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About this compilation

This compilation

This is a compilation of the *Parliamentary Service Act 1999* that shows the text of the law as amended and in force on 1 March 2019 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the establishment and management of the Australian Parliamentary Service, and for other purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Parliamentary Service Act 1999*.

2 Commencement

This Act commences, or is taken to have commenced, on the same day as the *Public Service Act 1999*, immediately after the commencement of that Act.

3 Objects of this Act

The main objects of this Act are:

(a) to establish a non-partisan Parliamentary Service that is efficient and effective in serving the Parliament; and

(b) to provide a legal framework for the effective and fair employment, management and leadership of Parliamentary Service employees; and

(c) to define the powers and responsibilities of Secretaries, the Parliamentary Librarian, the Parliamentary Service Commissioner and the Parliamentary Service Merit Protection Commissioner; and

(d) to establish rights and obligations of Parliamentary Service employees.

4 This Act binds the Crown

This Act binds the Crown in right of the Commonwealth, but does not make the Crown liable to be prosecuted for an offence.

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5 This Act extends to things outside Australia

(1) This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).

(2) This Act extends to all the Territories.

6 Engagement of employees in a Department

(1) All people engaged on behalf of the Commonwealth as employees to perform functions in a Department must be engaged under this Act, or under the authority of another Act.

(2) Subsection (1) does not apply to people engaged on an honorary basis.

(3) This section does not, by implication, affect any power that a Secretary might otherwise have to engage persons as independent contractors.

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Part 2—Interpretation

7 Interpretation

In this Act, unless the contrary intention appears:

acting SES employee means a non-SES employee who is acting in a position usually occupied by an SES employee.

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

Australian Fair Pay and Conditions Standard has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Note: See Schedules 4 and 9 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* in relation to the application of the Australian Fair Pay and Conditions Standard.

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

authorised member of a Parliamentary party means:

(a) the Leader of the Parliamentary party; or

(b) a member of the Parliamentary party authorised, in writing, by the Leader of the Parliamentary party to act under the provision in which the expression occurs.

budget means an annual Commonwealth budget.

caretaker period for a general election has the same meaning as in Schedule 1 to the *Charter of Budget Honesty Act 1998*.

category of Parliamentary Service employee means one of the following categories:

(a) ongoing Parliamentary Service employees;

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(b) Parliamentary Service employees engaged for a specified term or for the duration of a specified task;
(c) Parliamentary Service employees engaged for duties that are irregular or intermittent.

Classification Rules means rules made under section 23.

Code of Conduct means:
(a) the rules in section 13; and
(b) any rules and orders made by the Senate or the House of Representatives under section 50 of the Constitution that apply to Parliamentary Service employees.

Commissioner means the Parliamentary Service Commissioner appointed under this Act.

Commonwealth body means:
(a) a Commonwealth entity, or a Commonwealth company, within the meaning of the *Public Governance, Performance and Accountability Act 2013*; or
(b) the High Court of Australia.

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

designated Parliamentary party, during the caretaker period for a general election, means a political party at least 5 members of which were members of the Parliament of the Commonwealth immediately before the caretaker period.

Note: The Parliamentary Budget Officer may treat 2 or more political parties as a single designated Parliamentary party for the purpose of preparing a post-election report (see subsection 64MA(2)).

determinations means determinations under this Act other than Part 9.

election commitment, in relation to a general election, means a policy that a Parliamentary party has publicly announced it intends to seek to have implemented after the election.

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enterprise agreement has the same meaning as in the *Fair Work Act 2009*.

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

fair work instrument has the same meaning as in the *Fair Work Act 2009*.

former Parliamentary Service employee means a person who was, but is no longer, a Parliamentary Service employee.

general election means a general election of the members of the House of Representatives.

independent member, during the caretaker period for a general election, means a person:

(a) who is not a member of a Parliamentary party; and

(b) who intends to be a candidate in the general election, or in a Senate election held on the same day as the general election, without the endorsement of a political party; and

(c) who, immediately before the caretaker period, was a Senator or a Member of the House of Representatives because the person:

(i) had been elected to the Senate or the House of Representatives without the endorsement of a political party; or

(ii) had been chosen or appointed to fill a casual vacancy to the Senate without the endorsement of a political party.

insolvent under administration means a person who:

(a) has become bankrupt; or

(b) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) has compounded with his or her creditors; or

(d) has assigned his or her remuneration for the benefit of his or her creditors.

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Joint Committee of Public Accounts and Audit means the Joint Committee of Public Accounts and Audit provided for in the *Public Accounts and Audit Committee Act 1951*.

joint Department means:

(a) the Department of Parliamentary Services; or

(b) if another Department is designated as the joint Department by the Presiding Officers—that other Department.

Library Committee means the committee or committees of the Houses of Parliament that advise the Presiding Officers in respect of the functions of the Parliamentary Librarian.

Merit Protection Commissioner means the Parliamentary Service Merit Protection Commissioner appointed under this Act.

minimum retiring age means:

(a) unless paragraph (b) applies, 55 years; or

(b) if a higher or lower age is prescribed by the determinations—that age.

modern award has the same meaning as in the *Fair Work Act 2009*.

modifications includes additions, omissions and substitutions.

National Employment Standards has the same meaning as in the *Fair Work Act 2009*.

non-ongoing APS employee has the same meaning as in the *Public Service Act 1999*.

non-ongoing Parliamentary Service employee means a Parliamentary Service employee who is not an ongoing Parliamentary Service employee.

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

ongoing APS employee has the same meaning as in the *Public Service Act 1999*.

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ongoing Parliamentary Service employee means a person engaged as an ongoing Parliamentary Service employee, as mentioned in paragraph 22(2)(a).

overseas means outside Australia and the Territories.

Parliamentary Budget Office means the Department of the Parliamentary Budget Office established by subsection 64A(1).

Parliamentary Budget Officer means the holder of the office of Parliamentary Budget Officer established by section 64C.

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

Parliamentary party:

(a) means a political party at least one member of which is a member of the Parliament of the Commonwealth; and

(b) during a caretaker period for a general election—includes a political party at least one member of which was a member of the Parliament of the Commonwealth immediately before the caretaker period.

Parliamentary Service means the Australian Parliamentary Service established by subsection 9(1).

Parliamentary Service employee means:

(a) a person engaged as an employee under section 22; or

(b) a person determined under paragraph 72(1)(b) of the *Public Service Act 1999* to have become engaged as a Parliamentary Service employee in a Department.

Parliamentary Service employment means employment as a Parliamentary Service employee.

Parliamentary Service Employment Principles means the principles in section 10A.

Parliamentary Service Values means the values in section 10.

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political party has the same meaning as in the *Commonwealth Electoral Act 1918*.

polling day, in relation to an election, means the day fixed for polling in the election.

Presiding Officer or ***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.

relevant Department, in relation to a Secretary, means the Department of which he or she is the Secretary.

Remuneration Tribunal means the Remuneration Tribunal established by the *Remuneration Tribunal Act 1973*.

responsible Secretaries has the same meaning as in Schedule 1 to the *Charter of Budget Honesty Act 1998*.

Secretary means the Secretary of a Department and includes the Clerk of the Senate, the Clerk of the House of Representatives and the Parliamentary Budget Officer.

Secretary of a Department means:

(a) if the Department is the Department of the Senate—the Clerk of the Senate; or

(b) if the Department is the Department of the House of Representatives—the Clerk of that House; or

(ba) if the Department is the Parliamentary Budget Office—the Parliamentary Budget Officer; or

(c) if the Department is another Department—the Secretary of that Department.

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Senate election means an election of Senators for a State, the Australian Capital Territory or the Northern Territory.

SES means the Senior Executive Service established by section 35.

SES employee has the meaning given by section 34.

WR Act collective transitional instrument means an award, a collective agreement or a pre-reform certified agreement (within the meaning of those terms in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

WR Act transitional instrument means an award, a workplace agreement, a pre-reform certified agreement, an AWA or a pre-reform AWA (within the meaning of those terms in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

8 Relationship with Fair Work Acts

(1) This Act has effect subject to the *Fair Work Act 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

(2) Subsection (1) is not intended to imply anything about the relationship between this Act and any Act other than the *Fair Work Act 2009* or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

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Part 3—The Australian Parliamentary Service

9 Constitution and role of the Australian Parliamentary Service

(1) The Australian Parliamentary Service consists of Secretaries, the Parliamentary Librarian and Parliamentary Service employees.

(2) The Parliamentary Service serves the Parliament by providing professional support, advice and facilities to each House of the Parliament, to parliamentary committees and to Senators and Members of the House of Representatives, independently of the Executive Government of the Commonwealth.

(3) To the extent that section 21 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the application of government policy to non-corporate Commonwealth entities) applies to a Department, that section is subject to subsection (2) of this section.

10 Parliamentary Service Values

Committed to service

(1) The Parliamentary Service is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Parliament.

Ethical

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

Respectful

(3) The Parliamentary Service respects the Parliament and all people, including their rights and their heritage.

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Accountable

(4) The Parliamentary Service performs its functions with probity and is openly accountable for its actions to the Parliament and the Australian community.

Impartial

(5) The Parliamentary Service is non-partisan and provides advice that is frank, honest, timely and based on the best available evidence.

10A Parliamentary Service Employment Principles

Parliamentary Service Employment Principles

(1) The Parliamentary Service is a career-based 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 Parliamentary Service 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:

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(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

(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: Determinations made by the Presiding Officers may determine the scope or application of the Parliamentary Service Employment Principles (see subsections 11C(2) to (4)).

11 Commissioner may give advice to Presiding Officers about Parliamentary Service Values

The Commissioner may give advice in writing to the Presiding Officers for the purpose of:

(a) ensuring that the Parliamentary Service incorporates and upholds the Parliamentary Service Values; and

(b) determining where necessary the scope or application of the Parliamentary Service Values.

11A Determinations by Presiding Officers about Parliamentary Service Values

(1) The Presiding Officers may make determinations under section 71 in relation to any of the Parliamentary Service Values for the purpose of:

(a) ensuring that the Parliamentary Service incorporates and upholds the Parliamentary Service Values; and

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(b) determining where necessary the scope or application of the Parliamentary Service Values.

(2) However, the Presiding Officers must not make determinations for the purposes of subsection (1) in relation to a Parliamentary Service Value unless:

(a) the Commissioner has given advice to the Presiding Officers under section 11 in relation to the Parliamentary Service Value; and

(b) the Presiding Officers have had regard to that advice in making the determinations.

(3) For the purposes of this Act (other than subsection (1)), the Parliamentary Service Values have effect subject to any restrictions in determinations made for the purposes of subsection (1).

Tabling of Commissioner's advice

(4) If the Presiding Officers make determinations in relation to any of the Parliamentary Service Values in accordance with this section, the Presiding Officers must cause to be laid before each House of the Parliament a copy of the advice given by the Commissioner referred to in paragraph (2)(a).

11B Commissioner may give advice to Presiding Officers about employment matters

General

(1) The Commissioner may give advice in writing to the Presiding Officers about employment matters relating to Parliamentary Service employees, including the following:

(a) engagement;

(b) promotion;

(c) redeployment;

(d) mobility;

(e) training schemes;

(f) termination.

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Parliamentary Service Employment Principles

(2) The Commissioner may give advice in writing to the Presiding Officers for the purpose of:

(a) ensuring that the Parliamentary Service incorporates and upholds the Parliamentary Service Employment Principles; and

(b) determining where necessary the scope or application of the Parliamentary Service Employment Principles.

11C Determinations by Presiding Officers about employment matters

Determinations about general employment matters

(1) The Presiding Officers may make determinations under section 71 about employment matters relating to Parliamentary Service employees, including the matters referred to in subsection 11B(1).

Determinations about Parliamentary Service Employment Principles

(2) The Presiding Officers may make determinations under section 71 in relation to any of the Parliamentary Service Employment Principles for the purpose of:

(a) ensuring that the Parliamentary Service incorporates and upholds the Parliamentary Service Employment Principles; and

(b) determining where necessary the scope or application of the Parliamentary Service Employment Principles.

(3) However, the Presiding Officers must not make determinations for the purposes of subsection (2) in relation to a Parliamentary Service Employment Principle unless:

(a) the Commissioner has given advice to the Presiding Officers under subsection 11B(2) in relation to the Parliamentary Service Employment Principle; and

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(b) the Presiding Officers have had regard to that advice in making the determinations.

(4) For the purposes of this Act (other than subsection (2) of this section), the Parliamentary Service Employment Principles have effect subject to any restrictions in determinations made for the purposes of that subsection.

Tabling of Commissioner's advice about Parliamentary Service Employment Principles

(5) If the Presiding Officers make determinations in relation to any of the Parliamentary Service Employment Principles in accordance with this section, the Presiding Officers must cause to be laid before each House of the Parliament a copy of the advice given by the Commissioner referred to in paragraph (3)(a).

12 Secretaries must promote Parliamentary Service Values and Parliamentary Service Employment Principles

A Secretary must uphold and promote the Parliamentary Service Values and Parliamentary Service Employment Principles.

13 The Parliamentary Service Code of Conduct

(1) A Parliamentary Service employee must behave honestly and with integrity in connection with Parliamentary Service employment.

(2) A Parliamentary Service employee must act with care and diligence in connection with Parliamentary Service employment.

(3) A Parliamentary Service employee, when acting in connection with Parliamentary Service employment, must treat everyone with respect and courtesy, and without harassment.

(4) A Parliamentary Service employee, when acting in connection with Parliamentary Service employment, must comply with all applicable Australian laws. For this purpose, ***Australian law*** means:

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(a) any Act (including this Act), or any instrument having effect under an Act; or

(b) any law of a State or Territory, including any instrument having effect under such a law.

(5) A Parliamentary Service employee must comply with any lawful and reasonable direction given by someone in the Department in which he or she is employed who has authority to give the direction.

(6) A Parliamentary Service employee must maintain appropriate confidentiality about dealings that the employee has with either House of the Parliament, with any committee of either House, with any joint committee of both Houses, with any Senator or Member of the House of Representatives or with the staff of any Senator or Member.

(7) A Parliamentary Service employee must:

(a) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's Parliamentary Service employment; and

(b) disclose details of any material personal interest of the employee in connection with the employee's Parliamentary Service employment.

(8) A Parliamentary Service employee must use the resources of the Commonwealth in a proper manner and for a proper purpose.

(9) A Parliamentary Service 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 Parliamentary Service employment.

(10) A Parliamentary Service 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

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(b) to cause, or seek to cause, detriment to the Department in which the employee is employed, the Commonwealth or any other person.

(11) A Parliamentary Service employee must at all times behave in a way that upholds:

(a) the Parliamentary Service Values and Parliamentary Service Employment Principles; and

(b) the integrity and good reputation of the Department in which he or she is employed and the Parliamentary Service.

(12) A Parliamentary Service employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.

(13) A Parliamentary Service employee must comply with any other conduct requirement that is made by either House of the Parliament or by determinations.

