



Australian Public Service Commissioner's Directions 2013

made under subsection 11 (1), subsections 11A (1) and (2), and subsection 15 (4) of the

Public Service Act 1999

Dated 12 March 2013

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Public Service Commissioner

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1 Name of Directions

These Directions are the *Australian Public Service Commissioner's Directions 2013*.

2 Commencement

These Directions commence on the commencement of Schedules 1, 2, 3 and 4 of the *Public Service Amendment Act 2013*.

3 Revocation of previous Directions

The *Public Service Commissioner's Directions 1999* are revoked.

4 Definitions—the Dictionary

- (1) The Dictionary at the end of these Directions defines certain words and expressions.
- (2) The Dictionary includes certain words and expressions relevant to these Directions that are defined in the *Public Service Act 1999*.

Note: These definitions are indicated by an asterisk (*), and are included for information only to assist readers of these Directions. Minor changes from the Act definitions are indicated by square brackets ([]).

The importance of the APS Values

The APS aspires to be among the best in the world—a Service that is recognised and valued because its people:

- take the extra steps necessary to ensure that the needs of the Australian community are identified and met
- are forward looking and innovative
- work together and with the community to meet community needs
- deliver effective programs and excellent service with maximum efficiency, and so provide great value for money.

Fundamental to the achievement of these goals is the set of attitudes and behaviours that APS employees bring to their work. The APS Values, together with the APS Employment Principles, define the APS as an institution, and guide it in its dealings with everyone and in everything it does. Behaviour consistent with the APS Values strengthens public trust and confidence in public administration, and provides a secure foundation to guide the APS into the future.

The requirements of the law

The responsibilities of APS employees (including SES employees) and Agency Heads are set out in the *Public Service Act 1999* (the Act).

APS employees must at all times behave in a way that upholds the APS Values and APS Employment Principles (Act, s 13(11)).

Members of the SES must also promote the APS Values and APS Employment Principles by personal example, and other appropriate means (Act, s 35(3)(c)).

Agency Heads must uphold and promote the APS Values and APS Employment Principles (Act, s 12).

APS employees and Agency Heads must also comply with all applicable laws, the APS Code of Conduct and any other requirements prescribed by the *Public Service Regulations 1999* or these Directions (Act, s 13(4), s 13(13), s 14 and s 42(2)).

Directions about employment matters relating to APS employees, including the scope and application of the APS Employment Principles, are dealt with in Chapters 2 to 5 of these Directions.

The application of the APS Values

The APS Values, and these Directions, set out standards and outcomes that are required of APS employees and Agency Heads, taking account of an individual's duties and responsibilities. In this context, Agency Heads have an additional responsibility to take steps to ensure that the APS Values are promoted in their Agency (Direction 1.7).

The APS Values can be applied to the variety of functions undertaken across

agencies. For example, being *Committed to Service* applies when service is provided to external clients and the wider community, to other APS agencies, to clients within an Agency, or to Ministers and Government.

The APS Values can overlap, and actions can involve the application of more than one APS Value.

For example, the concept of collaboration is relevant to being *Committed to Service* as well as to being *Respectful*. This overlap is reflected in Direction 1.2, which provides that being *Committed to Service* requires supporting collaboration and teamwork, both internally and externally, and Direction 1.4, which provides that being *Respectful* requires collaborating and being open to ideas in policy development and implementation.

Each of the Values is of equal importance. There is no hierarchy of Values. There may be particular situations where there is tension between the different APS Values that are to be applied. In such cases, good judgment will need to be exercised to find the appropriate balance between competing demands.

How the APS Values are enforced

The APS Code of Conduct (Act, s 13) requires APS employees at all times to behave in a way that upholds the APS Values, the APS Employment Principles and the integrity and good reputation of the employee's Agency and the APS (Act, s 13(11)).

An Agency Head must establish procedures for determining whether an APS employee, or former employee, in the Agency has breached the Code of Conduct (Act, s 15(3)).

