affected directly by the report.

#### **2.4.5 Whistleblowers' reports reasonably considered to be frivolous or vexatious** *(part of Clause 2.6 of 2000/2)*

- (1) Where an office holder to whom a whistleblower's report is made considers, on reasonable grounds, that the report is frivolous or vexatious, the office holder may decide not to investigate the report.
- (2) Where an office holder to whom a whistleblower's report is made considers, on reasonable grounds, that the report is frivolous or vexatious in part, the office holder may decide to investigate only the part of the report that he or she considers not to be frivolous or vexatious.

#### **2.4.6 Compliance with procedures** *(Clause 2.7 Of 2000/2)*

- (1) A Secretary may issue procedures for the handling of whistleblowers' reports in the Secretary's Department.
- (2) Procedures issued by the Secretary must not be inconsistent with Directions issued by the Commissioner for determining breaches of the Code of Conduct, or with this Determination.
- (3) A person investigating a whistleblower's report alleging a breach of the Code of Conduct by a Parliamentary Service employee must:
  - (a) comply with procedures for handling whistleblowers' reports issued by the Secretary of the employee's Department at the time the report is made; and
  - (b) not otherwise act in a manner inconsistent with Commissioner's Directions.
- (4) A person investigating a whistleblower's report other than a report of a kind mentioned in subclause (3) must follow procedures not inconsistent with Commissioner's Directions.

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*Note* Subsection 15(3) of the Act requires Secretaries to establish procedures for determining breaches of the Code of Conduct. Subsection 15(4) requires the Commissioner to issue Directions for the purposes of subsection 15(3).

#### **2.4.7 Authorisation by office holders (Act s16)**

- (1) An office holder may authorise a person to exercise or perform, on behalf of the office holder, either generally or in a particular case, all or any of the powers or functions of the office holder under this Part, except the power to authorise a person to investigate a report.
- (2) A power exercised or function performed by a person authorised by an office holder under subclause (1) in accordance with the authorisation is taken to have been exercised or performed by the office holder.

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## Part 3 Parliamentary Service employment

*Note* In accordance with subsection 71(4) of the Act, the clauses in this Part that relate to section 22 of the Act apply, adopt or incorporate to the maximum extent possible, and subject to minor technical and drafting changes, regulations made for the purposes of section 22 of the *Public Service Act 1999*.

### Division 3.1 Engagement of Parliamentary Service employees

#### 3.1.1 Categories of employment (new provision)

- (1) The engagement of a Parliamentary Service employee (including the engagement of an ongoing APS employee under s26) must be:
  - (a) as an ongoing Parliamentary Service employee; or
  - (b) for a specified term or for the duration of a specified task; or
  - (c) for duties that are irregular or intermittent.
- (2) The usual basis for engagement is as an ongoing Parliamentary Service employee.

#### 3.1.2 Engagement - date of effect (new provision)

An engagement does not take effect unless and until the employee takes up duty.

#### 3.1.3 Engagement of persons who have received redundancy benefits

- (1) In this clause, a person is a *redundancy benefit recipient* if:
  - (a) the person has received a redundancy benefit from a Department or from an APS Agency; and
  - (b) the redundancy benefit period has not elapsed.
- (2) A Secretary may engage a redundancy benefit recipient as a Parliamentary Service employee only if the Secretary considers that the engagement is essential for the Department's operations, having regard to the nature of the duties to be performed and the skills, experience or qualifications of the person.
- (3) In addition to the requirement in subclause (2) above, a Secretary must also:
  - (a) obtain the Commissioner's approval before engaging a redundancy benefit recipient as either:
    - (i) an ongoing Parliamentary Service employee; or
    - (ii) a non-ongoing SES employee;
  - (b) consult with the Commissioner before engaging a redundancy benefit recipient, where the engagement is:
    - (i) as a non-ongoing Parliamentary Service employee (at a non-SES classification) for a specified term of more than 6 months; or
    - (ii) as a non-ongoing Parliamentary Service employee (at a non-SES classification) for the duration of a specified task where it is estimated that the duration of the task is likely to be more than 6 months.

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### 3.1.4 Meaning of “redundancy benefit” for the purposes of clause 3.1.3

- (1) Subject to subclause (2), each of the following payments is a **redundancy benefit**:
- (a) a severance payment, or similar payment, made to an employee on cessation of the employee’s employment;
  - (b) a payment made to an employee as a result of the shortening of a retention period;
  - (c) a payment made as an incentive retire.
- (2) Each of the following payments is not a **redundancy benefit**:
- (a) a payment made:
    - (i) to a person who was engaged for a specified term or for the duration of a specified task; and
    - (ii) as compensation for the early cessation of the person’s employment;
  - (b) a payment made to a person if the person’s employment ceased other than at the initiative of the employer.
- (3) The **redundancy benefit period** is the number of weeks following the date of cessation of a person’s employment that resulted in the payment of a redundancy benefit. It is calculated as follows:

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

*Note* a redundancy benefit does not include any payment in lieu of notice made to the employee.

## Division 3.2 Ongoing Employment

### 3.2.1 Employment to be ongoing (*new provision*)

Employment in the Parliamentary Service, other than non-ongoing employment in accordance with Division 3.3, is ongoing employment.

**Note**

Most employment conditions for ongoing employees, such as salary, leave and allowances, are covered by Secretaries' Determinations under section 24 of the Act and Certified Agreements and Australian Workplace Agreements under the *Workplace Relations Act 1996*. Other legislation (such as the *Maternity Leave (Commonwealth Employees) Act 1973*, *Long Service Leave (Commonwealth Employees) Act 1976*, the *Superannuation Act 1976* and the *Superannuation Act 1990*) also applies.

The *Workplace Relations Act 1996*, in its application to Parliamentary Service employment (ongoing and non-ongoing), sets out rules and entitlements concerning termination of employment.

The Parliamentary Service Commissioner has issued guidelines on SES employment.

### 3.2.2 Promotion of ongoing Parliamentary Service employees - definition (*Subclause 2.6 (1) of 2000/5*)

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- (1) The assignment to an ongoing Parliamentary Service employee (other than a trainee) of duties at a higher classification is a ***promotion*** unless:
    - (a) the assignment is temporary; or
    - (b) the assignment of duties at the current classification was temporary and, immediately before that assignment, the employee had been assigned duties at the higher classification; or
    - (c) the employee's current classification is included in a broadband and the assignment is to duties at a higher classification within that broadband.

*Note* Subclause 3.4.1(3) provides that, where an ongoing APS employee is engaged at a classification higher than the employee's classification in the APS immediately before the engagement, the move to the Parliamentary Service is taken to be a promotion. See also clauses 7.2.1 and 7.2.2.

- (2) The assignment (except temporarily) to a trainee of duties at a classification higher than the operational classification that relates to the training classification is a ***promotion***.
- (3) The allocation to a trainee, at the completion of training, of an operational classification that relates to the training is not a ***promotion***.

*Note* Rule 9 of the Classification Rules sets out arrangements for the allocation of operational classifications to ongoing and non-ongoing employees engaged at training classifications.
- (4) This clause applies whether or not the assignment of duties involves movement to another Department.
- (5) ***trainee*** in this clause means a Parliamentary Service employee whose classification is a training classification.

### **3.2.3 Promotion of ongoing Parliamentary Service employees - date of effect** (Clause 3.1 of 2000/2)

- (1) The promotion of an ongoing Parliamentary Service employee takes effect in accordance with this clause.

*Note* Subclause 3.4.1(3) provides that, where an ongoing APS employee is engaged at a classification higher than the employee's classification in the APS immediately before the engagement, the move to the Parliamentary Service is taken to be a promotion. See also clauses 7.2.1 and 7.2.2.
- (2) If the promotion decision is not subject to review by a Promotion Review Committee (PRC), the promotion takes effect:
  - (a) 4 weeks after the promotion is notified in the *Gazette*; or
  - (b) if there is another agreed date, which cannot be earlier than the date the promotion is notified in the *Gazette*, on that date.
- (3) If the promotion decision is subject to review by a PRC, the promotion takes effect in accordance with whichever of the following subclauses applies.
- (4) If no application for review by a PRC is made before the end of the application period, the promotion takes effect:
  - (a) 2 weeks after the end of the application period; or
  - (b) if there is another agreed date, which is not before the end of the application period, on that date.

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- (5) If an application for review by a PRC is made before the end of the application period, and the application is withdrawn before a PRC makes a decision on the application, the promotion takes effect on:
    - (a) the later of
      - (i) 2 weeks after the Secretary is notified of the withdrawal of the application; and
      - (ii) the date of effect of the promotion if no application for review had been made; or
    - (b) another agreed date.
  - (6) If an application for review by a PRC is made before the end of the application period and the application lapses after the Merit Protection Commissioner appoints a PRC to deal with the application but before the PRC makes a decision on it, the promotion takes effect:
    - (a) 2 weeks after the Merit Protection Commissioner notifies the Secretary that the application has lapsed; or
    - (b) on another agreed date, which cannot be before the end of the application period.
  - (7) If an application for review by a PRC is made before the end of the application period and the Merit Protection Commissioner decides under clause 7.2.6 that it is not necessary to appoint a PRC, the promotion takes effect:
    - (a) 4 weeks after the promotion is notified in the *Gazette*; or
    - (b) on another agreed date.
  - (8) If an application for review by a PRC is made before the end of the application period and not withdrawn, the promotion of the employee takes effect in accordance with the review decision:
    - (a) 4 weeks after the Merit Protection Commissioner notifies the Secretary of the review decision; or
    - (b) on another agreed date.

#### **3.2.4 Agreed moves between Departments** (*Clause 3.2 Of 2000/2*)

- (1) A Secretary (the *new Secretary*) and an ongoing Parliamentary Service employee may enter into a written agreement for the employee to move to the new Secretary's Department from the employee's current Department.
- (2) Subject to this clause, the agreement has effect according to its terms.
- (3) If the move is not a promotion, the employee must tell the Secretary of his or her current Department (the *current Secretary*), in writing, about the agreement before the end of the next working day after the agreement is made.
- (4) If the move is not a promotion, it takes effect:
  - (a) 4 weeks after the day the current Secretary is told of the agreement; or
  - (b) on another agreed date.
- (5) Subclause (3) has effect in relation to the move of an SES employee subject to any guidelines issued by the Commissioner under section 36 of the Act.

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- (6) If the move is a promotion, it takes effect as provided by clause 3.2.3.

### **3.2.5 Temporary moves between Departments** *(new provision)*

- (1) Where a move agreed under clause 3.2.4 is temporary, the agreement for the move must include an agreed date for the return of the employee to the current Department.
- (2) An agreed date may be varied by agreement between the parties.

### **3.2.6 Terms used in this Division** *(new provision)*

In this Division:

***agreed date*** means:

- (a) if the employee is not moving to a new Department, a date agreed between the employee and the current Secretary; and
- (b) if the employee is moving to another Department, a date agreed between the employee, the new Secretary and the current Secretary.

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

## **Division 3.3 Non-ongoing Employment**

### **3.3.1 Purpose of this Division** *(new provision)*

This Division sets out, for the purposes of subsections 22(4) and (5) of the Act, circumstances in which the engagement, and extensions of the engagement, of people as non-ongoing Parliamentary Service employees may occur.

