



Australian Civilian Corps Act 2011

No. 18, 2011

**An Act to provide for the establishment and
management of the Australian Civilian Corps, and
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Objects	2
4 Simplified outline	2
5 Definitions	3
6 Crown to be bound	4
7 Extension to external Territories	4
8 Extension to things overseas	4
9 Relationship with Fair Work Acts	4
Part 2—Australian Civilian Corps	5
10 Constitution of the Australian Civilian Corps	5
11 Management of the Australian Civilian Corps	5
12 Australian Civilian Corps Values	5
13 Director-General’s directions about the Australian Civilian Corps Values	5
14 Director-General must uphold and promote the Australian Civilian Corps Values	5
15 Australian Civilian Corps Code of Conduct	6
16 Director-General’s directions about the Australian Civilian Corps Code of Conduct	6
17 Breaches of the Australian Civilian Corps Code of Conduct	6
17A Review of decisions relating to breaches of Australian Civilian Corps Code of Conduct	7
Part 3—Australian Civilian Corps employees	10
18 Employer powers etc. of Director-General	10
19 Engagement of Australian Civilian Corps employees	10
20 Remuneration and other conditions	11
21 Assignment of duties	12
22 Suspension	12
23 Termination of employment	12
24 Secondment of Australian Civilian Corps employees	12
25 Limitation on Ministerial directions to Director-General	13
Part 4—Leave for the purposes of service in the Australian Civilian Corps	14
26 Power to grant leave for the purposes of service in the Australian Civilian Corps	14

27	Prime Minister may issue directions about leave etc. to Commonwealth employers	14
Part 5—Miscellaneous		16
28	Payments in special circumstances	16
29	Disclosure or use of personal information	16
29A	Prohibition of patronage and favouritism	17
30	Delegations	17
31	Regulations	18



Australian Civilian Corps Act 2011

No. 18, 2011

An Act to provide for the establishment and management of the Australian Civilian Corps, and for other purposes

[Assented to 12 April 2011]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Civilian Corps Act 2011*.

Section 2

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 April 2011
2. Sections 3 to 31	The 28th day after this Act receives the Royal Assent.	10 May 2011

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

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

3 Objects

The objects of this Act are:

- (a) to establish the Australian Civilian Corps; and
- (b) to provide a legal framework for the effective and fair employment and management of Australian Civilian Corps employees.

4 Simplified outline

The following is a simplified outline of this Act:

- This Act establishes the Australian Civilian Corps.

- The Australian Civilian Corps consists of persons engaged under this Act as Australian Civilian Corps employees.
- The Director-General of AusAID is to manage the Australian Civilian Corps.
- Australian Civilian Corps employees will perform duties overseas.

5 Definitions

In this Act:

AusAID means the Australian Agency for International Development.

Australian Civilian Corps Code of Conduct means the Australian Civilian Corps Code of Conduct prescribed under subsection 15(1).

Australian Civilian Corps employee means a person engaged under section 19.

Australian Civilian Corps Values means the Australian Civilian Corps Values prescribed under section 12.

Director-General means the Director-General of AusAID.

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

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

overseas means outside Australia and the Territories.

Presiding Officer means:

- (a) the President of the Senate; or
- (b) the Speaker of the House of Representatives.

WR Act collective transitional instrument means an award, a collective agreement or a pre-reform certified agreement (within

Section 6

the meaning of those terms in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) However, this Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

7 Extension to external Territories

This Act extends to every external Territory.

8 Extension to things overseas

This Act extends to acts, omissions, matters and things overseas.

9 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*.

Part 2—Australian Civilian Corps

10 Constitution of the Australian Civilian Corps

The Australian Civilian Corps consists of Australian Civilian Corps employees.

11 Management of the Australian Civilian Corps

The Director-General, under the Minister, is responsible for the management of the Australian Civilian Corps.

12 Australian Civilian Corps Values

The regulations may prescribe the Australian Civilian Corps Values.