14 Secretaries and statutory office holders bound by Code of Conduct

(1) Secretaries are bound by the Code of Conduct in the same way as Parliamentary Service employees.

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

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

Note: The determinations may make 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 this Act, being an office or appointment that is prescribed by the determinations for the purposes of this definition.

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15 Breaches of the Code of Conduct

Sanctions that may be imposed

(1) A Secretary may impose the following sanctions on a Parliamentary Service employee in the relevant Department who is found (under procedures established under subsection (3) of this section or subsection 48A(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 a Parliamentary Service employee's employment.

(2) The determinations may prescribe limitations on the power of a Secretary to impose sanctions under subsection (1).

Providing false or misleading information etc. in connection with engagement as a Parliamentary Service employee

(2A) A person who is, or was, a Parliamentary Service 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 48A(2)) to have, before being engaged as a Parliamentary Service employee:

(a) knowingly provided false or misleading information to another Parliamentary Service employee, or to a person acting on behalf of the Commonwealth; or

(b) wilfully failed to disclose to another Parliamentary Service 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;

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in connection with the person's engagement as a Parliamentary Service employee.

Note: If the person is a Parliamentary Service employee at the time a finding referred to in paragraph (2A)(a), (b) or (c) is made in relation to the person, the Secretary of the Department in which the person is employed may impose sanctions on the person as permitted by subsection (1).

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

(3) A Secretary must establish written procedures in accordance with this section for determining:

(a) whether a Parliamentary Service employee, or a former Parliamentary Service employee, in the relevant Department 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 a Parliamentary Service employee in the relevant Department 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 directions issued by the Commissioner under subsection (6); 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 Parliamentary Service employees or former Parliamentary Service employees; or

(b) Parliamentary Service employees, or former Parliamentary Service employees, who:

(i) have been convicted of an offence against a Commonwealth, State or Territory law in respect of

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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, by legislative instrument, issue directions for the purposes of paragraph (4)(a).

(7) A Secretary 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

A Secretary must establish a workplace diversity program to help in giving effect to the Parliamentary Service Employment Principles.

19 Restrictions on directions to Clerks

The Clerk of either House of the Parliament is not subject to direction by a Presiding Officer in relation to any advice sought from, or given by, the Clerk with respect to that House or any of its committees or members.

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Part 4—Parliamentary Service employees and the Parliamentary Librarian

Division 1—Parliamentary Service employees generally

20 General directions to Secretaries

(1) General directions may be given in writing under this section to Secretaries in relation to the management and leadership of Parliamentary Service employees.

(2) Any such directions are to be given:
  (a) in relation to the Clerk of the Senate—by the President of the Senate; or
  (b) in relation to the Clerk of the House of Representatives—by the Speaker of the House of Representatives; or
  (c) in relation to any other Secretary—by the President of the Senate and the Speaker of the House of Representatives acting jointly.

(3) A direction can only be given if the Commissioner has been consulted by the President of the Senate, the Speaker of the House of Representatives, or the President of the Senate and the Speaker of the House of Representatives, as the case may be, in relation to the proposed direction.

(4) A direction cannot be given to a Secretary in relation to the exercise of powers by the Secretary under section 15 or this Part in relation to particular individuals.

(5) A direction issued under this section is a legislative instrument.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

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21 Employer powers etc. of Secretary

(1) A Secretary, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of Parliamentary Service employees in the relevant Department.

(2) Without limiting subsection (1), a Secretary has, in respect of Parliamentary Service employees in the relevant Department, the rights, duties and powers that are prescribed by the determinations.

22 Engagement of Parliamentary Service employees

(1) A Secretary, on behalf of the Commonwealth, may engage people as employees for the purposes of the relevant Department.

(2) The engagement of a Parliamentary Service employee (including an engagement under section 26) 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.

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

(4) The determinations may prescribe the circumstances in which persons may be engaged as mentioned in paragraph (2)(b) or (c).

(5) An engagement for a specified term may be extended, subject to any limitations prescribed by the determinations.

(6) The engagement of a Parliamentary Service employee may be made subject to conditions notified to the employee, including conditions dealing with any of the following matters:
  (a) probation;
  (b) citizenship;
  (c) formal qualifications;
  (d) security and character clearances;
  (e) health clearances.

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(7) Subsection (6) does not, by implication, limit the conditions that may be applied to the engagement of a Parliamentary Service employee.

(8) A Secretary must not engage, as a Parliamentary Service employee, a person who is not an Australian citizen, unless the Secretary considers it appropriate to do so.

23 Classification Rules

(1) The Presiding Officers, after consulting the Commissioner, may, by legislative instrument, make rules about classifications of Parliamentary Service employees.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the Classification Rules (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

(2) The Classification Rules may apply, adopt or incorporate, with or without modification, any of the provisions of:

(a) a modern award, as in force at a particular time or as in force from time to time; or

(b) a transitional APCS, as in force at a particular time or as in force from time to time.

(3) Secretaries must comply with the Classification Rules.

(4) A Secretary may reduce the classification of a Parliamentary Service employee, without the employee's consent, only in the following circumstances:

(a) as a sanction under section 15;

(b) on the ground that the employee is excess to the requirements of the relevant Department at the higher classification;

(c) on the ground that the employee lacks, or has lost, an essential qualification for performing duties at the higher classification;

(d) on the ground of non-performance, or unsatisfactory performance, of duties at the higher classification;

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(e) on the ground that the employee is unable to perform duties at the higher classification because of physical or mental incapacity;

(f) in other circumstances prescribed by the determinations.

(5) If a relevant industrial instrument, determination under this Act or written contract of employment contains procedures to be followed when reducing the classification, then a reduction is of no effect unless those procedures are followed.

(6) In this section:

industrial instrument means:

(a) a modern award; or

(b) an enterprise agreement; or

(c) a workplace determination; or

(d) a WR Act transitional instrument; or

(e) a transitional APCS.

transitional APCS has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

workplace determination has the same meaning as in the *Fair Work Act 2009*.

24 Terms and conditions of employment

(1) A Secretary may from time to time determine in writing the terms and conditions of employment applying to a Parliamentary Service employee or Parliamentary Service employees in the relevant Department.

Note 1: Certain terms and conditions of employment are applicable to a Parliamentary Service employee under the Australian Fair Pay and Conditions Standard or the National Employment Standards.

Note 2: Other Commonwealth laws deal with matters such as superannuation, compensation, long service leave and maternity leave.

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(1A) A determination under subsection (1) is of no effect to the extent that it would reduce the benefit to a Parliamentary Service employee of an individual term or condition applicable to the employee under:

(a) a fair work instrument; or

(b) a WR Act transitional instrument.

Note: A determination under subsection (1) would also be of no effect to the extent that it would reduce the benefit to a Parliamentary Service employee of a term or condition applicable to the employee under the Australian Fair Pay and Conditions Standard or the National Employment Standards.

(2) A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of:

(a) a fair work instrument; or

(b) a WR Act collective transitional instrument;

as in force from time to time.

Note: A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of the Australian Fair Pay and Conditions Standard or the National Employment Standards. However, any modification of the provisions of those Standards by a determination under subsection (1) would be of no effect to the extent that it would reduce the benefit to a Parliamentary Service employee of a term or condition applicable to the employee under those Standards.

(3) The Presiding Officers may, by legislative instrument, determine the terms and conditions of employment applying to Parliamentary Service employees, if the Presiding Officers are of the opinion that it is desirable to do so because of exceptional circumstances.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the determination (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

(4) The limitation in subsection (1A) does not apply in relation to a determination under subsection (3).

(5) A determination under subsection (3) overrides the following, to the extent of any inconsistency:

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(a) a determination under subsection (1);
(b) the Australian Fair Pay and Conditions Standard;
(c) the National Employment Standards.

25 Assignment of duties

A Secretary may from time to time determine the duties of a Parliamentary Service employee in the relevant Department, and the place or places at which the duties are to be performed.

26 Mobility between Parliamentary Service and Public Service

(1) An ongoing Parliamentary Service employee is eligible for engagement, at any classification, as an ongoing APS employee. The engagement is subject to review in accordance with regulations under the *Public Service Act 1999*.

(2) An ongoing APS employee is eligible for engagement, at any classification, as an ongoing Parliamentary Service employee. The engagement is subject to review in accordance with the determinations.

(3) A person who moves from:
(a) employment as an ongoing Parliamentary Service employee to employment as an ongoing APS employee; or
(b) employment as an ongoing APS employee to employment as an ongoing Parliamentary Service employee;

retains his or her existing or accrued entitlements relating to annual leave, and personal or carer's leave, (however they may be described).

Note: Service for long service leave purposes is dealt with under the *Long Service Leave (Commonwealth Employees) Act 1976*, and service for maternity leave purposes is dealt with under the *Maternity Leave (Commonwealth Employees) Act 1973*.

(4) If a person moves from one service to another as mentioned in this section, the person stops being an employee of the service from which the person moved when he or she is engaged as an ongoing APS employee or as an ongoing Parliamentary Service employee.

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26A Rights of ongoing employees when engaged as non-ongoing employees of the other service

(1) If an ongoing Parliamentary Service employee is granted leave without pay to take up employment as a non-ongoing APS employee, the employee:

(a) retains his or her existing or accrued entitlements relating to annual leave, and personal or carer's leave, (however they may be described) in respect of employment as a Parliamentary Service employee; and

(b) when he or she returns to the Parliamentary Service—retains his or her existing or accrued entitlements of that kind in respect of employment as an APS employee.

(2) If an ongoing APS employee is granted leave without pay to take up employment as a non-ongoing Parliamentary Service employee, the employee:

(a) retains his or her existing or accrued entitlements relating to annual leave, and personal or carer's leave, (however they may be described) in respect of employment as an APS employee; and

(b) when he or she returns to the APS—retains his or her existing or accrued entitlements of that kind in respect of employment as a Parliamentary Service employee.

(3) Any period of leave without pay referred to in subsection (1) or (2) counts as service for all purposes except accrual of annual leave, or personal or carer's leave, (however they may be described).

Note: Service for long service leave purposes is dealt with under the *Long Service Leave (Commonwealth Employees) Act 1976*, and service for maternity leave purposes is dealt with under the *Maternity Leave (Commonwealth Employees) Act 1973*.

27 Compulsory moves between Parliamentary Departments and between the Parliamentary Service and the Australian Public Service

(1) The Commissioner may:

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(a) with the agreement of the Presiding Officers, move an excess Parliamentary Service employee to another Parliamentary Department; or

(b) with the agreement of the Australian Public Service Commissioner, move a transitional excess Parliamentary Service employee to an APS Agency.

(2) For the purposes of this section:

(a) a Parliamentary Service employee is an ***excess Parliamentary Service employee*** if, and only if, the Secretary has notified the Commissioner in writing that the employee is excess to the requirements of the Parliamentary Department; and

(b) a Parliamentary Service employee is a ***transitional excess Parliamentary Service employee*** if, and only if, the employee was covered by the *Public Service Act 1922* at the time immediately before this Act commenced and the Secretary has notified the Commissioner in writing that the employee is excess to the requirements of the Parliamentary Service.

28 Suspension

The determinations may make provision in relation to the suspension from duties of Parliamentary Service employees, with or without remuneration.

29 Termination of employment

(1) A Secretary may at any time, by notice in writing, terminate the employment of a Parliamentary Service employee in the relevant Department.

Note 1: The *Fair Work Act 2009* has rules and entitlements that apply to termination of employment.

Note 2: Determinations made by the Presiding Officers under subsection 11C(1) may set out procedures to be followed in terminating the employment of a Parliamentary Service employee.

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(2) For an ongoing Parliamentary Service employee, the notice must specify the ground or grounds that are relied on for the termination.

(3) For an ongoing Parliamentary Service employee, the following are the only grounds for termination:
  (a) the employee is excess to the requirements of the relevant Department;
  (b) the employee lacks, or has lost, an essential qualification for performing his or her duties;
  (c) non-performance, or unsatisfactory performance, of duties;
  (d) inability to perform duties because of physical or mental incapacity;
  (e) failure to satisfactorily complete an entry-level training course;
  (f) failure to meet a condition imposed under subsection 22(6);
  (g) breach of the Code of Conduct;
  (h) any other ground prescribed by the determinations.

(4) The determinations may prescribe the grounds for the termination of the employment of non-ongoing Parliamentary Service employees.

(5) Subsection (4) does not, by implication, limit the grounds for termination of the employment of a non-ongoing Parliamentary Service employee.

30 Retirement

A Parliamentary Service employee who has reached the minimum retiring age is entitled to retire at any time by notice in writing to the Secretary of the Department in which the employee is employed.

31 Forfeiture of additional remuneration

(1) If a Parliamentary Service employee receives any non-Commonwealth remuneration for performing duties as a Parliamentary Service employee, the Secretary of the Department

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in which the employee is employed may give a notice in writing to the employee in relation to the whole, or a specified part, of the remuneration.

(2) The amount notified by the Secretary:

(a) is taken to have been received by the employee on behalf of the Commonwealth; and

(b) may be recovered by the Commonwealth from the employee as a debt in a court of competent jurisdiction.

(2A) If the Parliamentary Librarian receives any non-Commonwealth remuneration for performing duties as the Parliamentary Librarian, the Secretary of the joint Department may give a notice in writing to the Parliamentary Librarian in relation to the whole, or a specified part, of the remuneration.

(2B) The amount notified by the Secretary:

(a) is taken to have been received by the Parliamentary Librarian on behalf of the Commonwealth; and

(b) may be recovered by the Commonwealth from the Parliamentary Librarian as a debt in a court of competent jurisdiction.

(3) If a Secretary receives any non-Commonwealth remuneration for performing duties as a Secretary, then the Presiding Officer may give a notice in writing to the Secretary in relation to the whole, or a specified part, of the remuneration.

(4) The amount notified by the Presiding Officer:

(a) is taken to have been received by the Secretary on behalf of the Commonwealth; and

(b) may be recovered by the Commonwealth from the Secretary as a debt in a court of competent jurisdiction.

(5) In this section:

non-Commonwealth remuneration means any remuneration from a person other than the Commonwealth.

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32 Right of return for election candidates

(1) This section applies to a person if:

(a) the person resigned as a Parliamentary Service employee in order to contest an election prescribed by the determinations; and

(b) the resignation took effect not earlier than 6 months before the closing date for nominations; and

(c) the person was a candidate in the election but failed to be elected.

(2) The person is entitled to be again engaged as a Parliamentary Service employee, in accordance with the determinations and within the time limits prescribed by the determinations.

33 Review of actions

(1) A Parliamentary Service employee is entitled to review, in accordance with the determinations, of any Parliamentary Service action that relates to his or her Parliamentary Service employment. However, a Parliamentary Service employee is not entitled to review under this section of Parliamentary Service action that consists of the termination of the employee's employment.

(2) The determinations may prescribe exceptions to the entitlement.