### **3.3.2 Engagement of SES employees for specified terms (Act s22)** *(Clause 4.2 of 1999/1)*

- (1) A person may be engaged as an SES employee for a specified term if the term does not exceed 5 years.
- (2) Where the person has been engaged for a specified term of less than 5 years:
  - (a) the engagement may be extended once or more than once; but
  - (b) the engagement may be extended only to the extent that the total term does not exceed 5 years.

### **3.3.3 Engagement of non-SES employees for specified terms or tasks (Act s22)** *(Clause 4.3 of 1999/1)*

- (1) This clause sets out the circumstances in which a person may be engaged as a non-ongoing non-SES Parliamentary Service employee.
- (2) The person may be engaged as a non-SES employee for:
  - (a) a specified term; or
  - (b) the duration of a specified task.

- (3) The person may be engaged for a reason, and for a specified term, set out in the following table:

<b>Item</b>	<b>Reason</b>	<b>Specified term</b>
1	To enable the Department to meet a temporary increase in the workload of the Department, or of a component of the Department, that the Secretary does not expect to continue.	Term not exceeding 18 months.
2	The Department has a temporary demand for employees with particular skills, and ongoing Parliamentary Service employees in the Department with those skills are or have been: <ul style="list-style-type: none"> <li>(a) given the opportunity to express interest in performing the relevant duties; and</li> <li>(b) considered for performance of those duties.</li> </ul>	Term not exceeding 18 months.
3	To replace an ongoing Parliamentary Service employee who is on leave authorised by the Department.	Term not exceeding 18 months.
4	To replace an ongoing Parliamentary Service employee to whom other duties are temporarily assigned.	Term not exceeding 18 months.
5	To replace an ongoing Parliamentary Service employee who moves temporarily to another Department.	Term not exceeding 18 months.
6	To replace an ongoing Parliamentary Service employee pending engagement of another ongoing Parliamentary Service employee.	The lesser of: <ul style="list-style-type: none"> <li>(a) 6 months from the date of engagement; and</li> <li>(b) the period ending when an ongoing Parliamentary Service employee is engaged.</li> </ul>
7	To undertake duties for the Department pending engagement of an ongoing Parliamentary Service employee to undertake the duties.	The lesser of: <ul style="list-style-type: none"> <li>(a) 6 months from the date of engagement; and</li> <li>(b) the period ending when an ongoing Parliamentary Service employee is engaged.</li> </ul>
8	The person has been offered in writing engagement as an ongoing Parliamentary Service employee but prefers to be engaged for a specified term.	Term not exceeding 3 years.

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<b>Item</b>	<b>Reason</b>	<b>Specified term</b>
9	To enable the Department to engage an ongoing APS employee as a non-ongoing Parliamentary Service employee.	Term not exceeding 3 years.

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- (4) The person may be engaged for the duration of a specified task if:
- the Secretary can reasonably estimate the duration of the task at the time of engagement; and
  - at that time, the Secretary reasonably considers that the services of the person are unlikely to be required after completion of the task; and
  - ongoing Parliamentary Service employees in the Department with the skills required to undertake duties in relation to the task are:
    - given the opportunity to express interest in performing those duties; and
    - considered for performance of the duties.
- (5) The person may be engaged for a specified term, or for the duration of a specified task, if the engagement is for the purpose of enabling the person to gain skills and experience under a scheme that is:
- approved under clause 3.3.5; or
  - the subject of a general direction in force under subsection 20(1) of the Act.
- Note* Section 20 of the Act enables the Presiding Officers to give directions to Secretaries in relation to the management and leadership of Parliamentary Service employees.
- (6) The person may be engaged for a specified term, or for the duration of a specified task, if the engagement is for the purpose of meeting a practical requirement for:
- the award of a qualification to the person by an educational institution; or
  - accreditation of the person by a professional body.
- (7) The person may be engaged for a specified term, or for the duration of a specified task, if the engagement is for the purpose of providing the person with occupational experience that is required under a law of the Commonwealth, or of a State or Territory, for licensing or registration to engage in the occupation.
- Note* When considering the replacement of an ongoing employee whose absence is likely to be prolonged or indefinite, a Secretary is bound by subsection 22(3) of the Act. This provides that the usual basis for engagement is as an ongoing Parliamentary Service employee. Also, paragraph 10(1)(n) of the Act (Value 14 in clause 2.2.3) provides that the Parliamentary Service is a career-based service.

### **3.3.4 Extension of specified terms of engagement of certain non-SES employees (Act ss22(5)) (Clause 4.4 of 1999/1)**

- (1) The engagement of a person for a reason mentioned in item 1 of the table in subclause 3.3.3(3) may be extended if:
- the reason continues to exist; and
  - the total term does not exceed 3 years; and

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- (c) the Department cannot fully meet its objectives by using the services of an ongoing Parliamentary Service employee in the Department; and
  - (d) the temporary increase in workload of the Department, or the component of the Department, is a result of implementing a policy that does not involve an ongoing increase in the usual workload of the Department or component.
- (2) The engagement of a person for a reason mentioned in item 2, 3, 4 or 5 of the table in subclause 3.3.3(3) may be extended if:
- (a) the reason continues to exist; and
  - (b) the total term does not exceed 3 years; and
  - (c) the Department cannot fully meet its objectives by using the services of an ongoing Parliamentary Service employee in the Department; and
  - (d) the Secretary certifies that extension of the engagement is in the public interest.

### **3.3.5 Workforce participation schemes (Act s21) (Clause 4.1 of 1999/1)**

- (1) For the purposes of subsection 21(2) of the Act, a Secretary may approve an employment scheme to enable people to gain skills and experience to assist them to participate in the workforce.
- (2) People engaged for such schemes may be engaged for specified periods or for the duration of specified tasks.
- (3) The approval of any scheme must be published in the *Gazette* within 14 days after the day on which the scheme was approved.

## **Division 3.4 Mobility between the Parliamentary Service and the APS**

### **3.4.1 Engagement of ongoing APS employees for ongoing Parliamentary Service employment (Act s26) (Clause 4.1 of 2000/2, as amended by 2003/1)**

- (1) Subclause (2) applies where a person moves or is to move from employment as an ongoing APS employee to employment as an ongoing Parliamentary Service employee.
- (2) The engagement of an APS employee in the Parliamentary Service for particular employment is subject to the provisions of the Determinations that would apply in relation to the movement of an ongoing Parliamentary Service employee to the same employment.
- (3) The engagement of an APS employee in the Parliamentary Service, at a higher classification than the employee's classification in the APS immediately before the engagement, is taken for the Determinations to be a promotion of an employee.
- (4) Whether an engagement of an ongoing APS employee in the Parliamentary Service, or an engagement for which an ongoing APS employee has applied, is at a higher classification is determined according to a comparison of:
  - (a) the Parliamentary Service classification group in which the classification is specified in the Classification Rules made by the Presiding Officers; and

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- (b) the APS classification group in which the employee's current APS classification is specified in the Classification Rules made under the *Public Service Act 1999*.
- (5) In determining the date of effect of a move to which subclause (2) applies:
- (a) a reference in this Determination to an employee moving to another Department includes an employee moving from an APS Agency to a Department; and
  - (b) a reference in this Determination to the Current Secretary includes the Agency Head of the APS Agency.

*Note* This clause preserves the principle of mobility between the APS and the Parliamentary Service on the same basis, and subject to the same requirements, as moves within the Parliamentary Service. Provisions of the Determinations applied by this clause to the engagement of ongoing APS employees as ongoing Parliamentary Service employees include those concerning gazettal and date of effect of moves at level or on promotion.

### **3.4.2 Engagement of ongoing APS employees for non-ongoing Parliamentary Service employment (Act s26A) (Clause 4.2 of 2000/2, as amended by 2003/1)**

- (1) This clause applies to an ongoing APS employee who is granted leave without pay to take up non-ongoing employment in the Parliamentary Service.
- (2) Clauses 3.5.4 and 3.5.5 do not apply to the engagement of employees mentioned in clause (1).

*Note* Under section 26A the employee retains his or her existing or accrued entitlements relating to annual leave and personal or carer's leave (however described).

## **Division 3.5 Merit in Employment**

### **3.5.1 Purpose of Division 3.5 (Clause 2.1 of 2000/5)**

- (1) This Division sets out minimum requirements that a Secretary must meet in upholding and promoting:
  - (a) Parliamentary Service Value 6 (*all employment decisions in the Parliamentary Service are based on merit*), including merit in relation to engagement or promotion as described in subsection 10(2) of the Act; and
  - (b) Parliamentary Service Value 13 (*the Parliamentary Service provides a reasonable opportunity to all eligible members of the community to apply for Parliamentary Service employment*).

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**Note on merit**

Subsection 10(2) of the Act provides that, for the purposes of Parliamentary Service Value 6, a decision relating to engagement or promotion is based on merit if:

- (a) an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process; and
- (b) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
- (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
- (d) the assessment is the primary consideration in making the decision.

*Note* Examples of work-related qualities that may be taken into account in making an assessment:

- 1. Skills and abilities
- 2. Qualifications, training and competencies
- 3. Standard of work performance
- 4. Capacity to produce outcomes from effective performance at the level required
- 5. Relevant personal qualities
- 6. Demonstrated potential for further development
- 7. Ability to contribute to team performance.

(2) The minimum requirements relate to:

- (a) the engagement and promotion of persons as Parliamentary Service employees; and
- (b) the selection of Parliamentary Service employees for temporary assignment of duties at a higher classification.

*Note* This Division does not apply to the engagement of people as Parliamentary Service employees in the circumstances mentioned in clause 3.5.10.

### **3.5.2 Engagement of ongoing Parliamentary Service employees - notification of employment opportunities** (*Subclauses 2.2(1) to (5) of 2000/5*)

(1) Before:

- (a) a person is engaged as an ongoing Parliamentary Service employee at a training classification or a Parliamentary Service Group 1 classification; or
- (b) an ongoing Parliamentary Service employee (other than an employee already in a training classification) is assigned duties at a training classification,

the opportunity to apply for the employment concerned, or similar employment in the Department, must be notified as open to all eligible members of the community eligible for the employment.

- (2) Subject to clause (4), before a person (other than a person referred to in paragraph (1)(a)) is engaged as an ongoing employee, the opportunity to apply for the employment concerned, or similar employment in the Department, must be notified as open to all eligible members of the community.
- (3) Subject to subclause (4), an opportunity referred to in subclause (1) or (2) must have been notified in the *Gazette* during the period of 12 months before the decision to engage a person is made.

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- (4) If a Secretary decides, for reasons of cost or operational efficiency, not to notify an opportunity referred to in subclause (2) as open to all eligible members of the community, the minimum requirement before a person is engaged is that the opportunity must be notified in the *Gazette*:

- (a) during the period of 12 months before the decision to engage the person is made; and
- (b) as open to all Parliamentary Service employees.

*Note* Clause 3.5.11 treats certain persons as Parliamentary Service employees for the purposes of this clause.