13 Director-General's directions about the Australian Civilian Corps Values

- (1) The Director-General may, by legislative instrument, issue directions in relation to each of the Australian Civilian Corps Values for the purposes of determining, where necessary, the scope or application of the Australian Civilian Corps Values.
- (2) For the purposes of this Act other than this section, the Australian Civilian Corps Values have effect subject to the restrictions (if any) in directions made under subsection (1).

14 Director-General must uphold and promote the Australian Civilian Corps Values

The Director-General must uphold and promote the Australian Civilian Corps Values.

Section 15

15 Australian Civilian Corps Code of Conduct

- (1) The regulations may prescribe the Australian Civilian Corps Code of Conduct.
- (2) The Australian Civilian Corps Code of Conduct must include a rule that an Australian Civilian Corps employee must at all times behave in a way that upholds the Australian Civilian Corps Values.
- (3) The Australian Civilian Corps Code of Conduct applies to Australian Civilian Corps employees.

16 Director-General's directions about the Australian Civilian Corps Code of Conduct

- (1) The Director-General may, by legislative instrument, issue directions in relation to the Australian Civilian Corps Code of Conduct for the purposes of determining, where necessary, the scope or application of the Australian Civilian Corps Code of Conduct.
- (2) For the purposes of this Act other than this section, the Australian Civilian Corps Code of Conduct has effect subject to the restrictions (if any) in directions made under subsection (1).

17 Breaches of the Australian Civilian Corps Code of Conduct

Breaches

- (1) The Director-General may impose the following sanctions on an Australian Civilian Corps employee who is found (under procedures established under subsection (3)) to have breached the Australian Civilian Corps Code of Conduct:
 - (a) termination of employment;
 - (b) re-assignment of duties;
 - (c) deductions from salary, by way of fine;
 - (d) a reprimand.
- (2) The regulations may prescribe limitations on the power of the Director-General to impose sanctions under subsection (1).

Section 17A

Procedures

- (3) The Director-General must establish procedures for determining whether an Australian Civilian Corps employee has breached the Australian Civilian Corps Code of Conduct.
- (4) Procedures under subsection (3) may set out matters to be taken into account in determining the sanction to be imposed on an Australian Civilian Corps employee for breaching the Australian Civilian Corps Code of Conduct.
- (5) Subsection (4) does not limit subsection (3).
- (6) Procedures under subsection (3):
 - (a) must be made with due regard to procedural fairness; and
 - (b) may establish different procedures for different categories of Australian Civilian Corps employees.
- (8) The Director-General must take reasonable steps to ensure that every Australian Civilian Corps employee has ready access to documents that set out the procedures referred to in subsection (3).
- (9) Procedures under subsection (3) may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (10) Procedures under subsection (3) are not a legislative instrument.

17A Review of decisions relating to breaches of Australian Civilian Corps Code of Conduct

- (1) A person who is, or has been, an Australian Civilian Corps employee is entitled to review, in accordance with the regulations, of any of the following decisions:
 - (a) a determination that the person breached the Australian Civilian Corps Code of Conduct when the person was an Australian Civilian Corps employee;
 - (b) a decision to impose a sanction on the person for breaching the Australian Civilian Corps Code of Conduct when the person was an Australian Civilian Corps employee.

Section 17A

- (2) However, a person is not entitled to review under this section of a decision to impose a sanction that consists of termination of the person's employment as an Australian Civilian Corps employee.

- (3) The regulations may prescribe exceptions to the entitlement.

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

Person or committee to conduct a review

- (4) The Director-General must arrange for:
- (a) a person; or
 - (b) a committee constituted in accordance with the regulations;
- to conduct a review under this section.
- (5) The Director-General must not arrange for a person to conduct a review under this section unless the Director-General is satisfied that the person has appropriate knowledge, skills and experience.
- (6) A review under this section must not be conducted by a person if the person is:
- (a) the Director-General; or
 - (b) an APS employee in AusAID; or
 - (c) an Australian Civilian Corps employee.
- (7) The Director-General must not arrange for a committee to conduct a review under this section unless the Director-General is satisfied that each member of the committee has appropriate knowledge, skills and experience.
- (8) A review under this section must not be conducted by a committee if a member of the committee is:
- (a) the Director-General; or
 - (b) an APS employee in AusAID; or
 - (c) an Australian Civilian Corps employee.