Note: For example, the determinations might provide that there is no entitlement to review if the application for review is frivolous or vexatious.

(3) Without limiting subsection (1), determinations made for the purposes of that subsection may provide for the powers available to the Merit Protection Commissioner, or any other person or body, when conducting a review under the determinations.

(4) Determinations for the purposes of subsection (1):

(a) may provide for an initial review to be conducted within the relevant Department; and

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(b) may provide that applications for review of particular kinds of Parliamentary Service action are to be made directly to the Merit Protection Commissioner; and

(c) must provide for an application for review to be referred to the Merit Protection Commissioner if the applicant is not satisfied with the outcome of an initial review within the relevant Department; and

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

(i) the Merit Protection Commissioner; or

(ii) a person nominated by the Merit Protection Commissioner; or

(iii) a 3 member committee constituted in accordance with the determinations.

(5) A person or body that has conducted a review under this section may make recommendations in a report on the review but does not have power to make any binding decision as a result of the review, except as provided by the determinations.

(6) If the Merit Protection Commissioner is not satisfied with the response to recommendations contained in a report on a review under this section, the Merit Protection Commissioner may give a report on the matter to the Secretary of the relevant Department and to the Presiding Officers, for presentation to the Parliament.

(7) In this section:

action includes a refusal or failure to act.

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

relevant Department, in relation to Parliamentary Service action, means the Department in which the person who did the action was at the time of the action.

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Division 2—The Senior Executive Service

34 SES employees

SES employees are those Parliamentary Service employees who are classified as SES employees under the Classification Rules.

35 Constitution and role of SES

(1) The Senior Executive Service consists of the SES employees.

(2) The function of the SES is to provide strategic leadership of the highest quality that contributes to an effective and cohesive Parliamentary Service.

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

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

(i) professional or specialist expertise;

(ii) policy advice;

(iii) program or service delivery;

(iv) regulatory administration; and

(b) promotes cooperation within and between Departments, including to deliver outcomes across Department boundaries; and

(c) by personal example and other appropriate means, promotes the Parliamentary Service Values, the Parliamentary Service Employment Principles and compliance with the Code of Conduct.

37 Incentive to retire

(1) A Secretary may give a notice in writing to an SES employee in the relevant Department stating that the employee will become entitled to a payment of a specified amount if the employee retires within a period specified in the notice.

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

(2) If the employee retires within the specified period, by notice in writing to the Secretary:

(a) the employee is entitled to be paid the specified amount; and

(b) the employee is taken, for all purposes, to have retired involuntarily from the Parliamentary Service.

38 Commissioner's certificate required for termination of SES employment

A Secretary cannot terminate the employment of an SES employee unless the Commissioner has issued a certificate stating that:

(a) all relevant requirements of determinations made for the purposes of subsection 11C(1) have been satisfied in respect of the proposed termination; and

(b) the Commissioner is of the opinion that the termination is in the public interest.

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Division 3—Parliamentary Librarian

38A Parliamentary Librarian

(1) An office of Parliamentary Librarian is established by this section.

(2) The Parliamentary Librarian and the employees of the joint Department assisting the Parliamentary Librarian may be known as the Parliamentary Library.

Note: The Parliamentary Librarian is within the joint Department (see section 54).

38B Functions of Parliamentary Librarian

(1) The functions of the Parliamentary Librarian are:

(a) to provide high quality information, analysis and advice to Senators and Members of the House of Representatives in support of their parliamentary and representational roles; and

(b) to undertake such other responsibilities within the joint Department, consistent with the function set out in paragraph (a), as are conferred in writing on the Parliamentary Librarian by the Secretary of the joint Department with the approval of the Presiding Officers.

(2) The Parliamentary Librarian must perform the function mentioned in paragraph (1)(a):

(a) in a timely, impartial and confidential manner; and

(b) maintaining the highest standards of scholarship and integrity; and

(c) on the basis of equality of access for all Senators, Members of the House of Representatives, parliamentary committees and staff acting on behalf of Senators, Members or parliamentary committees; and

(d) having regard to the independence of Parliament from the Executive Government of the Commonwealth.

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38C Appointment of Parliamentary Librarian

(1) The Parliamentary Librarian is to be appointed by the Presiding Officers for a period of 5 years.

(2) The Presiding Officers cannot make an appointment unless they have received a report about the vacancy from the Secretary of the joint Department.

(3) The Presiding Officers cannot appoint a person as the Parliamentary Librarian unless:

(a) the person has either or both of the following:

(i) professional qualifications in librarianship or information management (however described);

(ii) professional membership of a recognised professional association in the discipline of librarianship or information management (however described); or

(b) the Presiding Officers are satisfied that, by reason of the person's qualifications in another relevant discipline, or the person's professional experience, the person has suitable skills to perform the functions of Parliamentary Librarian.

(4) An appointment is not affected by any defect or irregularity in or in connection with the appointment.

38D Termination of appointment of Parliamentary Librarian

(1) The Presiding Officers may, by notice in writing, terminate the appointment of the Parliamentary Librarian at any time.

(2) The Presiding Officers cannot terminate an appointment unless they have received a report about the proposed termination from the Commissioner.

38E Terms and conditions of appointment

(1) The terms and conditions of appointment of the Parliamentary Librarian are as determined by the Presiding Officers.

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(2) For each determination, the Presiding Officers must seek the advice of the Remuneration Tribunal and take that advice into account.

(3) Each determination must be:

(a) published in the *Gazette* within 14 days; and

(b) laid before the Senate and the House of Representatives as soon as practicable;

after the determination is made.

38F Acting Parliamentary Librarian

(1) The Presiding Officers may appoint a person to act in the office of Parliamentary Librarian:

(a) if there is a vacancy in the office, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Parliamentary Librarian is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

(2) However, the Presiding Officers cannot appoint a person to act in the position unless the person meets the requirement in subsection 38C(3).

38G Resources for the Parliamentary Librarian

(1) The Secretary of the joint Department must provide resources to the Parliamentary Librarian in accordance with an annual agreement that satisfies the requirements of subsection (2).

(2) The agreement must be:

(a) made between the Secretary of the joint Department and the Parliamentary Librarian; and

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(b) approved by the Presiding Officers in writing after receiving advice about the contents of the agreement from the Library Committee.

(3) The Presiding Officers may approve the agreement for the purposes of subsection (2) either before or after the agreement is made by the Secretary and the Parliamentary Librarian.

38H Reporting to Library Committee

(1) The Parliamentary Librarian must give a report on the performance of the functions of the Parliamentary Librarian to the Library Committee on the request of the Committee.

Note: The Parliamentary Librarian must also give an annual report to the Presiding Officers under section 65.

(2) However, the Parliamentary Librarian must give such a report to the Committee at least once every financial year.

38I Copyright

For the purposes of sections 48A and 104A of the *Copyright Act 1968*:

(a) the part of the joint Department that is headed by the Parliamentary Librarian and that provides library services is taken to be a library the principal purpose of which is to provide library services for Members of the Parliament; and

(b) the Parliamentary Librarian is taken to be the officer in charge of that library; and

(c) a Parliamentary Service employee authorised by the Parliamentary Librarian to act on his or her behalf in relation to the provision of the library services is taken to be an authorised officer of that library.

Note: Sections 48A and 104A of the *Copyright Act 1968* apply only in relation to things done for the sole purpose of assisting a person who is a Member of a Parliament in the performance of the person's duties as such a Member.

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Part 5—The Parliamentary Service Commissioner

Division 1—Commissioner's functions etc.

39 Parliamentary Service Commissioner

There is to be a Parliamentary Service Commissioner.

40 Commissioner's functions

(1) The Commissioner's functions include the following functions:

(a) to give advice to the Presiding Officers on the management policies and practices of the Parliamentary Service;

(b) if requested by the Presiding Officers, to inquire into and report on matters relating to the Parliamentary Service that are specified in the request;

(c) to inquire, subject to the determinations, into public interest disclosures (within the meaning of the *Public Interest Disclosure Act 2013*), to the extent that the disclosures relate to alleged breaches of the Code of Conduct;

(d) such other functions as are conferred on the Commissioner by this Act, the determinations or any other law;

(e) to do anything incidental to or conducive to the performance of any of the Commissioner's functions.

(1A) Before commencing an inquiry under paragraph 40(1)(c), the Commissioner must notify the Presiding Officers in writing of the proposed inquiry.

(2) A report made by the Commissioner in the performance of his or her functions may include recommendations.

(3) The Commissioner is not subject to direction by or on behalf of the Executive Government of the Commonwealth in the performance of his or her functions.

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

41 Commissioner's inquiry powers

The following provisions apply in relation to an inquiry that is conducted by the Commissioner under paragraph 40(1)(b) or (c) (with references to the Auditor-General being replaced by references to the Commissioner):

(a) sections 32, 33 and 35 of the *Auditor-General Act 1997*;

(b) any other provisions of the *Auditor-General Act 1997*, or of regulations under that Act, that are relevant to the operation of section 32, 33 or 35 of that Act.

42 Annual report

(1) After the end of each financial year, the Commissioner must give a report to the Presiding Officers, for presentation to the Parliament, on the activities of the Commissioner during the year.

(2) The report must be prepared in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.

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Division 2—Commissioner's appointment, conditions etc.

43 Appointment of Commissioner

(1) The Commissioner is to be appointed by the Presiding Officers for a period of up to 5 years specified in the instrument of appointment.

(2) A person may hold both the office of Commissioner and the office of Australian Public Service Commissioner.

44 Terms and conditions of appointment

(1) Subject to subsection (4), the terms and conditions of appointment of the Commissioner are as determined in writing by the Presiding Officers.

(2) For each determination, the Presiding Officers must seek the advice of the Remuneration Tribunal and take that advice into account.

(3) Each determination must be:
  (a) published in the *Gazette* within 14 days; and
  (b) laid before each House of the Parliament as soon as practicable;
after the determination is made.

(4) If the same person holds both the office of Commissioner and the office of Australian Public Service Commissioner, the person is not to be paid any remuneration in respect of the office of Commissioner.

45 Removal from office

(1) The Presiding Officers may remove the Commissioner from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Presiding Officers praying

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for the removal of the Commissioner on the ground of misbehaviour or physical or mental incapacity.

(2) The Presiding Officers must remove the Commissioner from office if the Commissioner becomes an insolvent under administration.

46 Acting Commissioner

(1) The Presiding Officers may appoint a person to act as Commissioner:

(a) if there is a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

(2) A person may act in both the office of Commissioner and the office of Australian Public Service Commissioner.

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Part 6—The Parliamentary Service Merit Protection Commissioner

Division 1—Merit Protection Commissioner's functions etc.

47 Parliamentary Service Merit Protection Commissioner

There is to be a Parliamentary Service Merit Protection Commissioner.

48 Merit Protection Commissioner's functions

(1) The Merit Protection Commissioner's functions include the following functions:

(a) to inquire, subject to the determinations, into public interest disclosures (within the meaning of the *Public Interest Disclosure Act 2013*), to the extent that the disclosures relate to alleged breaches of the Code of Conduct;

(b) to inquire into alleged breaches of the Code of Conduct by the Commissioner and report to the Presiding Officers on the results of such inquiries (including, where relevant, recommendations for sanctions);

(c) to inquire into a Parliamentary Service action, at the request of the Presiding Officers, and to report to the Presiding Officers on the results of the inquiry;

(ca) to inquire into and determine, in accordance with section 48A, whether a Parliamentary Service employee, or a former Parliamentary Service employee, has breached the Code of Conduct;

(d) such functions as are prescribed by determinations made for the purposes of section 33;

(e) such other functions as are prescribed by the determinations.

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(2) The following provisions apply in relation to an inquiry under paragraph (1)(a) or (1)(c) (with references to the Auditor-General being replaced by references to the Merit Protection Commissioner):

(a) sections 32, 33 and 35 of the *Auditor-General Act 1997*;

(b) any other provisions of the *Auditor-General Act 1997*, or of regulations under that Act, that are relevant to the operation of section 32, 33 or 35 of that Act.

(3) The determinations may authorise the Merit Protection Commissioner to charge fees (on behalf of the Commonwealth) for the performance of functions prescribed under paragraph (1)(e).

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

(4) In this section:

action includes a refusal or failure to act.

Parliamentary Service action means an action in relation to the employment of a Parliamentary Service employee, being an action by another Parliamentary Service employee, by a Secretary or by the Parliamentary Librarian.

48A Inquiry into alleged breach of Code of Conduct by Parliamentary Service employee or former Parliamentary Service employee

Request for inquiry

(1) The Merit Protection Commissioner may, for the purposes of paragraph 48(1)(ca), inquire into and determine whether a Parliamentary Service employee, or a former Parliamentary Service employee, has breached the Code of Conduct if:

(a) the Secretary of the Department in which the Parliamentary Service employee, or former Parliamentary Service

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employee, was employed at the time of the alleged breach requests the Merit Protection Commissioner to do so; and

(b) the Merit Protection Commissioner considers it would be appropriate to do so; and

(c) the Parliamentary Service employee, or former Parliamentary Service employee, agrees, in writing, to the Merit Protection Commissioner doing so.

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

Procedures for inquiry

(2) The Merit Protection Commissioner must establish written procedures for inquiring into and determining whether a Parliamentary Service employee, or a former Parliamentary Service employee, has breached the Code of Conduct (including by engaging in conduct referred to in subsection 15(2A)). The procedures:

(a) must comply with basic procedural requirements prescribed by the determinations; and

(b) must have due regard to procedural fairness.

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

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

(a) different categories of Parliamentary Service employees or former Parliamentary Service employees; or

(b) Parliamentary Service employees, or former Parliamentary Service 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

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(ii) have been found to have committed such an offence but no conviction is recorded.

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

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

Merit Protection Commissioner's powers

(6) For the purposes of inquiring into and determining whether a Parliamentary Service employee, or a former Parliamentary Service employee, in a Department has breached the Code of Conduct, the Merit Protection Commissioner may exercise the same powers as the Secretary of the relevant Department may exercise in determining whether a Parliamentary Service employee, or a former Parliamentary Service employee, in the Department has breached the Code of Conduct.

Report on results of inquiry

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

Note: If the Merit Protection Commissioner finds that a Parliamentary Service employee in a Department has breached the Code of Conduct, the Secretary of the Department may impose a sanction on the Parliamentary Service employee under subsection 15(1).

49 Annual report

(1) After the end of each financial year, the Merit Protection Commissioner must give a report to the Parliamentary Service Commissioner on the activities of the Merit Protection Commissioner during the year.

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(2) The report must be prepared in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.

(3) The Merit Protection Commissioner's report is to be included in the Parliamentary Service Commissioner's report under section 42.

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Division 2—Merit Protection Commissioner's appointment, conditions etc.

50 Appointment of Merit Protection Commissioner

(1) The Merit Protection Commissioner is to be appointed by the Presiding Officers for a period of up to 5 years specified in the instrument of appointment.