### **3.5.3 Certain employees moving from training classifications to ongoing employment** (*Subclauses 2.2 (7) and (8) of 2000/5*)

- (1) This clause applies to:
  - (a) a non-ongoing Parliamentary Service employee who was engaged, on the basis of merit, at a training classification; or
  - (b) an ongoing Parliamentary Service employee who was selected, on the basis of merit, for assignment of duties at a training classification under subclause 3.5.2(1).
- (2) Where
  - (a) in connection with the training opportunity, it was notified that an employee to whom this clause applies, on completion of all training requirements for the classification, may be offered engagement, or assigned duties, at the operational classification specified in the Classification Rules as related to the training; and
  - (b) within a period of twelve months of completing all training requirements for the classification, the Secretary makes such an offer to the employee, clause 3.5.2 does not apply.
- (3) Where there is more than one employee to whom this clause applies that could be offered engagement or assigned duties under subclause (2), the merit requirement is satisfied if any employee to whom an offer is made is selected from among all those employees on merit.

### **3.5.4 Engagement of Parliamentary Service employees for a specified term or for the duration of a specified task - notification of employment opportunities** (*Clause 2.3 of 2000/5*)

- (1) Before a person is engaged as a Parliamentary Service employee for a specified term of more than 12 months, or for the duration of a specified task that is reasonably estimated to take more than 12 months, the opportunity to apply for the employment concerned, or similar employment in the Department, must have been notified in the *Gazette*:
  - (a) during the period of 12 months before the decision to engage the person is made; and
  - (b) as open to all eligible members of the community.

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*Note* Subclause 3.4.2(2) provides that, where an ongoing APS employee is granted leave without pay to take up non-ongoing employment in the Parliamentary Service, this clause does not apply to the engagement of the employee.

### **3.5.5 Extension of engagement of Parliamentary Service employees engaged for specified terms - notification of employment opportunities (Clause 2.5 of 2000/5)**

- (1) This clause applies if a Parliamentary Service employee is engaged for a specified term of 12 months or less.
- (2) Before an employee's engagement is extended to take the total period of engagement beyond 12 months:
  - (a) the opportunity to apply for the initial employment must have been notified in the *Gazette* as open to all eligible members of the community; or
  - (b) the opportunity to apply for the extended period of the engagement must have been notified in the *Gazette* as open to all eligible members of the community.

*Note* Subclause 3.4.2(2) provides that, where an ongoing APS employee is granted leave without pay to take up non-ongoing employment in the Parliamentary Service, this clause does not apply to the engagement of the employee.

### **3.5.6 Promotion - notification of employment opportunity (Subclauses 2.6(2) to (5) of 2000/5)**

- (1) Before an ongoing Parliamentary Service employee is promoted, the opportunity to apply for the relevant employment, or similar employment in the Department, must be notified in the *Gazette* during the period of 12 months before the decision to promote the person is made.
- (2) Subject to subclause (3), the opportunity must have been notified as open to all eligible members of the community.
- (3) If, a Secretary decides, for reasons of cost or operational efficiency, not to notify an opportunity referred to in subclause (1) to all eligible members of the community, the minimum requirement before an ongoing employee is promoted to the employment concerned is that the opportunity must have been notified in the *Gazette* as open to all Parliamentary Service employees.

*Note 1* Clause 3.5.11 treats certain persons as Parliamentary Service employees for the purposes of this clause.

*Note 2* Subclause 3.4.1(3) provides that, where an ongoing APS employee is engaged at a classification higher than the employee's classification in the APS immediately before the engagement, the move to the Parliamentary Service is taken to be a promotion. See also clauses 7.2.1 and 7.2.2.

### **3.5.7 Temporary assignment of duties (Clause 2.7 of Clause 2000/5)**

A Parliamentary Service employee may not be assigned duties for a temporary period at a higher classification unless the following matters have been considered:

- (a) the efficiency of the employee;
- (b) the relative importance to the Department of the duties to be performed at the higher classification and the other duties to be performed in the Department;

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- (c) the length of the period in which the employee is to perform duties at the higher classification;
  - (d) the expected cost of the employee performing duties at the higher classification; and
  - (e) the need for Parliamentary Service employees to be given the opportunity to gain experience in performing duties at a higher classification.

### **3.5.8 Employment opportunities advertised in the *Gazette* and elsewhere** *(new provision)*

Where an opportunity notified in the *Gazette* in accordance with clauses 3.5.2, 3.5.4, 3.5.5 or 3.5.6 is also to be advertised elsewhere as open to members of the community, the latter advertisement must occur before, or not more than four weeks after, the *Gazette* notification.

### **3.5.9 Special employment measures** *(Subclauses 2.2(6) and 2.3(3) of Clause 2000/5)*

Where under clauses 3.5.2, 3.5.4, 3.5.5 or 3.5.6 an employment opportunity must be notified to all eligible members of the community, that requirement is taken to be satisfied by an action taken in accordance with employment measures that:

- (a) are consistent with Commonwealth law; and
- (b) identify opportunities for employment as open to:
  - (i) Aboriginal or Torres Strait Islanders within the meaning of the *Racial Discrimination Act 1975*; or
  - (ii) people with intellectual disabilities; and
- (c) allow the engagement of people as Parliamentary Service employees.

### **3.5.10 Circumstances in which Division 3.5 does not apply** *(Schedule 1 to 2000/5)*

This Division does not apply to the engagement of a person as a Parliamentary Service employee when:

- (a) the following circumstances apply to the person:
  - (i) the person has previously been an employee of the Department; and
  - (ii) the person is receiving an invalidity pension from the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme; and
  - (iii) the CSS Board or PSS Board has decided that the person is fit to return to work; and
  - (iv) the engagement is at the person's former classification (or equivalent) or a lower classification; or
- (b) the following circumstances apply to the person:
  - (i) during the previous 12 months, the person has been an employee of the Department; and

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- (ii) following an investigation of the circumstances of the ending of the person's employment, the Secretary decides that his or her previous employment should not have ended; and
  - (iii) the engagement is at the person's former classification or a lower classification; or
  - (c) the Australian Industrial Relations Commission has recommended the reinstatement of the person, or made an order for his or her reinstatement, as a Parliamentary Service employee; or
  - (d) the Human Rights and Equal Opportunity Commission has recommended the reinstatement of the person as a Parliamentary Service employee; or
  - (e) the Federal Court of Australia has ordered the reinstatement of the person as a Parliamentary Service employee; or
  - (f) an application by the person for relief in relation to termination of employment is settled and the parties have agreed to his or her reinstatement as a Parliamentary Service employee; or
  - (g) the person has made an application for re-engagement under Part 4 of this Determination.

### **3.5.11 People treated as Parliamentary Service employees for specified purposes** (*Schedule 2 to 2000/5*)

The following persons are treated as Parliamentary Service employees for the purposes of clauses 3.5.2 and 3.5.6:

- (a) an employee of the Australian Public Service;
- (b) a former officer of a Parliamentary Department who resigned on or after 2 August 1990, if:
  - (i) the resignation was for child rearing purposes and the person resigned after taking at least 12 weeks' maternity or parental leave; and
  - (ii) the resignation took place within 2 years of the date of birth of the child for which the period of maternity or parental leave was granted; and
  - (iii) the opportunity for employment was notified in the *Gazette* within 6 years from the date of birth of the child for which the maternity or parental leave was granted; and
- (c) a former officer of a Parliamentary Department who:
  - (i) on 1 April 1987, was on leave without pay to work in the Northern Territory Public Service (*NTPS*); and
  - (ii) resigned before 1 April 1988 to continue employment in the *NTPS*; and
  - (iii) has continued to be employed by the *NTPS*;
- (d) a former officer of a Parliamentary Department who:
  - (i) accepted an offer of employment by a State Government or the Northern Territory Government; and
  - (ii) resigned from the Parliamentary Department in accordance with the agreement between the Commonwealth and the Public Sector Union on

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staffing issues arising from the Commonwealth-State Disability Agreement; and

- (iii) has continued to be employed by the relevant State Government or the Northern Territory Government.

### **Division 3.6            *Gazettal of employment decisions***

#### **3.6.1    Notification in *Gazette* of certain employment decisions** (*Clause 3.3 of 2000/2*)

- (1) The following decisions must be notified in the *Gazette*:
  - (a) in relation to a person who, before engagement, was not an ongoing Parliamentary Service or APS employee:
    - (i) engagement as an ongoing Parliamentary Service employee;
    - (ii) engagement for a specified term of more than 12 months or for the duration of a specified task reasonably estimated to take more than 12 months; or
    - (iii) in the case of a person engaged as a Parliamentary Service employee for a specified term of less than 12 months, extension of the engagement to take the total period of employment beyond 12 months;
  - (b) in relation to a person who is an ongoing Parliamentary Service employee:
    - (i) promotion;
    - (ii) assignment of duties (other than a temporary assignment or an assignment involving promotion), where the relevant employment opportunity was notified in the *Gazette*;
    - (iii) movement (other than a temporary assignment or an assignment involving promotion) to perform duties in another Department, where the relevant employment opportunity was notified in the *Gazette*;
    - (iv) assignment to an SES employee of duties at a lower classification without the employee's agreement;
    - (v) retirement of an SES employee within the period specified in a notice given under section 37 of the Act;
    - (vi) termination of the employment of an ongoing Parliamentary Service employee under section 29 of the Act (notification must indicate the grounds for termination); or
    - (vii) movement in accordance with the decision of a Promotion Review Committee.

*Note* Clause 3.4.1 provides that the engagement of an APS employee in the Parliamentary Service for particular ongoing employment is subject to the provisions that would apply in relation to the movement of an existing Parliamentary Service employee to the same employment, including the provisions relating to gazettal. Subclause 3.4.1(2) specifies that the engagement of a person in the Parliamentary Service, at a higher classification, is taken to be a promotion.

- (2) Where a decision notified in accordance with any of the above is cancelled (including a promotion cancelled in accordance with the decision of a Promotion Review Committee), the cancellation and date of effect must be notified in the *Gazette*.

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**Division 3.7**      **Miscellaneous employment provisions**

**3.7.1 Health clearances (Act ss21(2)) (Clause 3.1 of 1999/1)**

- (1) This clause applies to a Parliamentary Service employee whose engagement is subject, under subsection 22(6) of the Act, to a condition dealing with health clearances.
- (2) While the engagement is subject to the condition, the Secretary may direct the employee to:
  - (a) undergo, at the Department's cost, a medical examination by a nominated medical practitioner for an assessment of his or her health and physical fitness; and
  - (b) give the Secretary a medical report of the examination.

*Note* Departments will tell employees when an engagement is subject to a condition dealing with health clearances.

**3.7.2 Fitness for continued duty (Act ss21(2)) (Clause 3.2 of 1999/1)**

- (1) This clause applies if a Secretary reasonably believes that the state of health of a Parliamentary Service employee in the Department:
  - (a) may be affecting the employee's work performance; or
  - (b) has caused or may cause the employee to have an extended absence from work; or
  - (c) may be a danger to the employee; or
  - (d) has caused or may cause the employee to be a danger to other employees, members of the public or any other person; or
  - (e) may be affecting the employee's standard of conduct.

*Note 1* For paragraph (1)(b), situations of extended absence include:

- (a) absence from work for at least 4 continuous weeks; or
- (b) absence from work, for at least 4 weeks within a 13 week period, whether based on single or separate illnesses or injuries.

*Note 2* For paragraph (1)(d), the reference to "any other person" includes Senators, Members and persons employed under the *Members of Parliament (Staff) Act 1984*.