An Agency Head may impose the following sanctions on an employee who is found to have breached the Code of Conduct (Act, s 15(1)):

- 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.

Not every failure to act consistently with the APS Values needs to be dealt with by implementing misconduct procedures. Misconduct action is part of a range of people management practices that agencies have available to support high quality performance. When deciding whether to start a misconduct investigation, an Agency Head should consider, for example, whether the matter could be better dealt with under the Agency's performance management framework.

The functions of the Australian Public Service Commissioner include promoting the APS Values, the APS Employment Principles and the Code of Conduct (Act, s 41(2)(e)). The Australian Public Service Commissioner issues standards and guidance material for APS employees and Agency Heads on the practical application of the APS Values, APS Employment Principles and the Code of Conduct.

1.1 Purpose of Chapter 1

The purpose of this Chapter is:

- (a) to ensure that the APS incorporates and upholds the APS Values; and
- (b) to determine, where necessary, the scope or application of the APS Values.

1.2 Committed to Service:

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

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(1) of the Act requires:

- (a) engaging effectively with the community and working actively to provide responsive, client-focussed service delivery;
- (b) providing appropriate information to clients and the community about rights and entitlements, and the process for gaining access to them;
- (c) ensuring that decisions and interactions with clients are objective and impartial, and in accordance with Government policy;
- (d) encouraging innovative thought and supporting innovative solutions;
- (e) supporting collaboration and teamwork, both internally (within an Agency), and externally (with other agencies and the wider community);
- (f) promoting continuous improvement and managing change effectively;
- (g) contributing to a culture of achievement;
- (h) identifying and managing areas of potential risk;
- (i) supporting a unified APS that is determined to serve the Government of the day and the Australian community;
- (j) pursuing and supporting training and development to improve capability;
- (k) planning time and priorities to deliver intended results;
- (l) being responsive to Ministers (taking account of resource and time constraints), including being knowledgeable about the Government's policies and understanding the relevant issues and options, the Government's objectives and the environment in which it operates.

**1.3 Ethical:
The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does**

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(2) of the Act requires:

- (a) acting in a way that models and promotes the highest standard of ethical behaviour;
- (b) following through on commitments made;
- (c) having the courage to address difficult issues;
- (d) complying with all relevant laws, appropriate professional standards and the APS Code of Conduct;
- (e) acting in a way that is right and proper, as well as technically and legally correct or preferable;
- (f) reporting and addressing misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way;
- (g) supporting the strategic objectives of the Agency;
- (h) providing leadership in policy development, implementation, program management and regulation;
- (i) taking account of whole of government issues and concerns in developing and implementing policies and programs;
- (j) supporting systems that give APS employees appropriate opportunities to develop and demonstrate leadership qualities.

**1.4 Respectful:
The APS respects all people, including their rights and their heritage**

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(3) of the Act requires:

- (a) treating all people with dignity and recognising that all people have value;
- (b) dealing with all people honestly and with integrity;
- (c) recognising the importance of human rights and understanding Australia's human rights obligations;
- (d) recognising and fostering diversity;
- (e) collaborating and being open to ideas in policy development, implementation, program management and regulation;
- (f) complying with all relevant anti-discrimination laws.

1.5 Accountable:
The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(4) of the Act requires:

- (a) being answerable to Ministers for the exercise of delegated authority, and, through them, to Parliament;
- (b) being open to scrutiny and being transparent in decision making;
- (c) being able to demonstrate that actions and decisions have been made with appropriate consideration;
- (d) being able to explain actions and decisions to the people affected by them;
- (e) being accountable for actions and decisions through statutory and administrative reporting systems;
- (f) being able to demonstrate clearly that resources have been used efficiently, effectively, economically and ethically;
- (g) being answerable for individual performance through performance management systems.