(2) A person may hold both the office of Merit Protection Commissioner and the office of Public Service Merit Protection Commissioner.

51 Terms and conditions of appointment

(1) Subject to subsection (4), the terms and conditions of appointment of the Merit Protection Commissioner are as determined in writing by the Presiding Officers.

(2) For each determination, the Presiding Officers must seek the advice of the Remuneration Tribunal and take that advice into account.

(3) Each determination must be:
   (a) published in the *Gazette* within 14 days; and
   (b) laid before each House of the Parliament as soon as practicable;

after the determination is made.

(4) If the same person holds both the office of Merit Protection Commissioner and the office of Public Service Merit Protection Commissioner, the person is not to be paid any remuneration in respect of the office of Merit Protection Commissioner.

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52 Removal from office

(1) The Presiding Officers may remove the Merit Protection Commissioner from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Presiding Officers praying for the removal of the Commissioner on the ground of misbehaviour or physical or mental incapacity.

(2) The Presiding Officers must remove the Merit Protection Commissioner from office if the Merit Protection Commissioner becomes an insolvent under administration.

53 Acting Merit Protection Commissioner

(1) The Presiding Officers may appoint a person to act as Merit Protection Commissioner:

(a) if there is a vacancy in the office of Merit Protection Commissioner, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Merit Protection Commissioner is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

(2) A person may act in both the office of Merit Protection Commissioner and the office of Public Service Merit Protection Commissioner.

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Part 7—Departments and Secretaries

Division 1—Departments other than the Parliamentary Budget Office

53A Interpretation

In this Division:

(a) a reference to a Department does not include a reference to the Parliamentary Budget Office; and

(b) a reference to a Secretary does not include a reference to the Parliamentary Budget Officer.

Note: Division 2 deals with the Parliamentary Budget Office and the Parliamentary Budget Officer.

54 Departments

(1) The following Departments of the Parliament are established by this subsection:

(a) the Department of the Senate;

(b) the Department of the House of Representatives.

(2) Such other Departments of the Parliament as are required may be established by resolutions passed by each House of the Parliament.

(3) For the purposes of this Act:

(a) for the joint Department—the Department consists of the Secretary of the Department, together with the Parliamentary Librarian and Parliamentary Service employees assisting the Secretary; and

(b) for any other Department—the Department consists of the Secretary of the Department, together with Parliamentary Service employees assisting the Secretary.

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(4) A Department of the Parliament established under subsection (2) may be abolished by resolutions passed by each House of the Parliament.

54A Change of name of Department

(1) The name of a Department referred to in subsection 54(2) may be changed to a new name by resolutions passed by each House of the Parliament. The change takes effect when the resolutions are passed.

(2) After the former name is changed, a reference to the former name in a law of the Commonwealth, in a contract to which the Commonwealth is a party or in some other instrument of the Commonwealth has effect as if it were a reference to the new name.

(3) The Secretary of the Department whose name was changed remains the Secretary of the newly named Department.

(4) Each Parliamentary Service employee of the Department whose name was changed remains an employee of the newly named Department.

(5) The terms and conditions of service of the Secretary and of those employees are not altered by the change of name.

(6) The functions of the newly named Department are not altered by the change of name unless the resolutions passed by each House of the Parliament declare otherwise.

54B Abolition of Department

If a Department (the ***former Department***) referred to in subsection 54(2) is abolished and its functions conferred on another Department established under that subsection, a reference to the former Department in a law of the Commonwealth, in a contract to which the Commonwealth is a party or in some other instrument of the Commonwealth has effect as if it were a reference to that other Department.

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55 Offices of Clerk of the Senate and Clerk of the House of Representatives

On the commencement of this Act, offices of Clerk of the Senate and Clerk of the House of Representatives are established by this section.

56 Office of Secretary of a Department

(1) This section applies to a Department other than the Department of the Senate and the Department of the House of Representatives.

(2) On the establishment of a Department, an office of Secretary of that Department is established by this subsection.

(3) On the abolition of a Department, the office of Secretary of that Department is abolished by this subsection.

(4) The name of the office of Secretary of a Department is "Secretary of the [*name of Department*]".

57 Roles and responsibilities of Secretaries

Roles of Secretaries

(1) The roles of the Secretary of a Department include, but are not limited to, the following:
   (a) principal adviser to the Presiding Officer on matters relating to the Department;
   (b) leader, providing stewardship within the Department and, in partnership with other Secretaries, across the Parliamentary Service;
   (c) any other role prescribed by the determinations.

Responsibilities of Secretaries

(2) The responsibilities of the Secretary of a Department are as follows:

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(a) to manage the affairs of the Department efficiently, effectively, economically and ethically;
(b) to advise the Presiding Officer about matters relating to the Department;
(c) to implement measures directed at ensuring that the Department complies with the law;
(d) to provide leadership, strategic direction and a focus on results for the Department;
(e) to engage with stakeholders, particularly in relation to the core activities of the Department;
(f) to manage the affairs of the Department in a way that is not inconsistent with the interests of the Parliamentary Service as a whole;
(g) to assist the Presiding Officer to fulfil the Presiding Officer's accountability obligations to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of the Department;
(h) such other responsibilities as are prescribed by the determinations.

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

Note: See, for example, the *Public Governance, Performance and Accountability Act 2013*.

58 Appointment of Clerk of the Senate and Clerk of the House of Representatives

(1) The Clerk of the Senate is to be appointed by the President of the Senate after the President has consulted members of the Senate about the proposed appointment.

(2) The Clerk of the House of Representatives is to be appointed by the Speaker of the House of Representatives after the Speaker has consulted members of that House about the proposed appointment.

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(3) An appointment of a person as the Clerk of the Senate or the Clerk of the House of Representatives is to be for a period of 10 years. The person is not eligible for reappointment.

(4) A person is not to be appointed as the Clerk of the Senate or the Clerk of the House of Representatives unless the Presiding Officer making the appointment is satisfied that the person has extensive knowledge of, and experience in, relevant Parliamentary law, procedure and practice.

(5) If the Clerk of the Senate or the Clerk of the House of Representatives has reached the minimum retiring age, he or she is entitled to retire at any time by notice in writing to the Presiding Officer.

(6) An appointment is not affected by any defect or irregularity in or in connection with the appointment.

59 Appointment of Secretary of a Department

(1) The Secretary of a Department established under subsection 54(2) is to be appointed by the Presiding Officers for a period of 5 years.

(2) The Presiding Officers cannot make an appointment unless they have received a report about the vacancy from the Commissioner.

(3) An appointment is not affected by any defect or irregularity in or in connection with the appointment.

60 Termination of appointment of Clerk of the Senate or Clerk of the House of Representatives

(1) The Senate may, by resolution passed pursuant to a motion of which notice was given at least 6 sitting days before the day on which the resolution is passed, terminate the appointment of the Clerk of the Senate.

(2) The House of Representatives may, by resolution passed pursuant to a motion of which notice was given at least 6 sitting days before

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the day on which the resolution is passed, terminate the appointment of the Clerk of that House.

(3) A resolution terminating the appointment of the Clerk of the Senate or the Clerk of the House of Representatives must state the ground on which the appointment is terminated, which must be one of the following:

(a) the Clerk has been guilty of misbehaviour;

(b) the Clerk is incapable, because of physical or mental incapacity, of performing his or her duties;

(c) the Clerk has become an insolvent under administration.

61 Termination of appointment of Secretary of a Department

(1) The Presiding Officers may, by notice in writing, terminate an appointment of a Secretary of a Department (other than an appointment of the Clerk of the Senate or the Clerk of the House of Representatives) at any time.

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

(2) The Presiding Officers cannot terminate an appointment unless they have received a report about the proposed termination from the Commissioner.

62 Suspension of Clerk of the Senate or Clerk of the House of Representatives

(1) If it appears to the Presiding Officer of a House of the Parliament that a ground exists on which the House could terminate the appointment of the Clerk of the House, the Presiding Officer may, by notice in writing, suspend the Clerk from office.

(2) If the Presiding Officer of a House of the Parliament suspends the Clerk of the House from office, the Presiding Officer must cause a statement of the suspension setting out the ground of the

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suspension to be laid before the House not later than the first sitting day of the House after the day on which the suspension occurs.

(3) The suspension of the Clerk ends on the first occurrence of any one of the following:

(a) the appointment of the Clerk is terminated under section 60;

(b) the House passes a resolution removing the suspension;

(c) the prescribed period has elapsed after the day on which a statement of the suspension is laid before the House under subsection (2).

(4) For the purposes of paragraph (3)(c), the ***prescribed period*** in relation to a particular suspension is:

(a) 5 sitting days of the House concerned; or

(b) if the House concerned has, before those 5 sitting days have elapsed, passed a resolution specifying a greater number of sitting days (not exceeding 10 sitting days) in relation to the suspension—that greater number of sitting days.

(5) The suspension of a person from office as Clerk of the Senate or Clerk of the House of Representatives does not affect any entitlement of the person to be paid remuneration or allowances.

63 Terms and conditions of appointment

(1) The terms and conditions of appointment of the Secretary of a Department are as determined by the Presiding Officers.

(2) For each determination, the Presiding Officers must seek the advice of the Remuneration Tribunal and take that advice into account.

(3) Each determination must be:

(a) published in the *Gazette* within 14 days; and

(b) laid before the appropriate House of the Parliament as soon as practicable;

after the determination is made.

(4) In this section, ***appropriate House*** means:

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(a) in relation to a determination relating to the Clerk of the Senate—the Senate; or
(b) in relation to a determination relating to the Clerk of the House of Representatives—the House of Representatives; or
(c) in relation to a determination relating to any other Secretary—the Senate and the House of Representatives.

64 Acting Secretary

The Presiding Officers may appoint a person to act in the office of Secretary of a Department:

(a) if there is a vacancy in the office, whether or not an appointment has previously been made to the office; or
(b) during any period, or during all periods, when the Secretary is suspended from office, is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

64AA Money payable to Department

There is payable to a Department such money as is appropriated by the Parliament for the purposes of the Department.

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Division 2—Parliamentary Budget Office

Subdivision A—Establishment, functions etc.

64A Department of the Parliamentary Budget Office

(1) The Department of the Parliamentary Budget Office is established as a Department of the Parliament by this subsection.

Note: The Department of the Parliamentary Budget Office is referred to in this Act as the ***Parliamentary Budget Office*** (see section 7).

(2) The Parliamentary Budget Office consists of the Parliamentary Budget Officer, together with Parliamentary Service employees assisting the Parliamentary Budget Officer.

64B Purpose of Parliamentary Budget Office

The purpose of the Parliamentary Budget Office is to inform the Parliament by providing, in accordance with this Division, independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals.

64C Parliamentary Budget Officer

The office of Parliamentary Budget Officer is established by this section.

Note: The Parliamentary Budget Officer is the Secretary of the Parliamentary Budget Office (see section 7).

64D Appropriation of Consolidated Revenue Fund

The Consolidated Revenue Fund is appropriated for the purposes of the Parliamentary Budget Officer and the Parliamentary Budget Office in the financial year starting on 1 July 2011, to the extent of $6,000,000.

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64E Functions of Parliamentary Budget Officer

(1) The Parliamentary Budget Officer has the following functions:

(a) outside the caretaker period for a general election—to prepare policy costings on request by Senators or Members of the House of Representatives under section 64H;

(b) during the caretaker period for a general election—to prepare policy costings on request by authorised members of Parliamentary parties or independent members under section 64J;

(c) to prepare responses (other than policy costings) to requests relating to the budget by Senators or Members of the House of Representatives;

(d) to prepare submissions to inquiries of Parliamentary committees on request by such committees;

(da) after a general election—to report on election commitments of designated Parliamentary parties under section 64MA;

(e) to conduct, on his or her own initiative (including in anticipation of requests referred to in paragraphs (a) to (d)), research on and analysis of the budget and fiscal policy settings.

(2) The Parliamentary Budget Officer's functions under subsection (1) do not include:

(a) preparing economic forecasts; or

(b) preparing budget estimates (whether at the whole-of-government, agency or program level).

Note 1: Parts 5, 6 and 7 of Schedule 1 to the *Charter of Budget Honesty Act 1998* provide for certain economic forecasts and budget estimates to be prepared.

Note 2: The Parliamentary Budget Officer can prepare estimates for the Parliamentary Budget Office: see section 64R.

(3) In performing his or her functions under subsection (1), the Parliamentary Budget Officer must use the economic forecasts and parameters and fiscal estimates contained in the most recent

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relevant reports released under Parts 5, 6 and 7 of Schedule 1 to the *Charter of Budget Honesty Act 1998*.

(4) The Parliamentary Budget Officer must perform his or her functions under subsection (1) only for the purpose of the Parliamentary Budget Office referred to in section 64B.

64F Arrangements for obtaining information from Commonwealth bodies

(1) The Parliamentary Budget Officer may make an arrangement, in writing, with the Head (however described) of a Commonwealth body, or a person authorised by the Head, for the Parliamentary Budget Officer to obtain from the body information and documents relevant to the Parliamentary Budget Officer's functions.

(2) Without limiting subsection (1), an arrangement made under that subsection may make provision for the confidentiality of information disclosed or documents provided in accordance with the arrangement.

Note: See subsection 64V(5).

(3) The Parliamentary Budget Officer must ensure that an arrangement made under subsection (1) is made publicly available.

(4) An arrangement made under subsection (1) is not a legislative instrument.

64G Approaches etc. to be used in preparing policy costings

(1) The Parliamentary Budget Officer may, with the agreement of the responsible Secretaries, issue written principles setting out approaches and costing conventions to be used in preparing policy costings under this Division.

(2) If no principles are in effect under subsection (1), the Parliamentary Budget Officer must prepare policy costings under this Division using approaches and costing conventions recommended in the most recent guidelines issued under

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subclause 30(1) of Schedule 1 to the *Charter of Budget Honesty Act 1998*.

(3) The Parliamentary Budget Officer must ensure that principles issued under subsection (1) are made publicly available.

(4) Principles issued under subsection (1) are not legislative instruments.

64H Requests for costing of policies outside caretaker period

(1) This section applies at times other than during the caretaker period for a general election.

(2) A Senator or a Member of the House of Representatives may request the Parliamentary Budget Officer to prepare a costing of a policy or a proposed policy.

(3) A request under subsection (2):
  (a) must be in writing; and
  (b) must outline fully the policy to be costed, giving relevant details; and
  (c) must state the purpose or intention of the policy; and
  (d) may include a direction to treat the request, the policy costing or any other information relating to the request as confidential.

Note: For confidentiality obligations relating to requests, see subsection 64V(2).

(4) If the Parliamentary Budget Officer needs more information to cost aspects of a policy, he or she may, in writing, ask the person who requested the costing for that information.

(5) A request under subsection (2) may be withdrawn at any time, by notice in writing, by the Senator or the Member of the House of Representatives who made the request.