- (2) The Secretary may, by written notice, direct the employee to:
  - (a) undergo, at the Department's cost, a medical examination by a nominated medical practitioner for an assessment of the employee's health and physical fitness; and
  - (b) give the Secretary a medical report of the examination.

**3.7.3 Release of personal information (Act s68) (Clause 7.1 of 1999/1)**

- (1) For the purposes of paragraph 68(a) of the Act, a Secretary may disclose personal information (within the meaning of the *Privacy Act 1988*) only if the disclosure is necessary for:

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- (a) the performance or exercise of the employer powers of the Secretary or another Secretary;
  - (b) the performance of another function of the Secretary or another Secretary;
  - (c) the performance of a function of the Commissioner;
  - (d) the performance of a function of an Independent Selection Advisory Committee;
  - (e) the review of Parliamentary Service action (including a refusal or failure to act) by:
    - (i) a PRC; or
    - (ii) the Merit Protection Commissioner; or
    - (iii) a person nominated, or a committee constituted, by the Merit Protection Commissioner to conduct the review;
  - (f) the performance of an outsourced function; or
  - (g) the purposes of section 26 of the Act.
- (2) For the purposes of paragraph 68(b) of the Act, personal information that is disclosed by a Secretary for the performance of an outsourced function must not be further disclosed without the Secretary's written authority.
- (3) In this clause, ***outsourced function*** means
- (a) a function that was performed by Parliamentary Service employees but is being performed for a Department by a person other than a Parliamentary Service employee; and
  - (b) a function that before 5 December 1999 was performed by persons who were officers or employees under the *Public Service Act 1922* in a Department referred to in Section 74 of the Act and both before and after that date has been performed for a Department by a person other than a Parliamentary Service employee.

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## Part 4 Right of return for election candidates

### 4.1 Prescribed elections (Act s32) *(Clause 3.4 of 2000/2)*

For the purposes of paragraph 32(1)(a) of the Act, the following elections are prescribed:

- (a) an election for a member of a House of the Parliament of the Commonwealth or of a State;
- (b) an election for a member of the Legislative Assembly of the Australian Capital Territory or the Northern Territory;
- (c) a zone election under Division 7 of Part 3 of the *Aboriginal and Torres Strait Islander Commission Act 1989*; and
- (d) an election for a member of the Torres Strait Regional Authority, established under section 142 of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

### 4.2 Entitlement to return to Parliamentary Service employment (Act s32) *(Clause 3.5 of 2000/2)*

- (1) A person to whom section 32 of the Act applies is entitled to be engaged again as a Parliamentary Service employee if he or she applies, within the required time, to:
  - (a) the Secretary of the Department in which he or she was employed before resigning; or
  - (b) if the functions to which the person's duties related, or mainly related, have been transferred to another Department — the Secretary of that Department.
- (2) However, the person is not entitled to be engaged again if:
  - (a) before resigning to contest the election, he or she was engaged for a specified term or for the duration of a specified task; and
  - (b) when the person applies to be engaged again, the term (including any extension of the term) has expired or the task has been completed.
- (3) In subclause (1), ***required time*** means:
  - (a) for a person who contested an election the result of which is not disputed, 2 months after the declaration of the result of the election; and
  - (b) for a person who contested an election the result of which is disputed:
    - (i) if the election was an election mentioned in subclause 4.1(1)(c) or (1)(d) - 2 months after the Federal Court of Australia makes a final decision on the petition disputing the result, or the petition is withdrawn; and
    - (ii) in any other case - 2 months after a court of disputed returns decides the petition disputing the result, or the petition is withdrawn or lapses.

### 4.3 Entitlements on return to Parliamentary Service employment (Act s32) *(Clause 3.6 of 2000/2)*

- (1) This clause applies to a person who applies in accordance with clause 4.2 to be engaged again as a Parliamentary Service employee.

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- (2) The person's engagement must be on the basis on which he or she was engaged before resigning to contest the election.
  - (3) The person must be engaged at the classification he or she had before resigning (the *previous classification*).
  - (4) The person must be assigned duties that are the same as, or similar to, the duties he or she had before resigning or, if such duties are unavailable, other duties at the previous classification.
  - (5) The person must be engaged on:
    - (a) the terms and conditions of employment that applied to him or her before resigning; or
    - (b) if the remuneration, or another term or condition, applying to the person's previous classification has changed since he or she resigned, the changed terms and conditions.
  - (6) (6) For the purposes mentioned in subclause (7), the continuity of the person's service is taken not to have been broken by the period between his or her resignation and re-engagement as a Parliamentary Service employee but that period does not count as service.
  - (7) The purposes are:
    - (a) calculation of leave entitlements under the Australian Fair Pay and Conditions Standard or an employment arrangement that applies to the employee; or
    - (b) calculation of the employee's redundancy pay, however described, under an employment arrangement that applies to the employee.

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

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## Part 5

## Suspension and termination

### 5.1 Suspension from duties (Act s28) (Clause 5.1 of 1999/1)

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

### 5.2 Termination of employment of non-ongoing Parliamentary Service employees (Act s29) (Clause 5.2 of 1999/1)

- (1) This clause sets out procedures applicable to the termination of the engagement of a non-ongoing Parliamentary Service employee.
- (2) If an employment arrangement sets out procedures that apply to the termination of the non-ongoing Parliamentary Service employee, the procedures apply to the termination of the engagement of the employee unless the procedures:
  - (a) are prohibited content (within the meaning given by the *Workplace Relations Act 1996*); or
  - (b) would be prohibited content of that kind if the employment arrangement were a workplace agreement.
- (3) Where the employment of a non-ongoing employee is to be terminated on the grounds of a breach of the Code of Conduct, the procedures established by the Secretary under subsection 15(3) of the Act must be followed.

*Note 1* Section 29 of the Act refers to termination of employment, including grounds for termination, and enables procedures applicable to termination to be prescribed.

*Note 2* The *Workplace Relations Act 1996* also deals with rules and entitlements in relation to termination of employment.

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## Part 6

# Independent Selection Advisory Committees (ISACs)

### 6.1 Function of ISACs *(Clause 3.3.1 of 1999/2)*

- (1) The function of an ISAC is to make recommendations to a Secretary about the suitability of candidates for:
  - (a) engagement connected with employment in the Department; or
  - (b) promotion to employment in the Department; or
  - (c) assignment of duties in connection with employment in the Department.
- (2) The employment must be at a classification included in any of Groups 2 to 6 in the Classification Rules.

### 6.2 Establishment of ISAC *(Clause 3.3.2 of 1999/2)*

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

### 6.3 Constitution of ISAC *(Clause 3.3.3 of 1999/2)*

- (1) An ISAC must comprise:
  - (a) a Convenor nominated by the Merit Protection Commissioner; and
  - (b) a person nominated by the relevant Secretary; and
  - (c) a Parliamentary Service employee nominated by the Merit Protection Commissioner.
- (2) The Merit Protection Commissioner must be satisfied that the Parliamentary Service employee nominated under paragraph (1)(c) has the skills and personal qualities necessary to undertake his or her role independently and impartially.
- (3) The Parliamentary Service employee nominated under paragraph (1)(c) must be made available for the purposes of the ISAC, subject to the operational efficiency of the Department in which he or she is employed.
- (4) If a member of an ISAC ceases to act as a member before the ISAC has made its recommendation to the relevant Secretary, the ISAC is to be reconstituted by the remaining members and another member nominated in accordance with subclause (1).
- (5) The reconstituted ISAC must have regard to matters put before, or decided by, the ISAC as previously constituted.
- (6) A person is not subject to direction in carrying out duties as a member of an ISAC, except:
  - (a) by a Court; or
  - (b) by instructions issued under clause 6.5.

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#### **6.4 ISAC procedures – minimum requirements** *(Clause 3.3.4 of 1999/2)*

- (1) The procedures used by an ISAC in performing its functions under this Part must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;
  - (b) the functions must be carried out in private; and
  - (c) the functions of the ISAC must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) A person appearing before an ISAC must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

#### **6.5 ISAC procedures – Merit Protection Commissioner’s instructions** *(Clause 3.3.5 of 1999/2)*

- (1) The Merit Protection Commissioner must issue instructions about the procedures to be followed by an ISAC in performing its functions under this Part.
- (2) The instructions must not be inconsistent with the Act or Presiding Officers' Determinations under the Act.
- (3) An ISAC must comply with the instructions.

#### **6.6 Assistance to ISAC** *(Clause 3.3.6 of 1999/2)*

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

#### **6.7 Action by ISAC** *(Clause 3.3.7 of 1999/2)*

- (1) If an ISAC is established in respect of an employment opportunity, the ISAC must:
  - (a) assess the relative merits of the candidates for the relevant opportunity on the basis of:
    - (i) the relative suitability of the candidates for the duties; and
    - (ii) the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
    - (iii) the relative capacity of the candidates to achieve outcomes related to the duties; and
  - (b) report on the assessment to the relevant Secretary; and
  - (c) make a recommendation to the Secretary, primarily on the basis of the assessment, as to which candidate it considers to be the most suitable for the relevant employment.
- (2) If the ISAC considers that none of the candidates is suitable for the employment opportunity, the ISAC must make a recommendation to the Secretary to that effect.

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**6.8 Non-agreement on decision by ISAC** (*Clause 3.3.8 of 1999/2*)

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

**6.9 ISAC recommendation not binding** (*Clause 3.3.9 of 1999/2*)

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

**6.10 Effect of acting on ISAC recommendation** (*Clause 3.3.10 of 1999/2*)

- (1) An engagement, promotion or reassignment made in accordance with an ISAC recommendation is not subject to review under Division 7.2.
- (2) The engagement, promotion or reassignment of duties must be notified in the *Gazette* as having been made in accordance with an ISAC recommendation.
- (3) The engagement, promotion or reassignment of duties is not affected by:
  - (a) a defect in the nomination of a member of the ISAC; or
  - (b) a failure to comply with the instructions issued under clause 6.5.

**6.11 Effect of promoting another candidate** (*Clause 3.3.11 of 1999/2*)

- (1) If, instead of acting in accordance with an ISAC recommendation in respect of relevant employment, a Secretary promotes another ongoing Parliamentary Service employee to the employment opportunity, the promotion is subject to review under Division 7.2.
- (2) The promotion must be notified in the *Gazette* as a promotion decision that is subject to review under Division 7.2.

**6.12 Offence** (*Clause 3.3.12 of 1999/2*)

- (1) A person must not obstruct an ISAC in carrying out its functions under this Part.  
Penalty: 10 penalty units.
- (2) Strict liability applies to the physical element of an offence against subclause (1) that the functions being carried out by the ISAC were functions under this Part.

*Note 1* Penalty units are prescribed in section 4AA of the *Crimes Act 1914*.

*Note 2* For *strict liability*, see section 6.1 of the *Criminal Code* made under the *Criminal Code Act 1995*.

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## **Part 7**                      **Review of actions**

### **Division 7.1**              **Overview**

*Note 1* In accordance with subsection 71(4) of the Act, the clauses in this Part that relate to section 33 of the Act apply, adopt or incorporate, subject to technical and drafting changes, regulations made for the purposes of section 33 of the *Public Service Act 1999*.

*Note 2* References to the Merit Protection Commissioner in this Determination are references to the Parliamentary Service Merit Protection Commissioner.

