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Part 3—The Australian Public Service

9 Constitution of the APS

The Australian Public Service consists of Agency Heads and APS employees.

10 APS Values

Committed to service

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

Ethical

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

Respectful

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

Accountable

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

Impartial

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

10A APS Employment Principles*APS Employment Principles*

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

Decisions based on merit

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

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

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

11 Commissioner's Directions about APS Values

- (1) The Commissioner may issue directions in writing in relation to any of the APS Values for the purpose of:
 - (a) ensuring that the APS incorporates and upholds the APS Values; and
 - (b) determining where necessary the scope or application of the APS Values.

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

- (2) For the purposes of this Act other than this section, the APS Values have effect subject to the restrictions (if any) in directions made under subsection (1).

11A Commissioner's Directions about employment matters

General

- (1) The Commissioner may issue directions in writing about employment matters relating to APS employees, including the following:
 - (a) engagement;
 - (b) promotion;
 - (c) redeployment;
 - (d) mobility;
 - (e) training schemes;
 - (f) termination.

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

Directions about APS Employment Principles

- (2) The Commissioner may issue directions in writing in relation to any of the APS Employment Principles for the purpose of:
- (a) ensuring that the APS incorporates and upholds the APS Employment Principles; and
 - (b) determining where necessary the scope or application of the APS Employment Principles.

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

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

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

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

12 Agency Heads must promote APS Values and APS Employment Principles

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

13 The APS Code of Conduct

- (1) An APS employee must behave honestly and with integrity in connection with APS employment.
- (2) An APS employee must act with care and diligence in connection with APS employment.

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- (3) An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.
- (4) An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, *Australian law* means:
 - (a) any Act (including this Act), or any instrument made under an Act; or
 - (b) any law of a State or Territory, including any instrument made under such a law.
- (5) An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.
- (6) An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff.
- (7) An APS employee must:
 - (a) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment; and
 - (b) disclose details of any material personal interest of the employee in connection with the employee's APS employment.
- (8) An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.
- (9) An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.
- (10) An APS employee must not improperly use inside information or the employee's duties, status, power or authority:

- (a) to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
 - (b) to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.
- (11) An APS employee must at all times behave in a way that upholds:
- (a) the APS Values and APS Employment Principles; and
 - (b) the integrity and good reputation of the employee's Agency and the APS.
- (12) An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
- (13) An APS employee must comply with any other conduct requirement that is prescribed by the regulations.

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

- (1) Agency Heads are bound by the Code of Conduct in the same way as APS employees.
- (2) Statutory office holders are bound by the Code of Conduct, subject to any regulations made under subsection (2A).
- (2A) The regulations may make provision in relation to the extent to which statutory office holders are bound by the Code of Conduct.

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

- (3) In this section:

statutory office holder means a person who holds any office or appointment under an Act, being an office or appointment that is prescribed by the regulations for the purposes of this definition.

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15 Breaches of the Code of Conduct

Sanctions that may be imposed

- (1) An Agency Head may impose the following sanctions on an APS employee in the Agency who is found (under procedures established under subsection (3) of this section or subsection 41B(3) or 50A(2)) to have breached the Code of Conduct:
- (a) termination of employment;
 - (b) reduction in classification;
 - (c) re-assignment of duties;
 - (d) reduction in salary;
 - (e) deductions from salary, by way of fine;
 - (f) a reprimand.

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

- (2) The regulations may prescribe limitations on the power of an Agency Head to impose sanctions under subsection (1).

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

- (2A) A person who is, or was, an APS employee is taken to have breached the Code of Conduct if the person is found (under procedures established under subsection (3) of this section or subsection 41B(3) or 50A(2)) to have, before being engaged as an APS employee:
- (a) knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth; or
 - (b) wilfully failed to disclose to another APS employee, or to a person acting on behalf of the Commonwealth, information that the person knew, or ought reasonably to have known, was relevant; or
 - (c) otherwise failed to behave honestly and with integrity;

in connection with the person's engagement as an APS employee.

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

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

- (3) An Agency Head must establish written procedures in accordance with this section for determining:
 - (a) whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct (including by engaging in conduct referred to in subsection (2A)); and
 - (b) the sanction (if any) that is to be imposed under subsection (1) on an APS employee in the Agency who is found to have breached the Code of Conduct (including by engaging in conduct referred to in subsection (2A)).
- (4) The procedures:
 - (a) must comply with basic procedural requirements set out in Commissioner's Directions; and
 - (b) must have due regard to procedural fairness.
- (5) In addition, and without affecting subsection (4), the procedures may be different for:
 - (a) different categories of APS employees or former APS employees; or
 - (b) APS employees, or former APS employees, who:
 - (i) have been convicted of an offence against a Commonwealth, State or Territory law in respect of conduct that is alleged to constitute a breach of the Code of Conduct; or
 - (ii) have been found to have committed such an offence but no conviction is recorded.
- (6) The Commissioner must issue directions in writing for the purposes of paragraph (4)(a).

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

- (7) An Agency Head must ensure that the procedures established under subsection (3) are made publicly available.
- (8) Procedures established under subsection (3) are not legislative instruments.

18 Promotion of employment equity

An Agency Head must establish a workplace diversity program to assist in giving effect to the APS Employment Principles.

19 Limitation on Ministerial directions to Agency Head

An Agency Head is not subject to direction by any Minister in relation to the exercise of powers by the Agency Head under section 15 or Division 1 or 2 of Part 4 in relation to particular individuals.