(6) If the Parliamentary Budget Officer does not have sufficient information, or has not had sufficient time, to prepare a policy

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costing before the next general election, the request for the policy costing is taken to have been withdrawn immediately before the start of the caretaker period for the election.

64J Requests for costing of policies during caretaker period

(1) This section applies during the caretaker period for a general election.

(2) An authorised member of a Parliamentary party may request the Parliamentary Budget Officer to prepare a costing of a publicly announced policy of the Parliamentary party.

(3) A request for a costing of a policy of a Parliamentary party is not to be made under subsection (2) before polling day if a member of that party has, during the same caretaker period, requested the preparation of a costing of that policy, or a substantially similar policy, under clause 29 of Schedule 1 to the *Charter of Budget Honesty Act 1998*.

(4) A request for a costing of a policy of a Parliamentary party is not to be made under subsection (2) on or after polling day if a member of that party has, on or after that day, requested the preparation of a costing of that policy, or a substantially similar policy, under clause 29 of Schedule 1 to the *Charter of Budget Honesty Act 1998*.

(5) An independent member may request the Parliamentary Budget Officer to prepare a costing of a publicly announced policy of the independent member.

(6) A request under subsection (2) or (5) must:
  (a) be in writing; and
  (b) outline fully the policy to be costed, giving relevant details; and
  (c) state the purpose or intention of the policy.

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(7) If the Parliamentary Budget Officer needs more information to cost aspects of a policy, he or she may, in writing, ask the person who requested the costing for that information.

Note: The Parliamentary Budget Officer may also obtain information from Commonwealth bodies for the purpose of costing a policy in response to a request under subsection (2) or (5) (see section 64KA).

(8) An authorised member of a Parliamentary party may, by notice in writing, withdraw a request made under subsection (2) on behalf of the Parliamentary party.

(9) An independent member who made a request under subsection (5) may, by notice in writing, withdraw the request.

64K Caretaker period policy costing requests—interaction with the *Charter of Budget Honesty Act 1998*

If a request is made under subsection 64J(2) for the costing of a policy of a Parliamentary party (the ***first policy***), the Parliamentary Budget Officer:

(a) must ask the responsible Secretaries whether a request has been made under clause 29 of Schedule 1 to the *Charter of Budget Honesty Act 1998* in relation to a policy of the Parliamentary party that is the same as, or substantially similar to, the first policy; and

(b) if a request has been made under clause 29 of that Schedule—must not prepare a costing of the first policy under this Act.

64KA Caretaker period policy costing requests—information-gathering

(1) To help the Parliamentary Budget Officer to prepare a policy costing in response to a request made under subsection 64J(2) or (5) during the caretaker period for a general election, the Parliamentary Budget Officer may request the Head of a Commonwealth body to give information to the Parliamentary Budget Officer.

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(2) The Parliamentary Budget Officer may make a request under subsection (1):

(a) in relation to a policy costing requested before polling day in the election—during the period beginning after the policy costing request was made and ending on the day before polling day; and

(b) in relation to a policy costing requested on or after polling day in the election—during the period beginning after the policy costing request was made and ending at the end of the caretaker period.

(3) If the Head of a Commonwealth body receives a request under subsection (1), the Head must comply with the request in time to allow the information to be taken into account in preparing the relevant policy costing, unless:

(a) it is not practicable to do so; or

(b) it would be unlawful to do so; or

(c) it would require the Head to disclose confidential commercial information; or

(d) it would require the Head to disclose information that could prejudice national security.

(4) If the Head of a Commonwealth body gives information to the Parliamentary Budget Officer in response to a request made under subsection (1), the Head may request that some or all of the information be kept confidential.

Note: For confidentiality obligations relating to requests made under this subsection, see subsections 64V(4A) and (4B).

(5) Nothing in this section is intended to limit any other power of the Parliamentary Budget Officer to obtain information or documents from a Commonwealth body for the purpose of preparing a policy costing in response to a request under subsection 64J(2) or (5).

Note: The Parliamentary Budget Officer may obtain information or documents from a Commonwealth body in accordance with an arrangement in force under subsection 64F(1).

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(6) Nothing in this section creates rights or duties that are enforceable in judicial or other proceedings.

64L Caretaker period policy costing requests made before polling day—public release of requests and costings

(1) This section applies in relation to a policy costing request that is made under subsection 64J(2) or (5) before polling day during the caretaker period for a general election.

Note: Section 64LA applies in relation to a policy costing request that is made on or after polling day during the caretaker period for a general election in circumstances where the caretaker period continues after that day.

(2) As soon as practicable after the request has been made and before polling day, the Parliamentary Budget Officer must publicly release the request and a costing of the policy.

Note: The obligation in this subsection does not apply to a request that has been withdrawn under subsection 64J(8) or (9).

(3) If the Parliamentary Budget Officer does not have sufficient information, or has not had sufficient time, to prepare a policy costing and publicly release the request and the costing before polling day:

(a) the Parliamentary Budget Officer must publicly release a statement to that effect before that day; and

(b) the request is taken to have been withdrawn on that day; and

(c) the Parliamentary Budget Officer is not obliged or authorised to take any further action in relation to the request on or after that day.

64LA Caretaker period policy costing requests made on or after polling day—public release of requests and costings

(1) This section applies in relation to a policy costing request that is made under subsection 64J(2) or (5) on or after polling day during the caretaker period for a general election in circumstances where the caretaker period continues after that day.

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(2) As soon as practicable after the request has been made, the Parliamentary Budget Officer must publicly release the request and a costing of the policy.

Note: The obligation in this subsection does not apply to a request that has been withdrawn under subsection 64J(8) or (9).

(3) If the Parliamentary Budget Officer does not have sufficient information, or has not had sufficient time, to prepare a policy costing and publicly release the request and the costing before the end of the caretaker period:

(a) the Parliamentary Budget Officer must publicly release a statement to that effect as soon as practicable after the end of the caretaker period; and

(b) the request is taken to have been withdrawn at the end of the caretaker period; and

(c) the Parliamentary Budget Officer is not obliged or authorised to take any further action in relation to the request after the end of the caretaker period.

64M Requests relating to the budget (other than requests for policy costings)

A request referred to in paragraph 64E(1)(c) may include a direction to treat the request, the response to the request or any other information relating to the request as confidential.

Note: For confidentiality obligations relating to requests, see subsection 64V(2).

64MA Post-election report of election commitments

(1) The Parliamentary Budget Officer must prepare a report (the ***post-election report***) setting out, for each designated Parliamentary party:

(a) costings of all the election commitments of that party that the Parliamentary Budget Officer, in his or her best professional judgement, reasonably believes would have a material impact on the Commonwealth budget sector and Commonwealth

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general government sector fiscal estimates for the current financial year and the following 3 financial years; and

(b) the total combined impact those election commitments would have on the Commonwealth budget sector and Commonwealth general government sector fiscal estimates for the current financial year and the following 3 financial years.

Note 1: The post-election report must be prepared in accordance with section 64MAA.

Note 2: The Parliamentary Budget Officer may obtain information from Commonwealth bodies for the purpose of preparing the post-election report (see section 64MB).

Note 3: The post-election report must be publicly released (see section 64MC).

(1A) The Parliamentary Budget Officer must prepare the post-election report before the later of:

(a) 30 days after the end of the caretaker period for the general election to which the report relates; and

(b) 7 days before the first sitting day of either or both Houses of the Parliament after the general election to which the report relates.

(2) For the purpose of preparing the post-election report, the Parliamentary Budget Officer may treat 2 or more Parliamentary parties as a single designated Parliamentary party if:

(a) those parties would, if they had been a single political party during the caretaker period for the election, have been a designated Parliamentary party, as defined in section 7, during that period; and

(b) those parties, in writing, jointly request the Parliamentary Budget Officer to do so.

(3) Each designated Parliamentary party must, before 5 pm on the day before polling day in the election, give the Parliamentary Budget Officer a list, in writing, of the policies that the party has publicly announced it intends to seek to have implemented after the election.

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(4) On the day after polling day in the election, the Parliamentary Budget Officer must publicly release:

(a) each list of policies given to the Parliamentary Budget Officer under subsection (3); and

(b) if a designated Parliamentary party has not given the Parliamentary Budget Officer a list of policies under subsection (3)—a statement to this effect.

(5) Within 3 days after the end of the caretaker period for the election, the Parliamentary Budget Officer must prepare, for each designated Parliamentary party, a list in writing of all the election commitments of that party that the Parliamentary Budget Officer, in his or her best professional judgement, reasonably believes would have a material impact on the Commonwealth budget sector and Commonwealth general government sector fiscal estimates for the current financial year and the following 3 financial years.

(6) In preparing the list of election commitments of a designated Parliamentary party under subsection (5), the Parliamentary Budget Officer must have regard to:

(a) any list of policies given to the Parliamentary Budget Officer by the party under subsection (3); and

(b) any public announcements made by the party before or during the caretaker period for the election.

However, the Parliamentary Budget Officer is not required to include any of those policies or public announcements in the list of election commitments prepared by the Parliamentary Budget Officer under subsection (5).

(7) As soon as practicable after preparing the list of election commitments of a designated Parliamentary party under subsection (5), but not later than 3 days after the end of the caretaker period for the election, the Parliamentary Budget Officer must:

(a) give the list to the party; and

(b) if the party has given the Parliamentary Budget Officer a list of policies under subsection (3) and the Parliamentary Budget Officer's list of election commitments is different

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from the party's list of policies—give the party a statement explaining the reasons for the difference.

(8) Within 3 days after a designated Parliamentary party receives the list of election commitments under subsection (7), the party must give the Parliamentary Budget Officer comments on the list.

64MAA Requirements for post-election report of election commitments

(1) The Parliamentary Budget Officer must comply with this section in preparing the post-election report for a general election required by subsection 64MA(1).

(2) The Parliamentary Budget Officer may, but is not required to, take account of any comments given to the Parliamentary Budget Officer under subsection 64MA(8).

(3) The post-election report must:
  (a) set out any comments given to the Parliamentary Budget Officer by a designated Parliamentary party under subsection 64MA(8); and
  (b) if a designated Parliamentary party did not give the Parliamentary Budget Officer any comments under that subsection—include a statement to that effect.

(4) The post-election report:
  (a) must not include costings of election commitments other than:
    (i) those in the list prepared by the Parliamentary Budget Officer under subsection 64MA(5); and
    (ii) those referred to in any comments given to the Parliamentary Budget Officer under subsection 64MA(8); and
  (b) in relation to each election commitment for which a costing is included in the report:
    (i) must include an explanation of the reason the Parliamentary Budget Officer decided that the

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commitment was an election commitment (as defined in section 7) and that a costing of the election commitment should be included in the report; and

(ii) must state the source (or sources) of information from which the Parliamentary Budget Officer identified the election commitment.

(5) The post-election report does not have to include information that the Parliamentary Budget Officer considers should not be included because:

(a) it is confidential commercial information; or

(b) its disclosure in the report could prejudice national security.

Note: The post-election report must not include any information given to the Parliamentary Budget Officer by the Head of a Commonwealth body under subsection 64MB(4), if the Head requested that the information be kept confidential under subsection 64MB(5) (see subsection 64V(4A)).

(6) If the Parliamentary Budget Officer does not have sufficient information, or has not had sufficient time, to assess the cost of any election commitment, the Parliamentary Budget Officer may reflect this in the post-election report.

64MB Post-election report of election commitments—information-gathering

(1) If the Parliamentary Budget Officer needs more information about an election commitment of a designated Parliamentary party for the purpose of preparing the post-election report required by subsection 64MA(1), the Parliamentary Budget Officer may ask any of the following for that information:

(a) an authorised member of the Parliamentary party that made the election commitment;

(b) any other person who the Parliamentary Budget Officer believes, on reasonable grounds, has been associated with the calculation, review or announcement of the financial implications of the election commitment.

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(2) To help the Parliamentary Budget Officer to prepare the post-election report, the Parliamentary Budget Officer may request the Head of a Commonwealth body to give information to the Parliamentary Budget Officer.

(3) The Parliamentary Budget Officer may make a request under subsection (2) during the period beginning at the start of the caretaker period for the election to which the post-election report relates and ending on the day on which the post-election report is publicly released under subsection 64MC(1).

(4) If the Head of a Commonwealth body receives a request under subsection (2), the Head must comply with the request in time to allow the information to be taken into account in preparing the post-election report, unless:

(a) it is not practicable to do so; or

(b) it would be unlawful to do so; or

(c) it would require the Head to disclose confidential commercial information; or

(d) it would require the Head to disclose information that could prejudice national security.

(5) If the Head of a Commonwealth body gives information to the Parliamentary Budget Officer in response to a request made under subsection (2), the Head may request that some or all of the information be kept confidential.

Note: For confidentiality obligations relating to requests made under this subsection, see subsections 64V(4A) and (4B).

(6) As soon as practicable after the end of the caretaker period for the election to which the post-election report relates, the responsible Secretaries must give the Parliamentary Budget Officer any policy costings that have been prepared during the caretaker period under Part 8 of Schedule 1 to the *Charter of Budget Honesty Act 1998*.

(7) If:

(a) a policy costing is given to the Parliamentary Budget Officer under subsection (6); and

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(b) the policy is an election commitment that is to be included in the post-election report;

the Parliamentary Budget Officer may include the policy costing in the report. The Parliamentary Budget Officer is not required to prepare, but is not prevented from preparing, a new costing of the policy for inclusion in the post-election report.

(8) Nothing in this section is intended to limit any other power of the Parliamentary Budget Officer to obtain information or documents from a Commonwealth body for the purpose of preparing the post-election report.

Note: The Parliamentary Budget Officer may obtain information or documents from a Commonwealth body in accordance with an arrangement in force under subsection 64F(1).

(9) Nothing in this section creates rights or duties that are enforceable in judicial or other proceedings.

64MC Post-election report of election commitments—public release

(1) The Parliamentary Budget Officer must publicly release the post-election report required by subsection 64MA(1) as soon as practicable after preparing the report and before the later of:

(a) 30 days after the end of the caretaker period for the general election to which the report relates; and

(b) 7 days before the first sitting day of either or both Houses of the Parliament after the general election to which the report relates.

(2) At least 48 hours before publicly releasing the post-election report under subsection (1), the Parliamentary Budget Officer must give each designated Parliamentary party a copy of the part of the report setting out the costings of that party's election commitments and the information required under paragraph 64MA(1)(b) in relation to those election commitments.

(3) The part of the post-election report given to a designated Parliamentary party under subsection (2) must be accompanied by a notice:

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(a) informing the designated Parliamentary party that the part of the report given to the party must be kept confidential; and

(b) requesting the party to give the Parliamentary Budget Officer any comments in relation to the part of the report as soon as practicable.

(4) If the Parliamentary Budget Officer is given any comments in relation to the post-election report under paragraph (3)(b), the Parliamentary Budget Officer may, if it is practicable to do so:

(a) include the comments in the report; or

(b) revise the report to take account of the comments.