#### **7.1.1**      **General policy about review** (*Clause 2.1.1 of 1999/2*)

- (1) It is the policy of the Parliamentary Service that Departments should achieve and maintain workplaces that encourage productive and harmonious working environments.
- (2) The review processes established in this Part are intended to provide for a fair system of review of Parliamentary Service actions.
- (3) Employees' concerns are intended to be dealt with quickly, impartially and fairly.
- (4) Nothing in this Part is intended to prevent an application for review from being resolved by conciliation or other means of dispute resolution at any time before the review process is completed.

#### **7.1.2**      **Review of certain promotion decisions - Division 7.2** (*Clause 2.1.3 of 1999/2*)

Division 7.2 provides for applications for review of certain promotion decisions, including some decisions affecting APS employees, to be made to the Merit Protection Commissioner for review by a PRC.

*Note* A decision by a PRC is binding on a Secretary: see clause 7.2.16.

#### **7.1.3**      **Primary and secondary review of other Parliamentary Service actions - Divisions 7.3 to 7.5** (*Clause 2.1.4 of 1999/2*)

Divisions 7.3, 7.4 and 7.5 provide for:

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

*Note* A recommendation made on an application to the Merit Protection Commissioner for primary or secondary review is not binding on a Secretary: see clause 7.5.4.

#### **7.1.4**      **General provisions about review – Division 7.6** (*new provision*)

Division 7.6 sets out some general provisions about review.

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### **7.1.5 Secretary's responsibility** (*Clause 2.1.5 of 1999/2*)

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

- (a) this Determination; and
- (b) determinations under section 71 of the Act referred to in subsection 11(2) of the Act; and
- (c) the Secretary's responsibility to uphold and promote the Parliamentary Service Values.

## **Division 7.2 Review of certain promotion decisions**

### **7.2.1 Application of Division** (*Clause 2.2.1 of 1999/2*)

- (1) Subject to subclause (2), this Division applies if a decision (a *promotion decision*) is made:
  - (a) to promote an ongoing Parliamentary Service employee to employment at a classification included in Groups 2 to 6 of the Classification Rules; or
  - (b) to engage an ongoing APS employee in ongoing employment at a higher classification included in Groups 2 to 6 of the Classification Rules.

*Note 1* Subclauses 3.3.1(3) and (4) set out the basis for determining whether an engagement, or application for engagement, in the case of an APS employee, is at a higher classification.

*Note 2* Promotion is defined in clause 3.4.1.

- (2) This Division does not apply to a promotion decision resulting from:
  - (a) the recommendation of an Independent Selection Advisory Committee (ISAC); or
  - (b) a Promotion Review Committee decision.

### **7.2.2 Meaning of "person promoted" (Act s26)** (*Clause 2.2.1A of 1999/2, as amended by 2003/1*)

A reference in this Division to a person promoted includes an APS employee engaged or to be engaged as referred to in subclause 7.2.1(1).

### **7.2.3 Entitlement to review by Promotion Review Committee (PRC)** (*Clause 2.2.2 of 1999/2 as amended by 2003/1*)

- (1) An ongoing Parliamentary Service employee who applied for promotion to the relevant employment is entitled to apply to the Merit Protection Commissioner to have the promotion decision reviewed by a PRC.
- (2) An ongoing APS employee who applied for engagement in the relevant employment, at a higher classification, is entitled to apply to the Merit Protection Commissioner to have the promotion decision reviewed by a PRC.

*Note* Subclauses 3.3.1(3) and (4) refer to the engagement of APS employees as Parliamentary Service employees at higher classifications. Such moves, as defined, are treated as promotions.

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#### **7.2.4 Grounds for review** (*Clause 2.2.3 of 1999/2*)

A promotion decision can be reviewed under this Division only on the grounds of merit.

*Note* It is a Parliamentary Service Value that employment decisions are based on merit: see Value 6 in clause 2.2.3. For the purposes of that Value, a decision relating to engagement or promotion is based on merit if the matters set out in subsection 10(2) of the Act are satisfied.

#### **7.2.5 Application for review** (*Clause 2.2.4 of 1999/2*)

- (1) An application for review of a promotion decision under this Division must:
  - (a) be in writing; and
  - (b) be received by the Merit Protection Commissioner:
    - (i) within the application period specified in the *Gazette* notifying the promotion or within any extension of time given by the Merit Protection Commissioner before the end of that period; and
    - (ii) at the place notified in the *Gazette*.
- (2) The making of an application for review of a promotion decision under this Division operates to stay the decision until the relevant Secretary is notified:
  - (a) that the Merit Protection Commissioner does not believe a review of the promotion decision is necessary; or
  - (b) of the PRC's decision.

#### **7.2.6 Appointment of PRC** (*Clause 2.2.5 of 1999/2*)

- (1) If the Merit Protection Commissioner receives an application for review of a promotion decision under this Division, he or she must:
  - (a) consider the circumstances in which the application was made; and
  - (b) if he or she believes that a review of the promotion decision is necessary - appoint a PRC to deal with the application; and
  - (c) if he or she does not believe a review of the promotion decision is necessary, notify the relevant Secretary.
- (2) If more than one application is received in relation to a particular promotion decision for which a PRC has been appointed under paragraph (1)(b), the applications are to be dealt with by the same PRC.
- (3) A particular PRC may deal with applications in relation to more than one promotion decision.

#### **7.2.7 Constitution of PRC** (*Clause 2.2.6 of 1999/2*)

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

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- (2) The Merit Protection Commissioner must be satisfied that the person nominated under paragraph (1)(c) has the skills and personal qualities necessary to undertake his or her role independently and impartially.
  - (3) The person nominated under paragraph (1)(c) must be made available for the purposes of the PRC, subject to the operational efficiency of the Department or APS Agency in which he or she is employed.
  - (4) If a member of a PRC ceases to act as a member before the PRC has made its recommendation to the relevant Secretary, the PRC is to be reconstituted by the remaining members and another member nominated in accordance with subclause (1).
  - (5) The reconstituted PRC must have regard to matters put before, or decided by, the PRC as previously constituted.
  - (6) A person is not subject to direction in carrying out duties as a member of a PRC, except:
    - (a) by a Court; or
    - (b) by instructions issued under clause 7.2.11.

#### **7.2.8 Statements by parties** *(Clause 2.2.7 of 1999/2)*

- (1) An applicant for review of a promotion decision, and the person promoted, must each give the Merit Protection Commissioner a statement in writing setting out his or her claim for promotion to the relevant employment.
- (2) A statement must be given within 14 days after the closing date for lodging applications for review of the decision.
- (3) However if:
  - (a) within that 14 days the applicant or the person promoted asks the Merit Protection Commissioner for a longer period within which to give the statement; and
  - (b) the Merit Protection Commissioner agrees to allow a longer period; the statement must be given within the longer period allowed.
- (4) If the statement is not given within the time required under subclause (2) or (3), the PRC may consider and decide the application without the statement.

Note A person promoted includes, for this purpose, a person to be engaged from the APS at a higher classification.

#### **7.2.9 Frivolous or vexatious applications** *(Clause 2.2.8 of 1999/2)*

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

#### **7.2.10 PRC procedures – minimum requirements** *(Clause 2.2.9 of 1999/2)*

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

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- (b) the review must be conducted in private; and
  - (c) the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) A person appearing before a PRC must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

**7.2.11 PRC procedures — Merit Protection Commissioner’s instructions**  
*(Clause 2.2.10 of 1999/2)*

- (1) The Merit Protection Commissioner must issue instructions about the procedures to be followed by a PRC in performing its functions under this Division.
- (2) The instructions must not be inconsistent with the Act or Presiding Officers’ Determinations under the Act.
- (3) A PRC must comply with the instructions.

**7.2.12 Assistance to PRC** *(Clause 2.2.11 of 1999/2)*

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

**7.2.13 Requirement to provide information or documents** *(Clause 2.2.12 of 1999/2)*

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

**7.2.14 Conduct of review by PRC** *(Clause 2.2.13 of 1999/2)*

- (1) In considering an application for review of a promotion decision, a PRC must:
  - (a) assess the relative merits of the person promoted and each applicant for review of the promotion decision on the basis of:
    - (i) the relative suitability of each person for the duties; and
    - (ii) the relationship between each person’s work-related qualities and the work-related qualities genuinely required for the duties; and
    - (iii) the relative capacity of each person to achieve outcomes related to the duties; and
  - (b) decide, primarily on the basis of the assessment, that:
    - (i) the promotion decision should be upheld; or
    - (ii) the applicant for review or, if there is more than one applicant, a particular applicant for review should be promoted to the relevant employment.

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- (2) The PRC must tell the relevant Secretary in writing of its decision.

**7.2.15 Non-agreement on decision by PRC** (*Clause 2.2.14 of 1999/2*)

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

**7.2.16 Effect of PRC decision** (*Clause 2.2.15 of 1999/2*)

- (1) The decision of a PRC is binding on the relevant Secretary.
- (2) The decision of a PRC is not affected by:
- (a) a defect in the nomination of a member of the PRC; or
  - (b) a failure to comply with instructions issued under clause 7.2.11.

**7.2.17 Offence** (*Clause 2.2.16 of 1999/2*)

- (1) A person must not obstruct a PRC in carrying out its functions under this Division.  
Penalty: 10 penalty units.

*Note* Penalty units are described in section 4AA of the *Crimes Act 1914*.

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

*Note* For *strict liability*, see section 6.1 of the *Criminal Code* made under the *Criminal Code Act 1995*

**Division 7.3            Review of other Parliamentary Service actions - what action is reviewable?**

**7.3.1 Entitlement to review** (*Clause 2.3.1 of 1999/2*)

A non-SES Parliamentary Service employee (the *affected employee*) is entitled to review of Parliamentary Service action under this Part if the action is reviewable action.

**7.3.2 What Parliamentary Service action is reviewable action** (*Subclause 2.3.2(1) of 1999/2*)

Subject to clause 7.3.3, a Parliamentary Service action is *reviewable action* if the affected employee is entitled, under subsection 33 (1) of the Act, to review of the action.

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### 7.3.3 What Parliamentary Service action is not *reviewable action*?

(Subclauses 2.3.2(2) and (3) and Schedule 1 of 1999/2)

- (1) An action is not, or ceases to be, *reviewable action* if the affected person has applied to have the action reviewed by a Court or Tribunal and the action can be reviewed by that Court or Tribunal.
- (2) An action is not, or ceases to be, *reviewable action* if the person or committee that is, or would be, conducting the review considers that the action should not be reviewable for any of the following reasons:
  - (a) the application for review of the action is made more than one year after the action happened, or did not happen, and there are no exceptional circumstances explaining why the application was not made within the year;
  - (b) the application by the affected employee for review of the action is frivolous or vexatious;
  - (c) the affected employee has applied to have the action reviewed under Division 7.2;
  - (d) the affected employee has previously applied for review of the action under Division 7.4 or Division 7.5;
  - (e) the affected employee has applied, or could apply, to have the action reviewed by an external review body and review by the review body would be more appropriate than review under this Division;
  - (f) the affected employee does not have sufficient direct personal interest in review of the action; or
  - (g) review, or further review, of the action is not otherwise justified in all the circumstances.

*Note* Examples of external review bodies for paragraph (e):

- 1 Commonwealth Ombudsman.
- 2 Human Rights and Equal Opportunity Commission.