Section 17A

Powers and procedures

- (9) Without limiting subsection (1), regulations made for the purposes of that subsection may provide for the powers available to a person or committee that conducts a review under this section.

Recommendations in a report on a review

- (10) A person or committee that has conducted a review under this section (the **reviewer**) 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 regulations.
- (11) If the reviewer is not satisfied with the response to recommendations contained in a report on a review under this section, the reviewer may give a report on the matter to:
 - (a) the Minister; and
 - (b) either or both of the following:
 - (i) the Prime Minister;
 - (ii) the Presiding Officers, for presentation to the Parliament.

Part 3—Australian Civilian Corps employees

18 Employer powers etc. of Director-General

- (1) The Director-General, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of an Australian Civilian Corps employee.
- (2) Without limiting subsection (1), the Director-General has, in respect of Australian Civilian Corps employees, the rights, duties and powers that are prescribed by the regulations.

19 Engagement of Australian Civilian Corps employees

- (1) The Director-General, on behalf of the Commonwealth, may engage persons as employees for the purposes of:
 - (a) performing, or potentially performing, duties overseas; or
 - (b) performing duties in Australia that are incidental, preparatory or ancillary to the performance, or potential performance, of duties overseas;or both.
- (2) The engagement of an Australian Civilian Corps employee must be for a specified term.
- (3) The specified term may be extended, subject to any limitations prescribed by the regulations.
- (4) The engagement of an Australian Civilian Corps 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.

Section 20

- (5) Subsection (4) does not, by implication, limit the conditions that may be applied to the engagement of an Australian Civilian Corps employee.
- (6) A person may be engaged under this section even if the person is:
 - (a) employed by the Commonwealth in another capacity; or
 - (b) employed by any other employer.

Note: Section 26 deals with leave for the purposes of service in the Australian Civilian Corps.

20 Remuneration and other conditions

- (1) The Director-General may from time to time determine in writing the remuneration and other terms and conditions of employment applying to an Australian Civilian Corps employee or Australian Civilian Corps employees.

Note: Certain terms and conditions of employment are applicable to an Australian Civilian Corps employee under the National Employment Standards.

- (2) A determination under subsection (1) is of no effect to the extent that it would reduce the benefit to an Australian Civilian Corps employee of an individual term or condition applicable to the employee under an enterprise agreement.

Note: A determination under subsection (1) would also be of no effect to the extent that it would reduce the benefit to an Australian Civilian Corps employee of a term or condition applicable to the employee under the National Employment Standards.

- (3) 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 National Employment Standards. However, any modification of the provisions of the National Employment Standards by a determination under subsection (1) would be of no effect to the extent that it would reduce the benefit to an Australian Civilian Corps employee of a term or condition applicable to the employee under the National Employment Standards.

Section 21

21 Assignment of duties

The Director-General may from time to time determine the duties of an Australian Civilian Corps employee, and the place or places at which the duties are to be performed.

22 Suspension

The regulations may make provision in relation to the suspension from duties of Australian Civilian Corps employees, with or without remuneration.

23 Termination of employment

- (1) The Director-General may at any time, by written notice, terminate the employment of an Australian Civilian Corps employee.

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

- (2) The notice must set out the ground or grounds for the termination.

24 Secondment of Australian Civilian Corps employees

Secondment

- (1) The Director-General may arrange for an Australian Civilian Corps employee to be seconded for a specified period to any body or organisation (including an international body or organisation).
- (2) The Director-General may enter into an agreement with a body or organisation in relation to the secondment of one or more Australian Civilian Corps employees to the body or organisation under subsection (1).
- (3) The Director-General may enter into an agreement with an Australian Civilian Corps employee in relation to the secondment of the employee to a body or organisation under subsection (1).

Termination

- (4) The Director-General may at any time, by notice given to the body or organisation to which an Australian Civilian Corps employee is

seconded under subsection (1), terminate the secondment of the employee.