1.6 Impartial:
The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(5) of the Act requires:

- (a) serving the Government of the day, providing the same standard of high quality policy advice and implementation, and the same high quality professional support, irrespective of which political party is in power and of personal political beliefs;
- (b) ensuring that the individual's actions do not provide grounds for a reasonable person to question the ability of the individual to serve the Government of the day;
- (c) ensuring that management and staffing decisions are made on a basis that is independent of the political party system, free from political bias and not influenced by the individual's political beliefs;
- (d) understanding the needs of the Government and providing it with the best objective, non-partisan advice based on the best evidence available;
- (e) providing advice that is relevant and comprehensive, is not affected by fear of consequences, and does not withhold important facts or bad news;

- (f) providing advice that takes account of the context in which policy needs to be implemented, the broader policy directions set by Government and, where appropriate, implications for the longer term;
- (g) implementing Government policies in a way that is free from bias, and in accordance with the law.

1.7 Promoting the APS Values—Agency Heads

An Agency Head must take steps to integrate the APS Values into the Agency's culture and decision-making processes and support employees to take decisions based on the APS Values. An Agency Head must also consistently reflect the APS Values in his or her behaviour.

Note: Section 12 of the *Public Service Act 1999* requires Agency Heads to uphold and promote the APS Values.

1.8 Promoting the APS Values—SES employees

Having regard to an individual's duties and responsibilities, an SES employee must take steps to integrate the APS Values into the Agency's culture and decision-making processes, guide employees to take decisions based on the APS Values, and consistently reflect the APS Values in his or her behaviour.

Note: Section 35(3)(c) of the *Public Service Act 1999* requires each SES employee to promote the APS Values by personal example and other appropriate means.

In accordance with subsection 11A(1) of the Act, the Australian Public Service Commissioner (the Commissioner) may issue directions in writing about a range of employment matters relating to APS employees.

In accordance with subsection 11A(2) of the Act, the Commissioner may issue directions in writing in relation to any of the APS Employment Principles for the purpose of ensuring that the APS incorporates and upholds the Principles, and determining where necessary the scope or application of the Principles.

Section 10A of the Act reads:

APS Employment Principles

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

The introductory phrase to these Employment Principles states that the APS is a career-based public service. Implicit in this is the expectation that an Agency Head will put in place measures to ensure that the Agency is staffed on a basis that sustains core knowledge, expertise, and standards of professionalism and behaviour.

Summary of this Chapter

APS Employment Principle 10A(1)(c) requires decisions relating to engagement and promotion to be based on merit.

Part 2.1 provides the minimum requirements Agency Heads must meet in upholding this Principle in decisions relating to most promotions and most ongoing and long-term non-ongoing engagements. It defines the relevant terms, including the meaning of work-related qualities that may be taken into account in assessing the relative suitability of candidates to perform the relevant duties. It outlines the requirements of a merit-based competitive selection process, including the requirement to notify a vacancy in the Public Service *Gazette*, and provides

additional requirements for a selection process to fill a Senior Executive Service (SES) vacancy.

Part 2.2 provides directions on the minimum requirements Agency Heads must meet in relation to engagement or promotion decisions in short-term engagements and in other circumstances where APS Employment Principle 10A(1)(c) is modified.

Part 2.3 provides directions relating to the ongoing or temporary assignment of duties under section 25 of the Act (other than promotion) and ongoing or temporary moves between Agencies under section 26 of the Act.

Part 2.4 provides directions relating to the gazettal of employment decisions and the dates of effect of promotions.

Part 2.1 Engagement and promotion— standard provisions

The merit principle in engagement and promotion

This Part determines the scope or application of APS Employment Principle 10A(1)(c), in circumstances relating to most promotions and most ongoing and long-term non-ongoing engagements. It reads:

(1) The APS is a career-based public service that:

....

(c) makes decisions relating to engagement and promotion that are based on merit; and

....