Example for paragraph (g):

Review may not be justified because the applicant does not respond to a request under clause 7.6.3 for further information about why the review is sought.

- (3) The following actions are not reviewable:
  - (a) action about the policy, strategy, nature, scope, resources or direction of the Parliamentary Service or a Department.
  - (b) action taken in accordance with a direction or reference given by the Presiding Officers under the Act or another Act.
  - (c) the giving by the Commissioner of:
    - (i) advice under section 11 of the Act;
    - (ii) a direction under section 15 of the Act; and
    - (iii) guidelines under section 36 of the Act.
  - (d) action taken for an inquiry under section 48 of the Act;
  - (e) action arising under any of the following Acts:
    - *Australian Security Intelligence Organisation Act 1979*

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- *Safety, Rehabilitation and Compensation Act 1988*
  - *Superannuation Act 1976*
  - *Superannuation Act 1990.*
- (f) action relating to the engagement of a Parliamentary Service employee (other than an ongoing APS employee engaged under Section 26).
  - (g) action of a PRC; and
  - (h) action relating to the promotion of an ongoing Parliamentary Service employee as an SES employee (whether or not the employee is already an SES employee).
- (4) Action that determines, under section 25 of the Act, duties of a Parliamentary Service employee or the place or places where they are to be performed, is not reviewable unless the action involves:
- (a) a reduction in classification; or
  - (b) a relocation to another place; or
  - (c) a promotion that meets the following criteria:
    - (i) the affected employee was an applicant for the promotion;
    - (ii) the promotion was to employment at a classification included in Groups 7 or 8 of the Classification Rules;
    - (iii) there were serious defects in the selection process; or
  - (d) the assignment to an employee of duties that the employee could not reasonably be expected to perform.

## **Division 7.4      *Review of other Parliamentary Service actions - primary review***

### **7.4.1      *Application for primary review (Clause 2.3.3 of 1999/2)***

- (1) An affected employee may apply in writing to the relevant Secretary for review of reviewable action.
- (2) However, the application must be made to the Merit Protection Commissioner if the application is for review of:
  - (a) a determination that the affected employee has breached the Code of Conduct; or
  - (b) a sanction imposed for breach of the Code of Conduct, except termination of employment.

*Note* The *Workplace Relations Act 1996* provides for review of unfair and unlawful termination of employment at the instigation of the employer.

- (3) Also, the employee may apply in writing to the Merit Protection Commissioner for review of the action if:
  - (a) the Secretary was directly involved in the action; or
  - (b) it is not appropriate, because of the seriousness or sensitivity of the action, for the Secretary to deal with the application; or

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- (c) the action is claimed to be victimisation or harassment of the employee for having made a previous application for review of action.
  - (4) The application must state briefly:
    - (a) why the review is sought; and
    - (b) if a particular outcome is sought - the outcome sought.

*Note* Examples of outcomes:

- 1 Reconsideration of the action.
- 2 Reassignment of duties.

#### **7.4.2 Referral to Merit Protection Commissioner** (*Clause 2.3.4 of 1999/2*)

- (1) If an application for review of reviewable action is made to the relevant Secretary, the Secretary may, with the Merit Protection Commissioner's agreement, refer the application to the Merit Protection Commissioner.
- (2) The Secretary may, for example, refer the application to the Merit Protection Commissioner under subclause (1) if he or she:
  - (a) was directly involved in the action; or
  - (b) considers that it is not an application appropriate for him or her to deal with.
- (3) If the Secretary refers the application to the Merit Protection Commissioner, the Secretary must tell the employee in writing.

*Note* Clause 7.4.5 deals with review of applications referred to the Merit Protection Commissioner by a Secretary.

#### **7.4.3 Notice that action is not reviewable** (*Clause 2.3.5 of 1999/2*)

If an application for review of Parliamentary Service action is made and, under subclause 7.3.3, the action is not reviewable action, the person who would have conducted the review must tell the employee in writing:

- (a) that the action is not reviewable; and
- (b) the reasons why it is considered that the action is not reviewable; and
- (c) if the application was not made or referred to the Merit Protection Commissioner - of the employee's right to apply to the Merit Protection Commissioner under Division 7.5 for secondary review of the action.

#### **7.4.4 Conduct of review by Secretary** (*Clause 2.3.6 of 1999/2*)

- (1) If a Secretary does not refer an application for review to the Merit Protection Commissioner, the Secretary must review the action and attempt to resolve the employee's concerns about the action.
- (2) Subject to subclause 7.6.1(1), the Secretary may conduct the review in any manner the Secretary thinks fit.
- (3) The Secretary may:
  - (a) confirm the action; or
  - (b) vary the action; or

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- (c) set the action aside and substitute a new action.
  - (4) Subclause (3) does not limit the employer powers of the Secretary in relation to the action or the affected employee.
  - (5) The Secretary must tell the employee in writing of:
    - (a) any decision made on the application; and
    - (b) the reasons for the decision; and
    - (c) any action taken or to be taken as a result of the review; and
    - (d) the applicant's right to apply to the Merit Protection Commissioner under Division 7.5 for secondary review of the action.

**7.4.5 Conduct of review by Merit Protection Commissioner** (*Clause 2.3.7 of 1999/2*)

- (1) This clause applies if an application for review of a Parliamentary Service action is:
  - (a) made to the Merit Protection Commissioner under subclauses 7.4.1(2) or (3); or
  - (b) referred to the Merit Protection Commissioner under subclause 7.4.2(1).
- (2) The Merit Protection Commissioner must nominate a person (who may be the Merit Protection Commissioner), or constitute a three-person committee, to conduct the review.
- (3) If the Merit Protection Commissioner is to conduct the review, he or she must:
  - (a) review the action; and
  - (b) make a recommendation to the Secretary in writing about the action; and
  - (c) tell the Secretary in writing of the reasons for the recommendation; and
  - (d) tell the employee in writing of the recommendation and the reasons given to the Secretary.
- (4) If another person or a committee is to conduct the review, the person or committee must:
  - (a) review the action; and
  - (b) make a recommendation to the Merit Protection Commissioner in writing about the action; and
  - (c) tell the Merit Protection Commissioner in writing of the reasons for the recommendation.
- (5) After receiving the recommendation and reasons mentioned in paragraphs (4)(b) and (c), the Merit Protection Commissioner:
  - (a) must report to the Secretary in writing about the recommendation and reasons; and
  - (b) may make a recommendation to the Secretary in writing about the action (which may be different to the recommendation made by the person or committee conducting the review); and
  - (c) must give the employee a copy of the report and any recommendation made by the Merit Protection Commissioner about the action.

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**Division 7.5**      **Review of other Parliamentary Service actions - secondary review**

**7.5.1**      **Application for secondary review** *(Clause 2.3.8 of 1999/2)*

- (1) An affected employee may apply in writing to the Merit Protection Commissioner for secondary review of reviewable action if:
  - (a) the Secretary has told the employee under subclause 7.4.3(a) that the action is not reviewable action; or
  - (c) the employee is dissatisfied with the outcome of the Secretary's review of the action under clause 7.4.4.
- (2) The application must be made through the Secretary.
- (3) The application must state briefly why the review is sought.

**7.5.2**      **Secretary to give documents to Merit Protection Commissioner** *(Clause 2.3.9 of 1999/2)*

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

**7.5.3**      **Conduct of review** *(Clause 2.3.10 of 1999/2)*

- (1) The Merit Protection Commissioner must nominate a person (who may be the Merit Protection Commissioner), or constitute a three-person committee, to conduct the review.
- (2) If the Merit Protection Commissioner is to conduct the review, he or she must:
  - (a) review the action; and
  - (b) make a recommendation to the Secretary in writing about the action; and
  - (c) tell the Secretary in writing of the reasons for the recommendation; and
  - (d) tell the employee in writing of the recommendation and reasons given to the Secretary.
- (3) If another person or a committee is to conduct the review, the person or committee must:
  - (a) review the action; and
  - (b) make a recommendation to the Merit Protection Commissioner in writing about the action; and
  - (c) tell the Merit Protection Commissioner in writing of the reasons for the recommendation.
- (4) After receiving the recommendation and reasons mentioned in paragraphs (3)(b) and (c), the Merit Protection Commissioner:

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- (a) must report to the Secretary in writing about the recommendation and reasons; and
  - (b) may make a recommendation to the Secretary in writing about the action (which may be different to the recommendation made by the person or committee conducting the review); and
  - (c) must give the employee a copy of the report and any recommendation made by the Merit Protection Commissioner about the action.

#### **7.5.4 Action by Secretary** *(Clause 2.3.11 of 1999/2)*

- (1) If a Secretary receives a recommendation under clause 7.4.5 or 7.5.3, the Secretary must, as soon as possible:
  - (a) consider the recommendation; and
  - (b) make a decision about the recommendation.
- (2) The Secretary may:
  - (a) confirm the relevant action; or
  - (b) vary the action; or
  - (c) set the action aside and substitute a new action.
- (3) Subclause (2) does not limit the employer powers of the Secretary in relation to the action or the affected employee.
- (4) The Secretary must tell the employee and the Merit Protection Commissioner in writing of:
  - (a) the decision; and
  - (b) if the recommendation is not followed, the reasons for the decision.

*Note* Subsection 33(6) of the Act allows for matters to be reported to a Secretary and to the Presiding Officers, for presentation to the Parliament, if the Merit Protection Commissioner is not satisfied with the response to recommendations contained in a report on review under section 33.

### **Division 7.6**      ***Review of other Parliamentary Service actions - general provisions about review***

#### **7.6.1 Review procedures - minimum requirements** *(Clause 2.3.12 of 1999/2)*

- (1) The procedures used for a review conducted under this Part must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;
  - (b) the review must be conducted in private; and
  - (d) the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) A person appearing before a person or committee conducting a review under clause 7.4.5 or 7.5.3 must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

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**7.6.2 Review procedures - Merit Protection Commissioner's instructions** *(Clause 2.3.13 of 1999/2)*

- (1) The Merit Protection Commissioner must issue instructions about the procedures to be followed by a person or committee conducting a review under clause 7.4.5 or 7.5.3.
- (2) The instructions must not be inconsistent with the Act or Presiding Officers' determinations under the Act.
- (3) A person or committee conducting a review under clause 7.4.5 or 7.5.3 must comply with the instructions.

**7.6.3 Requirement to provide information or documents** *(Clause 2.3.14 of 1999/2)*

- (1) A person or committee carrying out a review under Division 7.4 or Division 7.5 may, by written notice given to a Secretary or Parliamentary Service employee, require the Secretary or Parliamentary Service employee to give the person or committee stated information or documents relevant to the review.
- (2) The Secretary or Parliamentary Service employee must give the information or documents in the way, and at or within the time, stated in the notice.

**7.6.4 Making of application does not operate as stay** *(Clause 2.3.15 of 1999/2)*

The making of an application for review of Parliamentary Service action under Division 7.4 or Division 7.5 does not operate to stay the action.

**7.6.5 Offence** *(Clause 2.3.16 of 1999/2)*

- (1) A person must not obstruct a person or committee conducting a review in carrying out functions under Division 7.4 or Division 7.5.

Penalty: 10 penalty units.

*Note* Penalty units are described in section 4AA of the *Crimes Act 1914*.

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

*Note* For *strict liability*, see section 6.1 of the *Criminal Code* made under the *Criminal Code Act 1995*.