64N Responsibility for managing Parliamentary Budget Office

(1) The Parliamentary Budget Officer, under the Presiding Officers, is responsible for managing the Parliamentary Budget Office and must advise the Presiding Officers in matters relating to the operation and administration of the Parliamentary Budget Office.

(2) The Parliamentary Budget Officer must assist the Presiding Officers to fulfil the Presiding Officers' accountability obligations to the Parliament and provide factual information, as required by the Parliament, in relation to the operation and administration of the Parliamentary Budget Office.

64P Restrictions on directions to Parliamentary Budget Officer

The Parliamentary Budget Officer is not subject to direction by a Presiding Officer in relation to the performance of a function under subsection 64E(1).

64Q Annual work plan for Parliamentary Budget Office

(1) The Parliamentary Budget Officer must, in consultation with the Joint Committee of Public Accounts and Audit, prepare a work plan for the Parliamentary Budget Office for each financial year.

(2) The work plan must be prepared:

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(a) for the financial year in which the first Parliamentary Budget Officer is appointed—before the end of 3 months after the appointment; and

(b) for each following financial year—before 1 October in the financial year.

(3) The work plan must set out:

(a) the priorities of the Parliamentary Budget Office for the financial year; and

(b) protocols for the allocation of the resources of the Parliamentary Budget Office during the financial year.

(4) The Parliamentary Budget Officer must ensure that the work plan is made publicly available.

(5) A work plan prepared under subsection (1) is not a legislative instrument.

64R Joint Committee of Public Accounts and Audit may request draft estimates

(1) The Joint Committee of Public Accounts and Audit (the ***Committee***) may request the Parliamentary Budget Officer to submit to the Committee draft estimates for the Parliamentary Budget Office for a financial year before the budget for that financial year.

(2) The Parliamentary Budget Officer must comply with the request in time to allow the Committee to consider the draft estimates and make recommendations on them before the budget.

64S Duties of Joint Committee of Public Accounts and Audit

(1) The Joint Committee of Public Accounts and Audit (the ***Committee***) has the following duties:

(a) to consider work plans for the Parliamentary Budget Office prepared under section 64Q;

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(b) to consider draft estimates for the Parliamentary Budget Office submitted under section 64R;

(c) to make recommendations to both Houses of Parliament, and to the Presiding Officers, on draft estimates referred to in paragraph (b);

(d) to consider:

(i) the operations of the Parliamentary Budget Office; and

(ii) the resources of the Parliamentary Budget Office, including funding, staff and information technology;

(e) to report to both Houses of the Parliament on any matter arising out of the Committee's consideration of the matters referred to in paragraph (d), or on any other matter relating to the Parliamentary Budget Officer's functions and powers, that the Committee considers should be drawn to the attention of the Parliament.

Note: These duties are additional to the duties of the Joint Committee of Public Accounts and Audit under section 8 of the *Public Accounts and Audit Committee Act 1951*.

(2) Nothing in subsection (1) authorises the Committee to direct the activities of the Parliamentary Budget Officer.

64T Review of operations of Parliamentary Budget Office

(1) After a general election, the Joint Committee of Public Accounts and Audit (the ***Committee***) may request the Parliamentary Budget Officer to cause an independent review of the operations of the Parliamentary Budget Office to be conducted in accordance with the request.

(2) The request must specify:

(a) the person or body who is to conduct the review; and

(b) the scope of the review; and

(c) the manner in which the review is to be conducted; and

(d) that a report of the review is to be provided to the Committee.

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(3) In making the request, the Committee must have regard to the resources of the Parliamentary Budget Office.

(4) The review must be completed within 9 months after the end of the caretaker period for the election.

(5) The Committee must table the report of the review in each House of the Parliament as soon as practicable after receiving it.

64U Public release of policy costings etc.

The Parliamentary Budget Officer must, subject to section 64V, ensure that the following information and documents are made publicly available:

(a) policy costing requests made under section 64H or 64J, and the policy costings prepared by the Parliamentary Budget Officer in response to those requests;

(b) any withdrawals of policy costing requests made under section 64H or 64J;

(c) requests relating to the budget referred to in paragraph 64E(1)(c), and the responses to those requests prepared by the Parliamentary Budget Officer;

(d) requests by Parliamentary committees referred to in paragraph 64E(1)(d), and the responses to those requests prepared by the Parliamentary Budget Officer;

(e) the results of any other work done in the performance of the functions of the Parliamentary Budget Officer under subsection 64E(1).

Note: See also:

(a) subsections 64L(2) and 64LA(2), which require policy costings prepared during a caretaker period for a general election to be publicly released; and

(b) section 64MC, which requires a post-election report prepared under section 64MA to be publicly released.

64V Confidentiality

(1) In this section:

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entrusted person means:

(a) the Parliamentary Budget Officer; or

(b) a Parliamentary Service employee assisting the Parliamentary Budget Officer; or

(c) a person acting under the direction or authority of the Parliamentary Budget Officer.

(2) An entrusted person must not disclose information relating to a request referred to in paragraph 64E(1)(a) or (c) if the request included a direction under paragraph 64H(3)(d) or section 64M to treat the information as confidential.

(3) Subsection (2) does not prevent an entrusted person from disclosing information relating to a request for the purposes of complying with the request.

(4) Despite subsection (2) but subject to subsection (5), the Parliamentary Budget Officer may make a public statement to clarify a matter relating to the response to a request referred to in paragraph 64E(1)(a) or (c) if:

(a) the request included a direction under paragraph 64H(3)(d) or section 64M to treat information relating to the request as confidential; and

(b) the Parliamentary Budget Officer is satisfied that it is necessary in the public interest to make the statement.

(4A) An entrusted person must not disclose information given to the Parliamentary Budget Officer by the Head of a Commonwealth body under subsection 64KA(3) or 64MB(4) if the Head requested, under subsection 64KA(4) or 64MB(5) (as the case requires), that the information be kept confidential.

(4B) Subsection (4A) does not prevent an entrusted person from disclosing information referred to in that subsection for the purpose for which the information was obtained, but the information must not be further disclosed.

(5) An entrusted person must not disclose information received by the Parliamentary Budget Officer in accordance with an arrangement

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under subsection 64F(1) if the disclosure of the information would contravene a confidentiality provision in the arrangement.

Subdivision B—Parliamentary Budget Officer's appointment, conditions etc.

64X Appointment of Parliamentary Budget Officer

(1) The Parliamentary Budget Officer is to be appointed by the Presiding Officers, for a term of 4 years.

Note: The Presiding Officers must obtain the approval of the Joint Committee for Public Accounts and Audit before appointing a person as the Parliamentary Budget Officer (see section 64XA).

(2) The Parliamentary Budget Officer holds office on a full-time basis.

(3) A Parliamentary Budget Officer is eligible for reappointment, but must not hold office for a total of more than 8 years.

(4) An appointment is not affected by any defect or irregularity in or in connection with the appointment.

64XA Approval of proposed appointment by Joint Committee of Public Accounts and Audit

(1) The Presiding Officers must not make an appointment under subsection 64X(1) unless:

(a) the Presiding Officers have referred the proposed appointment to the Joint Committee of Public Accounts and Audit (the ***Committee***) for approval; and

(b) the Committee has approved the proposal.

(2) A referral under paragraph (1)(a) must be in writing and may be withdrawn by the Presiding Officers at any time.

(3) If the Presiding Officers refer a proposed appointment to the Committee for approval under paragraph (1)(a), the Committee must:

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(a) approve or reject the proposal within 14 days after receiving it; or

(b) notify the Presiding Officers under subsection (5).

(4) The Committee may request the Presiding Officers to provide further information in relation to the proposal.

(5) The Committee may notify the Presiding Officers within 14 days after receiving a proposal that it needs more time to consider the proposal. If the Committee does so, the Committee must approve or reject the proposal within 44 days after receiving it.

(6) The decision to approve or reject a proposal is to be by a majority of the members of the Committee for the time being holding office.

(7) If the Committee does not make a decision on a proposal by the required time, the Committee is taken, at that time, to have approved the proposal.

(8) The Committee must notify the Presiding Officers of its decision on a proposal as soon as practicable after making the decision.

(9) A notification under this section must be in writing.

(10) The Committee must report to both Houses of the Parliament on its decision on a proposal.

64XB Remuneration of Parliamentary Budget Officer

(1) The Parliamentary Budget Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Parliamentary Budget Officer is to be paid the remuneration that is determined by the Presiding Officers.

(2) The Parliamentary Budget Officer is to be paid the allowances that are determined by the Presiding Officers.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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(4) A determination made by the Presiding Officers under subsection (1) or (2) must be:
  (a) published in the *Gazette* within 14 days after it is made; and
  (b) laid before each House of the Parliament as soon as practicable after it is made.

64XC Leave of absence

(1) The Parliamentary Budget Officer has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Presiding Officers may grant the Parliamentary Budget Officer leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Presiding Officers determine.

64XD Resignation

(1) The Parliamentary Budget Officer may resign by giving the Presiding Officers a written resignation.

(2) The resignation takes effect on the day it is received by the Presiding Officers or, if a later day is specified in the resignation, on that later day.

64XE Removal from office

(1) The Presiding Officers may remove the Parliamentary Budget Officer from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Presiding Officers praying for the removal of the Parliamentary Budget Officer on the ground of misbehaviour or physical or mental incapacity.

(2) The Presiding Officers must remove the Parliamentary Budget Officer from office if the Parliamentary Budget Officer becomes an insolvent under administration.

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64XF Acting appointments

The Presiding Officers may, by written instrument, appoint a person to act as the Parliamentary Budget Officer:

(a) during a vacancy in the office of Parliamentary Budget Officer (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Parliamentary Budget Officer:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

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Division 3—Annual report

65 Annual report

(1) After the end of each financial year:

(a) the Clerk of the Senate must give a report to the President of the Senate, for presentation to the Senate, on the activities of the Department of the Senate during the year; and

(b) the Clerk of the House of Representatives must give a report to the Speaker of that House, for presentation to that House, on the activities of the Department of the House of Representatives during the year; and

(c) the Secretary of each other Department must give a report to the President of the Senate and the Speaker of the House of Representatives, for presentation to each House of the Parliament, on the activities of that Department during the year.

(2) A report made under subsection (1) is to be prepared in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.

(3) After the end of each financial year, the Parliamentary Librarian must give a report to the Presiding Officers on the performance of the Parliamentary Librarian's functions during the year. The Parliamentary Librarian's report must be included in the report on the activities of the joint Department made under paragraph (1)(c).

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Part 7A—Protection of information

65AA Protection of information—Commissioner's functions etc.

Definitions

(1) In this section:

entrusted person means any of the following:

(a) the Commissioner;

(b) a delegate of the Commissioner;

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

(d) a member of staff assisting the Commissioner.

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

(a) paragraph 40(1)(b) or (c); or

(b) section 41; or

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

Prohibition on disclosure or other use of protected information

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

Note: Section 122.4 of the *Criminal Code* creates an offence in relation to the disclosure of information by Commonwealth officers.

Authorised disclosure or other use of protected information

(3) An entrusted person may make a record of, disclose or otherwise use protected information for the purposes of, or in connection

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with, the performance of functions or duties, or the exercise of powers, under this Act or the determinations.

Authorised disclosure of protected information by the Commissioner

(4) The Commissioner may disclose protected information in a report prepared for purposes connected with the performance of the functions, or the exercise of the powers, of the Commissioner under this Act or the determinations, if the Commissioner is satisfied that the disclosure is necessary for the purpose of setting out the grounds for the conclusions and recommendations contained in the report.

(5) Subject to subsection (6), the Commissioner may disclose protected information to a person, or to the public or a section of the public, if the Commissioner is satisfied that:

(a) the disclosure:

(i) is in the interests of a Department or a person; or

(ii) is in the public interest; and

(b) the disclosure is not likely to interfere with a review or inquiry under this Act or the determinations.

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

Compellability of entrusted persons to give evidence

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

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

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

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65AB Protection of information—Merit Protection Commissioner's functions etc.

Definitions

(1) In this section:

entrusted person means any of the following:

(a) the Merit Protection Commissioner;

(aa) a delegate of the Merit Protection Commissioner;

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

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

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

(e) any other person prescribed by the determinations for the purposes of this paragraph.

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

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

(a) subsection 48(1) or (2); or

(b) section 48A; or

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

Prohibition on disclosure or other use of protected information

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

Note: Section 122.4 of the *Criminal Code* creates an offence in relation to the disclosure of information by Commonwealth officers.

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Authorised disclosure or other use of protected information

(3) An entrusted person may make a record of, disclose or otherwise use protected information for the purposes of, or in connection with, the performance of functions or duties, or the exercise of powers, under this Act or the determinations.

Authorised disclosure of protected information by the Merit Protection Commissioner

(4) The Merit Protection Commissioner may disclose protected information in a report prepared for purposes connected with the performance of the functions, or the exercise of the powers, of the Merit Protection Commissioner under this Act or the determinations, if the Merit Protection Commissioner is satisfied that the disclosure is necessary for the purpose of setting out the grounds for the conclusions and recommendations contained in the report.

(5) Subject to subsection (6), the Merit Protection Commissioner may disclose protected information to a person, or to the public or a section of the public, if the Merit Protection Commissioner is satisfied that:

(a) the disclosure:

(i) is in the interests of a Department or a person; or

(ii) is in the public interest; and

(b) the disclosure is not likely to interfere with a review or inquiry under this Act or the determinations.

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

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Compellability of entrusted persons to give evidence

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

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

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

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

(c) paragraph 48(1)(a), (b), (c), (d) or (e); or

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

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

Competence of certain entrusted persons to give evidence

(8) A person who is, or was, a prescribed entrusted person is not competent, and cannot be compelled, to disclose protected information in any proceeding:

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

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

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

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65AC Giving information or producing documents to Commissioner not admissible in evidence etc.

Application

(1) This section applies if:

(a) either:

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

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

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

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

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

(a) paragraph 40(1)(b) or (c); and

(b) section 41; and

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

Giving information or producing document not admissible in evidence in certain proceedings

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

(a) contravenes any other law; or

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(b) might tend to incriminate the person or make the person liable to a penalty; or

(c) discloses legal advice given to a Presiding Officer or a Department; or

(d) discloses a communication between a person performing functions or duties, or exercising powers, in a Department and another person or body, being a communication protected against disclosure by legal professional privilege; or

(e) otherwise acts contrary to the public interest;

the giving of the information or the production of the document is not admissible in evidence against the person in proceedings (other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act).

Person not liable to penalty

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

Disclosure of personal information is authorised for purposes of Privacy Act

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

Legal professional privilege not affected

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

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65AD Giving information or producing documents to Merit Protection Commissioner not admissible in evidence etc.

Application

(1) This section applies if:

(a) either:

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

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

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

(c) the person gives the information or produces the document to the Merit Protection Commissioner.

