

## Parliamentary Service Determination 2013

*FRLI: F2013L01201*

*Sponsor: President of the Senate and Speaker of the House of Representatives*

*Tabled: House of Representatives and Senate, 12 November 2013*

### Summary of committee concerns

2.230 The committee seeks clarification as to why it is necessary to publicise employment decisions in the Public Service *Gazette*, in particular publication of decisions to terminate employment and the grounds for termination, and how this is compatible with the right to privacy and the Convention on the Rights of Persons with Disabilities.

### Overview

2.231 This determination gives effect to the provisions of the *Parliamentary Service Amendment Act 2013*,<sup>168</sup> including:

- articulating requirements, with respect to an individual's duties and responsibilities, for upholding the Parliamentary Service Values;
- enabling the Presiding Officers to make determinations relating to the Employment Principles set out in the amended *Parliamentary Service Act 1999*;
- providing for statutory office holders, as defined, to be bound by the Parliamentary Service Code of Conduct in certain circumstances;
- prescribing basic procedural requirements for Secretaries and the Parliamentary Service Merit Protection Commissioner in dealing with whistleblower reports, including prescribing circumstances in which an inquiry may be declined or discontinued;
- providing for the determination of basic procedural requirements with which the Merit Protection Commissioner must comply when inquiring into suspected breaches of the Code of Conduct by current or former Parliamentary Service employees;
- authorising the use and disclosure of personal information in certain circumstances, including employment decisions; and
- allowing a Secretary, in certain circumstances, to direct an employee to undergo an examination by a nominated medical practitioner to assess

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168 For our predecessor committee's views on these amendments, see, Parliamentary Joint Committee on Human Rights, see *First Report of 2013*, pp 62-67; *Sixth Report of 2013*, pp 294-299; and *Tenth Report of 2013*, Part 3, pp 89-90.

the employee's fitness for duty and to direct the employee to give a report of the examination to the Secretary.

## **Compatibility with human rights**

### ***Statement of compatibility***

2.232 The instrument is accompanied by a detailed and comprehensive statement of compatibility which identifies that the instrument engages a range of rights. These include the right to freedom of expression;<sup>169</sup> the right to privacy;<sup>170</sup> work rights;<sup>171</sup> the right to equality and non-discrimination;<sup>172</sup> the right to culture;<sup>173</sup> and the right to take part in public life.<sup>174</sup>

2.233 The statement provides a comprehensive discussion of the rights issues raised by the instrument and concludes that it promotes a number of human rights and to the extent that it limits certain rights, those limitations are reasonable, necessary and proportionate.

2.234 The committee considers that the statement adequately identifies the rights issues raised by the instrument and provides sufficient justifications for those provisions which involve limiting rights. The committee, however, considers that the instrument raises additional issues of concern which are not addressed in the statement of compatibility. The committee's concerns are set out below.

### ***Committee view on compatibility***

#### ***Right to privacy/rights of persons with disabilities***

2.235 The instrument sets out the requirements for notifying certain employment decisions in the *Public Service Gazette*.<sup>175</sup> A notification must include the employee's name unless the Secretary decides that the name should not be included because of the employee's work-related or personal circumstances.<sup>176</sup>

2.236 The committee notes that among the employment decisions that are subject to the notification requirement are termination decisions, which are to include the grounds for the termination.<sup>177</sup> It is therefore possible for any member of the public

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169 Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

170 Article 17 of the ICCPR.

171 Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

172 Article 26 of the ICCPR and article 2(2) of the ICESCR.

173 Article 27 of the ICCPR and article 15 of the ICESCR.

174 Article 25 of the ICCPR.

175 Clause 39.

176 Clause 39(4).

177 Clause 39(1)(i).

to access the *Gazette* on the internet and discover that an individual has been terminated from the Parliamentary Service and ascertain the grounds for that termination. Grounds for termination that can be publicised in the *Gazette* include:<sup>178</sup>

- that the employee lacks, or has lost, an essential qualification for performing his or her duties;
- non-performance, or unsatisfactory performance, of duties;
- inability to perform duties because of physical or mental incapacity;
- failure to satisfactorily complete an entry-level training course; and
- breach of the Code of Conduct.

2.237 The statement of compatibility states that the notification provision promotes employees' right to privacy insofar as there is option for the Secretary to decide that a name should not be included in a *Gazette* notice because of the person's work-related or personal circumstances, for example, if the person has a legal protection order. However, the issue of the appropriateness of the notification provisions in general is not addressed.

2.238 The committee considers that these provisions engage and limit the right to privacy in article 17 of the ICCPR. They also engage rights under the Convention on the Rights of Persons with Disabilities (CRPD), in particular article 22, where the public notification relates to the termination of an employee on the grounds of physical or mental incapacity.

2.239 The committee notes that our predecessor committee raised similar concerns with regard to the notification provisions in the Australian Public Service Commissioner's Directions 2013.<sup>179</sup> In response to the committee's concerns, the Public Service Commissioner has undertaken to publically consult and review whether publication of termination decisions and the grounds for termination is in the public interest having regard to an individual's right to privacy and the CRPD.<sup>180</sup>

**2.240 The committee intends to write to the Presiding Officers to seek their views as to why it is necessary to publicise employment decisions in the Public Service *Gazette*, in particular decisions to terminate employment and the grounds for termination, and how this is compatible with the right to privacy and the CRPD, in particular where such employment termination decisions are based on the disability of the person concerned.**

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178 *Parliamentary Service Act 1999*, s 29.

179 See, Parliamentary Joint Committee on Human Rights, *Sixth Report of 2013*, pp 133-134.

180 See, Parliamentary Joint Committee on Human Rights, *Tenth Report of 2013*, Appendix 3, pp 183-184. See also, Australian Public Service Commissioner's Amendment Direction 2013 (No. 1), Statement of compatibility, p 6.