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## Part 8

## Parliamentary Service Commissioner

### 8.1 **Parliamentary Service Commissioner: immunity from suit** (*Clause 3.1.1 of 1999/2*)

- (1) This clause applies in relation to the following persons:
  - (a) the Commissioner;
  - (b) a member of the staff assisting the Commissioner; and
  - (c) a person acting under the direction or authority of the Commissioner.
- (2) A person to whom this clause applies is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise, or purported exercise, of the Commissioner's function under paragraph 40(1)(b) of the Act in relation to matters mentioned in section 16.

*Note* Paragraph 40(1)(b) of the Act refers to the Commissioner's function of inquiring into and reporting on Parliamentary Service matters at the request of the Presiding Officers. Section 16 of the Act refers to whistleblowers' reports.

### 8.2 **Parliamentary Service Commissioner: secrecy** (*Clause 3.1.2 of 1999/2*)

- (1) This clause applies to the following persons:
  - (a) the Commissioner;
  - (b) a member of the staff assisting the Commissioner; and
  - (c) a person acting under the direction or authority of the Commissioner.
- (2) A person to whom this clause applies must not, directly or indirectly, make a record of, or divulge or communicate to any other person, any information that was:
  - (a) acquired by the person while performing duties as a person described in subclause (1); and
  - (b) disclosed or obtained in the course of investigating a report to which Division 2.4, about whistleblowers' reports, relates.

Penalty: 10 penalty units.

*Note* Penalty units are described in section 4AA of the *Crimes Act 1914*.

- (3) **Strict liability** applies to the following physical elements of an offence against subclause (2):
  - (a) that the duties performed by the person were duties as a person described in subclause (1); and
  - (b) that the information was disclosed or obtained in the course of investigating a report to which Division 2.4 relates.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code* made under the *Criminal Code Act 1995*.

- (4) Subclause (2) applies to a person:
  - (a) while he or performing duties as a person described in subclause (1); and
  - (b) after ceasing to perform the duties.

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- (5) Subclause (2) does not prevent a person:
- (a) from making a record of, or divulging or communicating to any other person, information acquired by the person:
    - (i) in the performance of duties as a person described in subclause (1); and
    - (ii) for purposes connected with the exercise of the powers, and with the performance of the functions, of the Commissioner under the Act; or
  - (b) from divulging or communicating to any other person information given by a Parliamentary Service employee, in the performance of the Parliamentary Service employee's duties, with the consent of the Parliamentary Service employee's Secretary or the Presiding Officers; or
  - (c) from divulging or communicating to any other person information given by a person, otherwise than as described in paragraph (b), with the consent of the person who gave the information.
- (6) Subclause (2) does not prevent the Commissioner from disclosing, in a report made under the Act, matters that, in his or her opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.
- (7) A person who is, or has been, a person described in subclause (1) is not competent and may not be required, in any proceedings before:
- (a) a court (whether exercising federal jurisdiction or not); or
  - (b) before a person authorised:
    - (i) by a law of the Commonwealth or of a State or Territory, or
    - (ii) by consent of parties,to hear, receive or examine evidence;
- to disclose any information acquired by the person through being or having been a person described in subclause (1), being information of the kind referred to in subclause (2).
- (8) This clause does not prevent the Commissioner from disclosing information, or making a statement, to any person or to the public or a section of the public with respect to the performance of a function of the Commissioner under the Act if, in the opinion of the Commissioner:
- (a) it is in the interests of any Department or person to disclose the information or to make the statement; or
  - (b) it is otherwise in the public interest to disclose the information or to make the statement.
- (9) The Commissioner must not disclose information or make a statement under subclause (8) with respect to a particular inquiry if the disclosure of the information, or the making of the statement, is likely to interfere with the carrying out of the inquiry, or of any other inquiry.
- (10) If the Commissioner discloses information or makes a statement under subclause (8) with respect to a particular inquiry, the Commissioner must not disclose the name of an applicant, or any other matter that would allow an applicant to be identified, unless it is fair and reasonable in all the circumstances to do so.

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## **Part 9**                      **Parliamentary Service Merit Protection Commissioner**

### **9.1**        **Prescribed functions** *(Clause 3.2.1 of 1999/2)*

- (1) The Merit Protection Commissioner's functions set out in Part 7 are prescribed for the purposes of paragraph 48(1)(d) of the Act.
- (2) The Merit Protection Commissioner's functions set out in this Part are prescribed for the purposes of paragraph 48(1)(e) of the Act.

### **9.2**        **Investigation of complaints by former employees** *(Clause 3.2.2 of 1999/2)*

- (1) The Merit Protection Commissioner may investigate a complaint by a former Parliamentary Service employee that relates to the employee's entitlements on separation from the Parliamentary Service.
- (2) The Merit Protection Commissioner may make recommendations to the employee's former Secretary in relation to the complaint.

### **9.3**        **Independence of Merit Protection Commissioner** *(Clause 3.2.3 of 1999/2)*

The Merit Protection Commissioner is not subject to direction in carrying out his or her duties under this Determination, except by a Court.

*Note*    Actions taken, or not taken, in accordance with directions or references given by the Presiding Officers under the Act are not reviewable by the Merit Protection Commissioner.

### **9.4**        **Merit Protection Commissioner: immunity from suit** *(Clause 3.2.4 of 1999/2)*

- (1) This clause applies to the following persons:
  - (a) the Merit Protection Commissioner;
  - (b) a member of the staff assisting the Merit Protection Commissioner;
  - (c) a person acting under the direction or authority of the Merit Protection Commissioner;
  - (d) a member of a Promotion Review Committee; and
  - (e) a member of an Independent Selection Advisory Committee.
- (2) A person to whom this clause applies is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise, or purported exercise, of any power or authority conferred by the Act.

### **9.5**        **Merit Protection Commissioner: secrecy** *(Clause 3.2.5 of 1999/2)*

- (1) This regulation applies to the following persons:
  - (a) the Merit Protection Commissioner;
  - (b) a member of the staff assisting the Merit Protection Commissioner;
  - (c) a person acting under the direction or authority of the Merit Protection Commissioner;

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- (d) a member of a review committee established under paragraph 33(4)(d) of the Act;
  - (e) a member of an Independent Selection Advisory Committee; and
  - (g) a person (other than the Merit Protection Commissioner) who is required to assist the Merit Protection Commissioner to investigate a complaint under clause 9.2.
- (2) The person must not, directly or indirectly, make a record of, or divulge or communicate to any other person, any information that was:
- (a) acquired by the person while performing duties as a person described in subclause (1); and
  - (b) disclosed or obtained:
    - (i) under paragraph 48(1)(a), or under determinations made for the purposes of section 33, of the Act; or
    - (ii) during the investigation of a complaint under clause 9.2; or
    - (iii) while acting as a member of an Independent Selection Advisory Committee.

Penalty: 10 penalty units.

*Note* Penalty units are described in the *Crimes Act 1914*.

- (3) Strict liability applies to the following physical elements of an offence against subclause (2):
- (a) that the duties performed by the person were duties as a person described in subclause (1);
  - (b) that the information was disclosed or obtained under paragraph 48(1)(a), or under determinations made for the purposes of section 33, of the Act;
  - (c) that the information was disclosed or obtained during the investigation of a complaint under clause 9.2; and
  - (d) that the information was disclosed or obtained while the person was acting as a member of an Independent Selection Advisory Committee.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code* made under the *Criminal Code Act 1995*.

- (4) Subclause (2) applies to the person:
- (a) while he performing duties as a person described in subclause (1); and
  - (b) after ceasing to perform the duties.
- (5) Subclause (2) does not prevent the person:
- (a) from making a record of, or divulging or communicating to any other person, information acquired by the person:
    - (i) while performing duties as a person described in subclause (1); and
    - (ii) for purposes connected with the exercise of the powers, and with the performance of the functions, of the Merit Protection Commissioner under the Act; or
  - (b) from divulging or communicating to any other person information given by a Parliamentary Service employee, in the performance of the employee's duties, with the consent of the employee's Secretary or the Presiding Officers; or

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- (c) from divulging or communicating to any person information given by a person, otherwise than as described in paragraph (b), with the consent of the person who gave the information.
- (6) Subclause (2) does not prevent the Merit Protection Commissioner from disclosing, in a report made under the Act, matters that, in his or her opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.
- (7) A person who is, or has been, a person described in subclause (1) is not competent and may not be required, in any proceedings before:
- (a) a court (whether exercising federal jurisdiction or not); or
  - (b) before a person authorised:
    - (i) by a law of the Commonwealth or of a State or Territory, or
    - (ii) by consent of parties,to hear, receive or examine evidence;
- to disclose any information acquired by the person through being or having been a person described in subclause (1), being information that was disclosed or obtained under the provisions of section 33 or paragraph 48 (1) (a) of the Act.
- (8) This clause does not prevent the Merit Protection Commissioner from disclosing information, or making a statement, to any person or to the public or a section of the public with respect to the performance of a function of the Merit Protection Commissioner under the Act if, in the opinion of the Merit Protection Commissioner:
- (a) it is in the interests of any Department or person to disclose the information or to make the statement; or
  - (b) it is otherwise in the public interest to disclose the information or to make the statement.
- (9) The Merit Protection Commissioner must not disclose information or make a statement under subclause (8) with respect to a particular inquiry or review if the disclosure of the information, or the making of the statement, is likely to interfere with the carrying out of the inquiry or review, or of any other inquiry or review.
- (10) If the Merit Protection Commissioner discloses information or makes a statement under subclause (8) with respect to a particular inquiry or review, the Merit Protection Commissioner must not disclose the name of an applicant, or any other matter that would allow an applicant to be identified, unless it is fair and reasonable in all the circumstances to do so.

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## Part 10

## Attachment of salaries to satisfy judgement debts (*Part 6 of 1999/1*)

### 10.1 Definitions

In this Part:

**creditor** means a person to whom a Secretary, the Parliamentary Librarian or a Parliamentary Service employee owes a judgement debt.

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

**net salary** in relation to a debtor means the debtor's gross salary less any amounts to be deducted to pay income tax, child support under the *Child Support (Assessment) Act 1989* or a superannuation contribution.

**gross salary** means the sum of the debtor's gross salary as a Secretary or Parliamentary Service employee (not including an amount of compensation under the *Safety, Rehabilitation and Compensation Act 1988*) and allowances in the nature of salary paid regularly to the debtor.

**superannuation contribution** means an amount that the debtor is required to contribute to a superannuation fund relating to the debtor's engagement as a Secretary or Parliamentary Service employee, that is the minimum amount required by law or the rules of the fund.

### 10.2 Application of Part 10

This Part does not apply in relation to a debtor whose estate has been sequestrated, either voluntarily or compulsorily, for the benefit of creditors and who has not yet obtained a certificate of discharge.

### 10.3 When deductions may be made

- (1) Deductions may be made from the salary of a debtor and the amounts deducted paid to satisfy a judgement debt in accordance with this Part.
- (2) A Secretary may make deductions from the salary of a debtor in the Secretary's Department to satisfy a judgement debt if:
  - (a) the judgement creditor has asked the Secretary to make deductions from the salary of the debtor and provided the Secretary with a copy of the judgement to which the judgement debt relates, certified by Registrar or other proper officer of the relevant Court, and a statutory declaration that the judgement debt is still outstanding and as to the amount outstanding;
  - (b) the administration fee required by clause 10.6 is paid;
  - (c) the debtor has been given a notice under subclause (3); and
  - (d) the debtor does not satisfy the Secretary that the judgement debt has been discharged or satisfied.
- (3) Before making deductions from the salary of a debtor under subclause (2), the Secretary must give the debtor 30 days' notice of the Secretary's intention to make

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deductions together with a copy of each of the documents referred to in paragraph (2)(a).