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

(a) sections 48 and 48A; and

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

Giving information or producing document not admissible in evidence in certain proceedings

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

(a) contravenes any other law; or

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(b) might tend to incriminate the person or make the person liable to a penalty; or

(c) discloses legal advice given to a Presiding Officer or a Department; or

(d) discloses a communication between a person performing functions or duties, or exercising powers, in a Department and another person or body, being a communication protected against disclosure by legal professional privilege; or

(e) otherwise acts contrary to the public interest;

the giving of the information or the production of the document is not admissible in evidence against the person in proceedings (other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act).

Person not liable to penalty

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

Disclosure of personal information is authorised for purposes of Privacy Act

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

Legal professional privilege not affected

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

65AE Release of personal information

The determinations:

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

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

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Part 8—Miscellaneous

65A Security Management Board

(1) A Security Management Board is established by this section.

(2) The Board consists of:

(a) the Secretary of the joint Department, or an SES employee of that department nominated by the Presiding Officers in writing; and

(b) an SES employee of the Department of the Senate nominated by the President of the Senate in writing; and

(c) an SES employee of the Department of the House of Representatives nominated by the Speaker of the House of Representatives in writing; and

(d) either:

(i) the Commissioner of the Australian Federal Police; or

(ii) a Deputy Commissioner of the Australian Federal Police or a senior executive AFP employee (within the meaning of the *Australian Federal Police Act 1979*) who is nominated by the Presiding Officers in writing.

(3) The Board may, with the approval in writing of the Presiding Officers:

(a) invite other members of the Parliamentary Service to attend its meetings; and

(b) invite the heads of other organisations to attend or be represented at its meetings.

(4) The Presiding Officers will appoint a Board member to chair meetings of the Board.

(5) The function of the Board is to provide advice as required to the Presiding Officers on security policy, and the management or operation of security measures, for Parliament House.

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66 Payments in special circumstances

(1) The Presiding Officers may authorise the making of payments to a person under subsection (2) if the Presiding Officers consider it appropriate to do so because of special circumstances that relate to, or arise out of:

(a) the payee's employment by the Commonwealth; or

(b) another person's employment by the Commonwealth.

(2) The Presiding Officers may authorise the making of any of the following payments:

(a) one or more payments of an amount or amounts specified in the authorisation (or worked out in accordance with the authorisation);

(b) periodical payments of an amount specified in the authorisation (or worked out in accordance with the authorisation), during a period specified in the authorisation (or worked out in accordance with the authorisation).

(3) Payments may be authorised under this section even though the payments would not otherwise be authorised by law or required to meet a legal liability.

(4) An authorisation cannot be made under this section if it would involve, or be likely to involve, a total amount exceeding the amount prescribed by regulations made for the purposes of subsection 73(4) of the *Public Service Act 1999*.

(5) Conditions may be attached to payments under this section. If a condition is breached, the payment may be recovered by the Commonwealth as a debt in a court of competent jurisdiction.

Note: Payments under this section are to be made out of money appropriated by the Parliament.

67 Attachment of salaries to satisfy judgment debts

(1) The determinations:

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(a) may provide for deductions to be made from the salary of a Secretary, the Parliamentary Librarian or a Parliamentary Service employee in order to satisfy a judgment debt; and

(b) may prescribe fees payable in connection with such deductions.

(2) In this section:

judgment debt includes interest on a judgment debt.

68A Departments and office holders not prescribed authorities for Freedom of Information Act purposes

None of the following is a prescribed authority for the purposes of the *Freedom of Information Act 1982*:

(a) a Department of the Parliament that is established under this Act;

(b) a person who holds, or performs the duties of, an office established under this Act.

69 Positions

(1) A Secretary may, in writing, create positions in the relevant Department.

(2) A Secretary may from time to time nominate any Parliamentary Service employee in the relevant Department to occupy a position in that Department, but does not have to do so for all Parliamentary Service employees in that Department.

(3) A provision of any Act that applies to Parliamentary Service employees who are nominated under this section to occupy a position applies in the same way to Parliamentary Service employees who are not nominated under this section to occupy a position.

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70 Delegations

(1AA) The Commissioner may, in writing, delegate to a former senior official any of the Commissioner's powers or functions under paragraph 40(1)(c).

(1AB) The Merit Protection Commissioner may, in writing, delegate any of the Merit Protection Commissioner's powers or functions under this Act (other than this section) to:

(a) an APS employee made available to the Merit Protection Commissioner by an Agency Head (within the meaning of the *Public Service Act 1999*); or

(b) a Parliamentary Service employee made available to the Merit Protection Commissioner by the Secretary of the Department in which the employee is employed.

(1) A Secretary may, in writing, delegate to a Parliamentary Service employee any of the Secretary's powers or functions under this Act (other than this section).

(1A) A Secretary may, in writing, delegate to the Parliamentary Librarian any of the Secretary's powers or functions under this Act (other than this section).

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

(3) If a Parliamentary Service employee (the ***first delegate***) to whom powers or functions are delegated under subsection (1) is an SES employee or acting SES employee, the first delegate may, in writing, delegate any of those powers or functions to another Parliamentary Service employee (the ***second delegate***). However, if the first delegate is subject to directions in relation to the exercise of a power or function delegated under this subsection, the first delegate must give corresponding directions to the second delegate.

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(3A) If powers or functions are delegated under subsection (1A), the Parliamentary Librarian may, in writing, delegate any of those powers or functions to a Parliamentary Service employee. However, if the Parliamentary Librarian is subject to directions in relation to the exercise of a power or function delegated under this subsection, the Parliamentary Librarian must give corresponding directions to the Parliamentary Service employee concerned.

(4) A power or function that is exercised or performed by a person under a delegation under subsection (3) or (3A) is taken, for the purposes of this Act, to have been exercised or performed by the person who originally delegated the corresponding power or function under subsection (1) or (1A).

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

(6) A person (the ***delegate***) to whom the Merit Protection Commissioner has delegated powers or functions under subsection (1AB) is not subject to direction by any person other than the Merit Protection Commissioner in relation to the delegate's exercise of the delegated powers or functions.

(7) A power or function that is exercised by an APS employee under a delegation under subsection (1AB) is taken, for the purposes of the Code of Conduct (within the meaning of the *Public Service Act 1999*), to have been exercised by the APS employee in connection with APS employment (within the meaning of that Act).

(8) In this section:

former senior official means:

(a) a person who held, but no longer holds, an office or appointment under an Act; or

(b) a person who was, but is no longer, an SES employee, and who does not hold an office or appointment under an Act; or

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(c) a person who was, but is no longer, an SES employee within the meaning of the *Public Service Act 1999*, and who does not hold an office or appointment under an Act.

70A Immunity from civil proceedings

Commissioner's functions

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

(a) the Commissioner;

(b) a delegate of the Commissioner;

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

(d) a member of staff assisting the Commissioner;

in relation to anything done, or omitted to be done, in good faith by the person in connection with the performance or purported performance of functions or duties, or the exercise or purported exercise of powers, conferred by:

(e) paragraph 40(1)(b) or (c); or

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

Merit Protection Commissioner's functions

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

(a) the Merit Protection Commissioner;

(aa) a delegate of the Merit Protection Commissioner;

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

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

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

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(e) any other person prescribed by the determinations for the purposes of this paragraph;

in relation to anything done, or omitted to be done, in good faith by the person in connection with the performance or purported performance of functions or duties, or the exercise or purported exercise of powers, conferred by this Act or the determinations.

71 Determinations

(1) The Presiding Officers, after consulting the Commissioner, may, by legislative instrument, make determinations prescribing matters:

(a) required or permitted by this Act (other than Part 9) to be prescribed by determinations; or

(b) necessary or convenient to be prescribed by determinations for carrying out or giving effect to this Act (other than Part 9).

(2) The determinations may prescribe penalties of not more than 50 penalty units for offences against the determinations.

(3) The determinations may make provision, in relation to a matter that may be prescribed by the determinations, by applying, adopting or incorporating, with or without modification, provisions of regulations in force at a particular time, or as in force from time to time, under the *Public Service Act 1999*.

(4) Determinations made for the purposes of sections 22 and 33 must apply, adopt or incorporate to the maximum extent possible regulations made for the purposes of sections 22 and 33, respectively, of the *Public Service Act 1999*.

(5) Subsection (4) does not, by implication, limit subsection (3).

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Part 9—Transitional provisions

72 Interpretation

In this Part, unless the contrary intention appears:

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

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

classification includes a level.

commencing time means the time when this Act commences.

continuing employee means a person who was a continuing employee in a former Parliamentary Department for the purposes of Division 10 of Part III of the old Act immediately before the commencing time.

continuing SES officer means a person who was an SES officer in a former Parliamentary Department immediately before the commencing time.

corresponding new Department, means:

(a) in relation to a former Parliamentary Department—the Department that corresponds to the former Parliamentary Department; or

(b) in relation to a person who was an old Act officer or old Act employee—the Department that corresponds to the former Parliamentary Department in which the person was an old Act officer or old Act employee immediately before the commencing time.

determinations means determinations under this Part.

eligible public employment means eligible public employment within the meaning of Part IV of the old Act.

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first-tier person means a person:

(a) to whom:

(i) Division 2 of Part IV of the old Act applied immediately before the commencing time; or

(ii) the *Officers' Rights Declaration Act 1928* applied immediately before the commencing time because of section 87TA of the old Act; and

(b) who was an officer in a former Parliamentary Department immediately before the Division referred to in subparagraph (a)(i) or the Act referred to in subparagraph (a)(ii) began to apply to him or her.

former Parliamentary Department means a Parliamentary Department within the meaning of section 9B of the old Act.

Merit Protection Act means the *Merit Protection (Australian Government Employees) Act 1984*.

non-SES officer means a person who was an officer under the old Act, other than an SES officer.

old Act means the *Public Service Act 1922*.

old Act employee means an employee within the meaning of the old Act.

old Act officer means an officer within the meaning of the old Act.

pre-commencement misconduct means conduct of an old Act officer or old Act employee before the commencing time that was misconduct for the purposes of Subdivision C, D or E of Division 6 of Part III of the old Act.

second-tier person means:

(a) a person to whom Division 3 of Part IV of the old Act applied immediately before the commencing time; or

(b) a person who becomes a second-tier person under subsection 77(6) of this Act.

statutory instrument means:

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(a) a law of the Commonwealth (other than this Act); or
(b) a law of a Territory; or
(c) an instrument having effect under a law referred to in paragraph (a) or (b).

term employee means a person who, immediately before the commencing time was:

(a) a short-term or fixed-term employee in a former Parliamentary Department for the purposes of Division 10 of Part III of the old Act; or
(b) a person employed in a former Parliamentary Department under section 82AG of the old Act.

transitional determination means a determination under subsection 9(7A) or section 82D of the old Act that was in force immediately before the commencing time, subject to any amendments that are prescribed by the determinations under this Part.

transitional period, in relation to a first-tier person, means the period starting at the commencing time and ending at the earliest of the following times:

(a) the end of the period prescribed by the determinations for the purposes of this paragraph;
(b) the time when the person ceases to be engaged in eligible public employment;
(c) the time when the person resigns or retires as a Parliamentary Service employee;
(d) the end of the relevant period (as defined in subsection 87D(5) of the old Act).

73 Operation of Part

(1) This Part has effect despite anything in Parts 3 to 8.

(2) Except where this Part expressly provides otherwise, this Act applies to a person who is taken, under this Part, to have been

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appointed or engaged under this Act in the same way as it applies to people actually engaged or appointed under this Act.

74 Continuation of existing Departments

(1) The Department of the Senate and the Department of the House of Representatives that were in existence immediately before the commencing time continue in existence as the Departments referred to in paragraphs 54(1)(a) and (b), respectively.

(2) The Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department that were in existence immediately before the commencing time continue in existence as Departments of the Parliament and are taken to have been established under subsection 54(2).

75 Current heads of Parliamentary Departments to continue in office

(1) The person who held the office of Clerk of the Senate or the office of Clerk of the House of Representatives immediately before the commencing time is taken to have been appointed under subsection 58(1) or (2), as the case may be, to the office of the same name established by section 55, and to have been so appointed for a period of 10 years beginning at the commencing time.

(2) The person who held the office of Parliamentary Librarian immediately before the commencing time is taken to have been appointed under section 59 to the office of Secretary of the Department of the Parliamentary Library established by section 56, and to have been so appointed for a period of 5 years beginning at the commencing time.

(3) The person who held the office of Principal Parliamentary Reporter immediately before the commencing time is taken to have been appointed under section 59 to the office of Secretary of the Department of the Parliamentary Reporting Staff established by

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section 56, and to have been so appointed for a period of 5 years beginning at the commencing time.

(4) The person who held the office of Secretary to the Joint House Department immediately before the commencing time is taken to have been appointed under section 59 to the office of Secretary of the Joint House Department established by section 56, and to have been so appointed for a period of 5 years beginning at the commencing time.

76 Conversion of officers and employees

Continuing SES officers

(1) At the commencing time, a continuing SES officer becomes an SES employee:

(a) in the corresponding new Department; and

(b) with a corresponding classification;

as if he or she had been engaged as an ongoing Parliamentary Service employee under section 22.

Non-SES officers

(2) At the commencing time, a non-SES officer becomes a non-SES employee:

(a) in the corresponding new Department; and

(b) with a corresponding classification;

as if he or she had been engaged as an ongoing Parliamentary Service employee under section 22.

Term employees

(3) At the commencing time, a term employee becomes a non-SES employee:

(a) in the corresponding new Department; and

(b) with a corresponding classification;

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as if he or she had been engaged as a Parliamentary Service employee under section 22 for a period equal to the unexpired part of the period of the person's engagement under the old Act.

Continuing employees

(4) At the commencing time, a continuing employee becomes a non-SES employee:

(a) in the corresponding new Department; and

(b) with a corresponding classification;

as if he or she had been engaged as an ongoing Parliamentary Service employee under section 22.

77 Rights under Part IV of the old Act—first-tier persons

(1) During the transitional period, a first-tier person is taken to be absent from duty as a Parliamentary Service employee, on leave without pay.

(2) Service by a first-tier person in eligible public employment during the transitional period is counted, for the purposes of accrual of recreation leave credits and sick leave credits, as if it were service as a Parliamentary Service employee.

(3) A first-tier person is taken to have resigned as a Parliamentary Service employee at the end of the transitional period unless, before the end of the transitional period:

(a) the person has given notice in writing to the relevant Secretary stating that the person intends to resume duties as a Parliamentary Service employee on the first working day after the end of the transitional period; or

(b) the person has been granted leave for a period that consists of, or includes, the first working day after the end of the transitional period.

(4) If a person:

(a) gives a notice under paragraph (3)(a); and

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(b) is absent from duty without leave on the first working day after the end of the transitional period;

the person is taken to have resigned as a Parliamentary Service employee at the end of that first working day.