Subsection 10A(2) explains the meaning of merit in this context. It reads:

(2) For the purposes of paragraph (1)(c), a decision relating to engagement or promotion is based on merit if:

- (a) all eligible members of the community were given a reasonable opportunity to apply to perform the relevant duties; and
- (b) an assessment is made of the relative suitability of the candidates to perform the relevant duties, using a competitive selection process; and
- (c) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required to perform the relevant duties; and
- (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.

Division 1 Preliminary

2.1 Purpose of Part 2.1

The purpose of this Part is:

- (a) to determine the scope or application of APS Employment Principle 10A(1)(c), relating to engagement and promotion decisions based on merit, in circumstances relating to most promotions and most ongoing and long-term non-ongoing engagements; and
- (b) to determine the minimum requirements that an Agency Head must meet in upholding that Principle.

Note: Part 2.2 provides modifications of and exceptions to the requirements in this Part for certain kinds of engagement and promotion decisions.

2.2 Meaning of *promotion*

- (1) For these Directions, a reference to a *promotion* is a reference to the ongoing assignment of duties to an ongoing APS employee at a higher classification than the employee's current classification, in the same or another Agency, other than:
 - (a) the allocation of a higher classification in a broadband to an ongoing APS employee already within the same broadband in the same Agency; or
 - (b) the allocation of an operational classification to a trainee under the Classification Rules.

Note: The following are not promotions:

- (a) following a voluntary temporary reduction in an ongoing APS employee's classification—the ongoing assignment of duties to the employee at the original classification;
- (b) the temporary assignment of duties to an APS employee at a higher classification than the employee's current classification.

2.3 Meaning of *vacancy*

For these Directions, a *vacancy* exists in an Agency when a decision has been made that:

- (a) a specified group of duties need to be performed; and
- (b) it is appropriate to consider engaging a person or promoting an APS employee to perform the duties.

Note: A vacancy may also be filled by the movement of an APS employee at the employee's current classification.

2.4 Meaning of Senior Executive Service (SES) vacancy

For these Directions, *SES vacancy* means a vacancy at a SES classification as set out in the Classification Rules.

2.5 Meaning of *similar vacancy*

For these Directions, a vacancy is *similar* to a notified vacancy if:

- (a) it is in:
 - (i) the same Agency as the notified vacancy; or
 - (ii) if the notified vacancy relates to a function that was moved to another Agency after the notification by a machinery of government change—the Agency to which the function was moved; and
- (b) it is the same category of employment (ongoing or non-ongoing); and
- (c) it comprises similar duties; and
- (d) it is at the same classification; and
- (e) it is to be performed in a similar location.

2.6 Meaning of *work-related qualities*

For these Directions, work-related qualities that may be taken into account in making an assessment of candidates' suitability to perform duties in accordance with paragraph 10A(2)(c) of the Act include the following:

- (a) skills and abilities;
- (b) qualifications, training and competencies;
- (c) standard of work performance;
- (d) capacity to produce outcomes by effective performance at the level required;
- (e) relevant personal qualities, such as honesty and integrity;
- (f) potential for further development;
- (g) ability to contribute to team performance.

Division 2 Merit in engagement and promotion—application of APS Employment Principle 10A(1)(c)

2.7 How an Agency Head upholds APS Employment Principle 10A(1)(c)

An Agency Head upholds APS Employment Principle 10A(1)(c) in relation to a decision to engage or promote a person in that Agency by ensuring that the decision is based on a selection process that meets:

- (a) the requirements of this Division; or
- (b) for a decision to which Part 2.2 applies—the requirements of this Division as modified by that Part.

Note: This Division sets standards for merit-based selection and requires a vacancy, or a similar vacancy, to have been notified in the *Gazette* within the previous 12 months.