- (4) A debtor given notice under subclause (3) has 14 days in which to satisfy the Secretary that the judgement debt has been discharged or satisfied or that the amount outstanding is different from the amount declared under subclause (2).

#### **10.4 Amount of deductions**

Deductions may be made from the salary of the debtor of whichever of the following amounts is applicable:

- (a) amounts equal to 20% of the net salary of the debtor;
- (b) if the amounts of deductions to be made would cause serious financial hardship to the debtor - such smaller amounts as in the Secretary's opinion would not cause that hardship;
- (c) if the debtor asks for deductions to be made of higher amounts - of those amounts;
- (d) if a single deduction of a smaller amount would satisfy the judgement debt - of that smaller amount.

#### **10.5 More than one judgement debt**

- (1) If more than one judgement debt exists against a debtor, the Secretary must deal with them one at a time in the order in which the Secretary has received notice of them.
- (2) If a Secretary receives notice of more than one judgement debt at the same time, the Secretary must deal with them one at a time in the order in which the judgements to which the judgement debts relate were made.
- (3) Deductions may be made from the salary of a debtor only to satisfy one judgement debt at a time.

#### **10.6 Administration fee**

- (1) A judgement creditor who requests deductions under this part to satisfy a judgement debt must pay a fee of \$38 for the making of the deductions.
- (2) The fee is the price of the supply of a service for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*.

#### **10.7 Effect of deductions**

- (1) The Secretary may pay an amount deducted from the salary of a debtor under this Part to the judgement creditor.
- (2) An amount equal to the amount of the payment is taken to have been paid to the debtor as salary when the payment is made to the judgement creditor and the same amount is taken to have been paid to the judgement creditor by the debtor for the purposes of satisfying the judgement debt.

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- (3) If more money is paid under this Part to a judgement creditor than is required to satisfy a judgement debt, the amount of the overpayment is a debt owing by the judgement creditor to the debtor.

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## Part 11 Delegations

### 11.1 Delegation by Secretary *(Clause 7.2 of 1999/1)*

- (1) A Secretary may, in writing, delegate to a person any of the Secretary's powers or functions under a determination by the Presiding Officers under the Act (other than this clause).
- (2) However, a Secretary cannot delegate powers or functions to an outsider without the prior written consent of the Commissioner.
- (3) An SES employee or acting SES employee, or the Parliamentary Librarian or acting Parliamentary Librarian (the *first delegate*) to whom powers or functions are delegated under subclause (1) may, in writing, delegate any of the powers or functions to another person (the *second delegate*).
- (4) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subclause (1), the first delegate must give corresponding directions to the second delegate.
- (5) A power or function that is exercised or performed by a person under a delegation under subclause (3) is taken, for this Determination, to have been exercised or performed by the person who originally delegated the corresponding power or function under subclause (1).
- (6) A person exercising powers or functions under a delegation under this clause must comply with any directions of the person who delegated the power or function.
- (7) In this clause:  
*outsider* means a person other than:
  - (a) a Parliamentary Service employee; or
  - (b) a person appointed to an office by the Presiding Officers.

### 11.2 Delegation by Commissioner and Merit Protection Commissioner *(new provision)*

- (1) The Commissioner may, in writing, delegate to a senior official any of the Commissioner's powers or functions under a determination by the Presiding Officers under the Act (other than this clause).
- (2) The Merit Protection Commissioner may, in writing, delegate to a person any of the Merit Protection Commissioner's powers or functions under a determination by the Presiding Officers under the Act (other than this clause).
- (3) A person (the first delegate) to whom powers or functions are delegated under subclauses (1) or (2) may, in writing, delegate any of the powers or functions to another person (the second delegate).
- (4) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subclauses (1) or (2), the first delegate must give corresponding directions to the second delegate.
- (5) A power or function that is exercised or performed by a person under a delegation under subclause (3) is taken, for this Determination, to have been exercised or

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performed by the person who originally delegated the corresponding power or function under subclauses (1) or (2).

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

(7) In this clause:

*senior official* means a person other than:

- (a) a person who holds any office or appointment under an Act; or
- (b) an SES employee or acting SES employee.

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## Schedule 1      Dictionary

*Note* Words and expressions defined in the *Parliamentary Service Act 1999* are indicated by an asterisk (\*).

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

\**action* includes a refusal or failure to act.

\**Australian Fair Pay and Conditions Standard* has the meaning given by the *Workplace Relations Act 1996*.

*APS Agency* has the meaning of *Agency* given by the *Public Service Act 1999*.

*APS* means the Australian Public Service established under the *Public Service Act 1999*.

\**AWA* has the meaning given by Schedule 7A to the *Workplace Relations Act 1996*.

\**award* has the same meaning as in the *Workplace Relations Act 1996*.

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

*classification group* means a group of classifications mentioned in column 1 of Schedule 1 to the Classification Rules.

\**Classification Rules* means the *Parliamentary Service Classification Rules* made under section 23 of the Act, as in force from time to time.

\**Code of Conduct* (or *Code*) means the rules in section 13 of the Act.

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

\**Department* means a Department of the Parliament that is established under the Act.

*employee* means a Parliamentary Service employee.

*employer powers*, for a Secretary, means the rights, duties and powers of the Secretary under Part 4 of the Act.

*employment* means Parliamentary Service employment.

*employment arrangement* means:(a) an award; or

(b) a workplace agreement; or

(c) a pre-reform certified agreement; or

(d) an AWA; or

(e) a pre-reform AWA; or

(f) a determination under subsection 24 (1) or (3) of the Act; or

(g) a written contract of employment.

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

*Gazette* includes the electronic APS Employment *Gazette*.

*higher classification*, for an employee, means a classification that is in a higher classification group than the employee's current classification.

*Independent Selection Advisory Committee*, or *ISAC*, means an Independent Selection Advisory Committee established under this Determination.

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

**merit** - see subsection 10(2) of the Act and the note in clause 3.5.1.

**\*Merit Protection Commissioner** means the Parliamentary Service Merit Protection Commissioner appointed under the Act.

**nominated medical practitioner** means a medical practitioner nominated by the Secretary to assess the fitness for duty of a Parliamentary Service employee in the Department.

**\*non-SES employee** means a Parliamentary Service employee other than an SES employee.

**\*ongoing Parliamentary Service employee** means a person engaged as an ongoing Parliamentary Service employee, as mentioned in paragraph 22(2)(a) of the Act.

**operational classification**, in relation to a training classification, means a classification mentioned in column 3 of Schedule 2 to the Classification Rules that relates to that training classification.

**\*Parliamentary Librarian** means the holder of the office of Parliamentary Librarian established under section 38A of the Act.

**\*Parliamentary Service** means the Australian Parliamentary Service established by section 9 of the Act.

**\*Parliamentary Service action** means action by a person in the capacity of a Secretary or Parliamentary Service employee.

*Note* This expression is defined in subsection 33(7) of the Act.

**\*Parliamentary Service employee** means a person engaged under section 22 of the Act.

**\*Parliamentary Service employment** means employment as a Parliamentary Service employee.

**Parliamentary Service Group 1 classification** means any of the classifications mentioned in column 2 of Group 1 of Schedule 1 to the Classification Rules.

**\*Parliamentary Service Values** means the values in section 10 of the Act.

**\*pre-reform AWA** has the meaning given by the *Workplace Relations Act 1996*.

**\*pre-reform certified agreement** has the meaning given by the *Workplace Relations Act 1996*.

**\*Presiding Officers** means:

- (a) where the expression is used in connection with a reference to the Department of the Senate or the Clerk of the Senate - the President of the Senate; or
- (b) where the expression is used in connection with a reference to the Department of the House of Representatives or the Clerk of that House - the Speaker of the House of Representatives; or
- (c) otherwise - the President of the Senate and the Speaker of the House of Representatives acting jointly.

**promotion**, for an ongoing Parliamentary Service employee, has the meaning given by clause 3.2.2.

**Promotion Review Committee**, or **PRC**, means a Promotion Review Committee established under this Determination.

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**reviewable action**, for Part 7, see clauses 7.3.2 and 7.3.3.

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

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

\***Secretary** means the Secretary of a Department and includes the Clerk of the Senate and the Clerk of the House of Representatives.

\***SES** means the Senior Executive Service established by section 35.

\***SES employee** has the meaning given by section 34.

**similar employment**, in relation to an opportunity for employment notified in the *Gazette*, means employment that comprises similar duties and is at the same classification as the employment notified in the *Gazette*.

\***Statutory office holder** has the meaning given by section 14.

**training classification** has the meaning given in the Classification Rules.

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

**whistleblower's report** (or **whistleblowers' reports**) means a report or reports made by a Parliamentary Service employee about a breach or alleged breach of the Code of Conduct.

\***workplace agreement** has the meaning given by the *Workplace Relations Act 1996*.

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## Notes to *Parliamentary Service Determination 2003/2*

### Note 1

*Parliamentary Service Determination 2003/2* (in force under section 71 of the *Parliamentary Service Act 1999*) as shown in this compilation is amended as indicated in the Table below.

### Table of Instruments

Title	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Parliamentary Service Determination 2003/2</i>	7 January 2004 (see 2004, No GN 1)	7 January 2004	
<i>Parliamentary Service Amendment Determination 2008/1 (F2008L08269)</i>	1 August 2008	2 August 2008	
<i>Parliamentary Service Amendment Determination 2009/1 (F2009L02761)</i>	14 July 2009	15 July 2009	

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## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 2</b>	
<b>Division 2.2</b>	
C. 2.2.1 .....	am. F2008L08269
C. 2.2.3 .....	am. F2008L08269
<b>Division 2.3</b>	
C. 2.3.1 .....	rs. F2008L08269
Heading to c. 2.3.3 .....	rs. F2008L08269
C.2.3.3 .....	am. F2008L08269
<b>Division 2.4</b>	
Note to c. 2.4.1 .....	rs. F2008L08269
Heading to c. 2.4.3 .....	rs. F2008L08269
Heading to c. 2.4.7 .....	rs. F2008L08269
<b>Part 3</b>	
<b>Division 3.1</b>	
C.3.1.3 .....	rs. F2009L02761
C.3.1.4 .....	rs. F2009L02761
<b>Division 3.3</b>	
C. 3.3.5 .....	am. F2008L08269
<b>Part 4</b>	
C. 4.2 .....	am. F2008L08269
C. 4.3 .....	am. F2008L08269
<b>Part 5</b>	
C. 5.2 .....	am. F2008L08269
<b>Part 7</b>	
<b>Division 7.5</b>	
C. 7.5.1 .....	am. F2008L08269
<b>Part 10</b>	
C. 10.1 .....	am. F2008L08269
<b>Part 11</b>	
C. 11.1 .....	am. F2008L08269
<b>Dictionary</b>	
Dictionary .....	am. F2008L08269
	am. F2009L02761

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