(5) If a person would have ceased to be an officer under the old Act at a particular time because of section 87JA or 87JB of the old Act (if the old Act had not been repealed), then the person is taken to have resigned as a Parliamentary Service employee at that time.

(6) If the transitional period for a first-tier person ends at the end of the relevant period (as defined in subsection 87D(5) of the old Act), then the person becomes a second-tier person at the end of that relevant period.

78 Rights under Part IV of the old Act—second-tier persons

(1) A second-tier person is entitled to be engaged as a Parliamentary Service employee, in accordance with the determinations, within the time limits prescribed by the determinations.

(2) Determinations made for the purposes of subsection (1) may prescribe exceptions to the entitlement.

79 Determinations under the old Act

(1) At the commencing time, each Secretary is taken to have made a determination (a ***continued determination***) under section 24 containing the terms of each transitional determination.

(2) A continued determination may be amended or revoked by the Secretary in the same way as if it had actually been made under section 24.

(3) Unless sooner revoked, a continued determination (including any amendments made by a Secretary under section 24) ceases to be in force on the third anniversary of the commencing time.

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80 Misconduct

(1) A Secretary may, under section 15, impose the same sanctions on a Parliamentary Service employee in the relevant Department for pre-commencement misconduct as the Secretary could have imposed on the employee for that conduct under that section if the conduct had happened after the commencing time.

(2) Subsection (1) does not apply to conduct for which a person was charged under the old Act before the commencing time.

(3) For the purposes of this section, the procedures referred to in section 15 apply in determining whether:

(a) conduct was misconduct for the purposes of Subdivision C, D or E of Division 6 of Part III of the old Act; and

(b) conduct would have been a breach of the Code of Conduct if the conduct had happened after the commencing time.

81 References to Agency, Agency Head, former Parliamentary Departments and Secretaries

(1) In any Act other than the *Privacy Act 1988*:

(a) a replacement reference to an Agency includes a reference to a Department; and

(b) a replacement reference to an Agency Head (other than a reference to the Agency Head of a particular Agency) includes a reference to the Secretary of a Department; and

(c) a reference to a former Parliamentary Department is a reference to a Department; and

(d) a reference to a particular former Parliamentary Department is a reference to the Department that corresponds to that former Parliamentary Department; and

(e) a reference to the Secretary of a Department includes a reference to the Clerk of the Senate and the Clerk of the House of Representatives; and

(f) a reference to the Clerk of the Senate is a reference to the Clerk of the Senate holding office under this Act; and

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(g) a reference to the Clerk of the House of Representatives is a reference to the Clerk of the House of Representatives holding office under this Act.

(2) This section has effect subject to any modifications prescribed by the determinations.

(3) This section does not limit, by implication, section 83.

(4) In this section:

replacement reference means a reference that resulted from an amendment made by the *Public Employment (Consequential and Transitional) Amendment Act 1999* or by regulations under that Act.

82 References in statutory instruments to "officer" etc.

In any statutory instrument, unless the contrary intention appears:

(a) references in general terms to an officer include references to a Secretary, the Parliamentary Librarian or a Parliamentary Service employee; and

(b) references to an officer of the Commonwealth include references to a Secretary, the Parliamentary Librarian or a Parliamentary Service employee; and

(c) references to an officer or employee of a particular former Parliamentary Department include references to a Parliamentary Service employee in the corresponding new Department; and

(d) references to a person occupying, holding or performing the duties of an office in a particular former Parliamentary Department include references to a Parliamentary Service employee in the corresponding new Department; and

(e) references in general terms to an office include references to a position occupied by a Parliamentary Service employee; and

(f) references to an office in a particular former Parliamentary Department include references to a position occupied by a

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Parliamentary Service employee in the corresponding new Department.

83 Determinations

(1) The Presiding Officers, after consulting the Commissioner, may, by legislative instrument, make determinations prescribing matters:

(a) required or permitted by this Part to be prescribed by determinations; or

(b) necessary or convenient to be prescribed by determinations for carrying out or giving effect to this Part.

(2) Without limiting, by implication, subsection (1), determinations may be made under subsection (1), in relation to Parliamentary Service employees, with respect to any matters with respect to which regulations may be made under subsection 14(3) of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

(3) Determinations made for the purposes of subsection (2):

(a) may provide for the old Act or the Merit Protection Act to continue in force for the purposes of the determinations, even though those Acts have been repealed; and

(b) prevail over the old Act, this Act and the Merit Protection Act, to the extent of any inconsistency.

(4) The determinations may:

(a) amend other Acts, by making amendments of a kind that are consequential on the repeal of the old Act and its replacement in relation to Parliamentary Service employees by this Act; and

(b) make provision of a transitional or saving nature in relation to amendments made under paragraph (a).

(5) For the purposes of the *Amendments Incorporation Act 1905*, amendments made by determinations under paragraph (4)(a) are to be treated as if they had been made by an Act.

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(6) Determinations made under this section within one year after the commencing time may commence on a day earlier than the day on which they are made, but not earlier than the commencing time.

(7) The determinations may make provision, in relation to a matter that may be prescribed by the determinations, by applying, adopting or incorporating, with or without modification, provisions of regulations in force at a particular time, or as in force from time to time, under the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

84 Certain Acts continue to apply to Departments established and people appointed or engaged under this Act

If, immediately before the commencing time, an Act applied to former Parliamentary Departments or to people appointed or engaged under section 9 of the *Public Service Act 1922*, the first-mentioned Act applies to corresponding new Departments or to people appointed or engaged under this Act, as the case may be.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Parliamentary Service Act 1999	145, 1999	11 Nov 1999	5 Dec 1999 (s 2 and gaz 1999, No S584)	
Parliamentary Service Amendment Act 2001	125, 2001	27 Sept 2001	17 Oct 2001 (s 2(1) item 1 and gaz 2001, No GN41)	—
Parliamentary Service Amendment Act 2005	39, 2005	1 Apr 2005	Sch 1: 1 Apr 2005 (s 2)	—
Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008	8, 2008	20 Mar 2008	Sch 1 (items 274, 275): 28 Mar 2008 (s 2(1) item 2 and F2008L00959)	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 15: 1 July 2009 (s 2(1) item 38)	Sch 15 (item 22)
Financial Framework Legislation Amendment Act 2010	148, 2010	17 Dec 2010	Sch 10: 18 Dec 2010 (s 2(1) item 10)	—
Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2011	170, 2011	4 Dec 2011	Sch 1: 15 Feb 2012 (s 2(1) item 2 and F2012L00277)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 6 (items 51, 52): 22 Sept 2012 (s 2(1) item 37)	—
Public Service Amendment Act 2013	2, 2013	14 Feb 2013	Sch 3 (items 7, 9, 12, 13): 1 July 2013 (s 2(1) item 2 and F2013L00484)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Parliamentary Service Amendment Act 2013	4, 2013	1 Mar 2013	Sch 1 (items 1–55, 69–92): 1 July 2013 (s 2(1) items 2, 5) Sch 1 (items 56–68): 1 Mar 2013 (s 2(1) items 3, 4) Sch 2 (items 1–32): 1 July 2013 (s 2(1) item 6 Sch 2 (item 33): 1 Mar 2013 (s 2(1) item 7) Remainder: 1 Mar 2013 (s 2(1) item 1)	Sch 2 (items 1–32, 33)—
Parliamentary Service Amendment (Freedom of Information) Act 2013	97, 2013	28 June 2013	28 June 2013 (s 2)	Sch 1 (item 2)
Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2013	102, 2013	29 June 2013	Sch 1 and Sch 2 (items 1A, 1B): 30 June 2013 (s 2(1) item 2)	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 3 (items 126, 127, 343): 29 June 2013 (s 2(1) item 16)	Sch 3 (item 343)
Public Interest Disclosure (Consequential Amendments) Act 2013	134, 2013	15 July 2013	Sch 1 (items 18–21) and Sch 2 (items 1, 2): 15 Jan 2014 (s 2(1) items 4, 6)	Sch 2 (items 1, 2)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 11 (items 36–43) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 11 (item 41) and Sch 14

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Parliamentary Service Amendment Act 2015	26, 2015	1 Apr 2015	2 Apr 2015 (s 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 469–471): 5 Mar 2016 (s 2(1) item 2)	—
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 2 (items 27, 28): 29 Dec 2018 (s 2(1) items 3)	—
Parliamentary Service Amendment (Post-election Report) Act 2019	4, 2019	1 Mar 2019	1 Mar 2019 (s 2(1) item 1)	—

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI No. 50, 2006)	17 Mar 2006 (F2006L00820)	Sch 19: 27 Mar 2006 (r 2(b))	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s. 3	am. No. 39, 2005
Part 2	
s. 7	am. No. 125, 2001; No. 39, 2005; SLI 2006 No. 50; No. 8, 2008; No. 54, 2009; No. 170, 2011; Nos. 2, 4 and 102, 2013; No 62, 2014
s. 8	am. No. 54, 2009
Part 3	
s. 9	am. No. 39, 2005; No. 4, 2013; No 62, 2014
s. 10	rs. No. 4, 2013
s. 10A	ad. No. 4, 2013
s. 11	rs. No. 4, 2013
s. 11A	ad. No. 4, 2013
s. 11B	ad. No. 4, 2013
s. 11C	ad. No. 4. 2013
s. 12	rs. No. 4, 2013
s. 13	am. No. 4, 2013; No 62, 2014
s. 14	am. No. 4, 2013
s. 15	am. No. 4, 2013
s. 16	am. No. 4, 2013
	rep No 134, 2013
s. 17	rep. No. 4, 2013
s. 17A	ad. No. 39, 2005
	rep. No. 4, 2013
s. 18	am. No. 4, 2013
Part 4	
Part 4 heading	rs. No. 39, 2005
Division 1	
s. 20	am No 4 and 134, 2013; No 126, 2015

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Provision affected	How affected
s. 22	am. No. 4, 2013
s. 23	am. SLI 2006 No. 50; No. 8, 2008; No. 54, 2009; No. 4, 2013; No 126, 2015
s. 24	am. SLI 2006 No. 50; No. 8, 2008; No. 54, 2009; No. 4, 2013; No 126, 2015
s. 26	rs. No. 125, 2001
s. 26A	ad. No. 125, 2001
s. 27	am. No. 2, 2013
s. 29	am. No. 54, 2009; No. 4, 2013
s. 31	am. No. 4, 2013
s. 33	am. No. 4, 2013
Division 2	
s. 35	am. No. 4, 2013
s. 36	rep. No. 4, 2013
s. 37	am. No. 4, 2013
s. 38	am. No. 4, 2013
Division 3	
Division 3	ad. No. 39, 2005
s. 38A	ad. No. 39, 2005
s. 38B	ad. No. 39, 2005
s. 38C	ad. No. 39, 2005
s. 38D	ad. No. 39, 2005
s. 38E	ad. No. 39, 2005
	am. No. 4, 2013
s. 38F	ad. No. 39, 2005
	am. No. 4, 2013
s. 38G	ad. No. 39, 2005
s. 38H	ad. No. 39, 2005
s. 38I	ad. No. 39, 2005
Part 5	
Division 1	
s. 40	am No 4 and 134, 2013
s. 41	am. No. 4, 2013

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Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s. 43	am. No. 2, 2013
s. 44	am. Nos. 2 and 4, 2013
s. 46	am. Nos. 2 and 4, 2013
Part 6	
Division 1	
s. 48	am. No. 39, 2005; No 4 and 134, 2013
s. 48A	ad. No. 4, 2013
Division 2	
s. 51	am. No. 4, 2013
s. 53	am. No. 4, 2013
Part 7	
Division 1	
Division 1 heading	ad No 170, 2011
s. 53A	ad. No. 170, 2011
s. 54	am. No. 39, 2005
ss. 54A, 54B	ad. No. 125, 2001
s. 57	rs. No. 4, 2013
	am No 62, 2014
s 63	am No 4, 2013
s 64	am No 4, 2013
s 64AA	ad No 62, 2014
Division 2	
Division 2	ad No 170, 2011
Subdivision A	
s. 64A	ad. No. 170, 2011
s. 64B	ad. No. 170, 2011
s. 64C	ad. No. 170, 2011
s. 64D	ad. No. 170, 2011
s. 64E	ad. No. 170, 2011
	am. No. 102, 2013

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Provision affected	How affected
s. 64F	ad. No. 170, 2011
s. 64G	ad. No. 170, 2011
	am. No. 102, 2013
s. 64H	ad. No. 170, 2011
s. 64J	ad. No. 170, 2011
	am No 102, 2013
s. 64K	ad. No. 170, 2011
	am. No. 102, 2013
s. 64KA	ad. No. 102, 2013
s. 64L	ad. No. 170, 2011
s. 64LA	ad. No. 170, 2011
s. 64M	ad. No. 170, 2011
s 64MA	ad No 102, 2013
	am No 4, 2019
s 64MAA	ad No 102, 2013
s 64MB	ad No 102, 2013
	am No 4, 2019
s 64MC	ad No 102, 2013
	am No 4, 2019
s. 64N	ad. No. 170, 2011
s. 64P	ad. No. 170, 2011
s. 64Q	ad. No. 170, 2011
s. 64R	ad. No. 170, 2011
s. 64S	ad. No. 170, 2011
s. 64T	ad. No. 170, 2011
s. 64U	ad. No. 170, 2011
	am No 102, 2013
s. 64V	ad. No. 170, 2011
	am. No. 102, 2013
Subdivision B	
s. 64X	ad. No. 170, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s. 64XA	ad. No. 170, 2011
s. 64XB	ad. No. 170, 2011
s. 64XC	ad. No. 170, 2011
s. 64XD	ad. No. 170, 2011
s. 64XE	ad. No. 170, 2011
s. 64XF	ad. No. 170, 2011
	am. No. 4, 2013
Division 3	
Division 3 heading	ad No 170, 2011
s 65	am No 39, 2005
Part 7A	
Part 7A	ad. No. 4, 2013
s 65AA	ad No 4, 2013; No 67, 2018
s 65AB	ad No 4, 2013; No 67, 2018
s. 65AC	ad. No. 4, 2013
s. 65AD	ad. No. 4, 2013
s. 65AE	ad. No. 4, 2013
Part 8	
s 65A	ad No 39, 2005
	am No 170, 2011; No 102, 2013; No 26, 2015
s. 66	am. No. 148, 2010; No. 4, 2013
s. 67	am. No. 39, 2005
s. 68	rep. No. 4, 2013
s. 68A	ad. No. 97, 2013
s. 70	am. No. 39, 2005; No. 4, 2013
s. 70A	ad. No. 4, 2013
s, 71	am. No. 4, 2013
Part 9	
ss. 81, 82	am. No. 39, 2005
s. 83	am. No. 103, 2013
Part 10	rep. No. 136, 2012

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Endnote 4—Amendment history

Provision affected	How affected
s. 85	rep. No. 136, 2012
Schedule 1	rep. No. 136, 2012

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