Consequences of secondment

- (5) The secondment under subsection (1) of a person who is an Australian Civilian Corps employee does not affect the following:
 - (a) the person's status as an Australian Civilian Corps employee;
 - (b) the application of any provision of this Act in relation to the person during the period of the secondment.
- (6) Nothing in this section affects:
 - (a) any rights, powers or immunities that an Australian Civilian Corps employee who is seconded under subsection (1) has by virtue of holding any office or position to which the employee has been seconded; or
 - (b) the extent to which the employee is subject to obligations or liabilities in relation to discipline by virtue of holding any office or position to which the employee has been seconded.

25 Limitation on Ministerial directions to Director-General

The Director-General is not subject to direction by any Minister in relation to the exercise of powers by the Director-General under this Part in relation to particular individuals.

Part 4—Leave for the purposes of service in the Australian Civilian Corps

26 Power to grant leave for the purposes of service in the Australian Civilian Corps

- (1) An employer in Australia may, at the request of an employee of the employer, grant unpaid leave to the employee for the purposes of service in the Australian Civilian Corps.
- (2) Subsection (1) is in addition to, and not instead of, any other power of an employer to grant unpaid leave.

27 Prime Minister may issue directions about leave etc. to Commonwealth employers

Commonwealth employer

- (1) For the purposes of this section, each of the following persons is a ***Commonwealth employer***:
 - (a) a person who, on behalf of the Commonwealth, has the powers of an employer in respect of an employee of the Commonwealth;
 - (b) a body corporate that:
 - (i) is established by or under a law of the Commonwealth for a public purpose; and
 - (ii) has employees;
 - (c) a company that:
 - (i) is a wholly-owned Commonwealth company (within the meaning of the *Commonwealth Authorities and Companies Act 1997*); and
 - (ii) has employees.

Directions

- (2) The Prime Minister may, by legislative instrument, issue directions to a Commonwealth employer in relation to:
 - (a) the granting of leave to employees for the purposes of service in the Australian Civilian Corps; or
 - (b) any other matter that relates to the participation of employees in the Australian Civilian Corps.
- (3) Directions under subsection (2) must not relate to a particular employee.
- (4) Paragraph (2)(a) does not apply to a grant of leave to an employee unless the employee has requested the leave.

Part 5—Miscellaneous

28 Payments in special circumstances

- (1) The Minister may authorise the making of payments to a person under subsection (2) if the Minister considers it appropriate to do so because of special circumstances that relate to, or arise out of:
 - (a) the payee's employment as an Australian Civilian Corps employee; or
 - (b) another person's employment as an Australian Civilian Corps employee.
- (2) The Minister 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 of more than \$100,000.
- (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.

29 Disclosure or use of personal information

The regulations:

Section 29A

- (a) may authorise the disclosure or use, in specific circumstances, of personal information (within the meaning of the *Privacy Act 1988*); and
- (b) may impose restrictions on the collection, storage, access, use or further disclosure of information disclosed under regulations made for the purposes of paragraph (a).

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

29A Prohibition of patronage and favouritism

A person exercising powers under this Act or the regulations:

- (a) in relation to the engagement of Australian Civilian Corps employees; or
 - (b) otherwise in relation to Australian Civilian Corps employees;
- must do so without patronage or favouritism.

30 Delegations

- (1) The Minister may, in writing, delegate to:
 - (a) another Minister; or
 - (b) an SES employee, or acting SES employee, in AusAID; or
 - (c) a person who holds an office or appointment under an Act;
 any or all of his or her powers or functions under this Act or the regulations.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) The Director-General may, in writing, delegate to:
 - (a) an APS employee in AusAID; or
 - (b) an Australian Civilian Corps employee;
 any or all of his or her powers or functions under:
 - (c) this Act; or
 - (d) the regulations; or
 - (e) any other instrument made under this Act.

Note: The expression *APS employee* is defined in the *Acts Interpretation Act 1901*.

Section 31

- (3) 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.
- (4) This section does not apply to a power to make, vary or revoke a legislative instrument.

31 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 30 September 2010
Senate on 15 November 2010]*

(189/10)