2.8 Merit-based selection process for engagement or promotion

- (1) A competitive selection process for a decision to engage or promote a person to fill a vacancy meets the requirements of this Division only if the following apply:
 - (a) the aim and purpose of the selection process is determined in advance and information about the process is readily available to applicants;
 - (b) the vacancy is notified in accordance with clause 2.9;
 - (c) the selection process is applied fairly in relation to each eligible applicant;
 - (d) the selection process is transparent and appropriately documented;
 - (e) merit is the primary consideration in making the engagement or promotion decision, in accordance with subsection 10A(2) of the Act;
 - (f) the selection process is free from discrimination, patronage and favouritism, consistent with APS Employment Principle 10A(1)(f);
 - (g) in the case of a decision to engage a person—the engagement would comply with the restrictions on engagement of redundancy benefit recipients in clause 7.1.

Note 1: Part 2.2 provides modifications of and exceptions to the requirements in this Part for certain kinds of engagement and promotion decisions.

Note 2: The Regulations (regulations 3.4 and 3.5) provide for matters regarding the engagement of non-ongoing employees.

- (2) For paragraph (1)(e), secondary considerations that may be relevant to the selection decision include such factors as a candidate's ability to commence by a particular date, willingness to relocate or ability to meet other reasonable Agency requirements.

2.9 Notification of vacancy in the Public Service Gazette

Basic requirement for notification of vacancy

- (1) Subject to this clause, a selection process for a decision to fill a vacancy meets the requirements of this Division only if:
 - (a) the vacancy, or a similar vacancy, in the Agency was notified in the *Public Service Gazette* within a period of 12 months before the written decision to engage or promote the person; and
 - (b) the vacancy was notified as open to all eligible members of the community; and
 - (c) the vacancy was notified with a closing date for applications of at least 7 calendar days after the notification (unless otherwise approved by the Commissioner).

Note: Part 2.2 provides modifications of and exceptions to the requirements in this Part for certain kinds of engagement and promotion decisions.

Notification of SES vacancies—external advertising

- (2) A vacancy at an SES classification must be notified in the *Public Service Gazette* and advertised externally (for example on a recruitment website) as open to all eligible members of the community.

Note: The Department of Finance and Deregulation has issued a policy on non-campaign recruitment advertising.

Restricting applications to APS employees (other than APS Level 1 and training classifications)

- (3) If the Agency Head decides that, for reasons of cost or operational efficiency, a vacancy at a non-SES classification should be filled by a person who is already an APS employee, the vacancy may, with the agreement of the Commissioner, be notified in the *Public Service Gazette* as open only to persons who are APS employees at the time of the notification.
- (4) Subclause (3) does not apply in relation to a vacancy at the APS Level 1 classification or a training classification, and these must be notified as open to all eligible members of the community.

Multiple Agency notification

- (5) An Agency participating in a multiple Agency selection process must ensure that there is adequate notification of the vacancy under its own Agency name in the *Public Service Gazette* (for example a heading followed by a link to multiple Agency notification).

External advertising

- (6) If a vacancy notified in the *Public Service Gazette* as open to all eligible members of the community is also advertised externally (for example on a

recruitment website) the external advertising must take place within 4 weeks before or 4 weeks after the *Gazette* notification.

- (7) If:
- (a) a vacancy is notified in the Public Service *Gazette* as open only to persons who are APS employees; and
 - (b) it is subsequently decided to advertise the vacancy externally as open to all eligible members of the community;
- the vacancy must be re-notified in the Public Service *Gazette* with the changed eligibility provision.

Meaning of APS employee

- (8) In this clause:
- APS employee** means a person who:
- (a) is a current ongoing APS employee or ongoing Parliamentary Service employee; or
 - (b) was, at the time of the relevant Public Service *Gazette* notification, a non-ongoing APS employee or non-ongoing Parliamentary Service employee.

2.10 Additional requirements for SES engagement or promotion decisions

A selection process that results in a decision to engage or promote a person as an SES employee meets the requirements of this Division only if the following also apply:

- (a) a representative of the Commissioner was a full participant in the selection process;
- (b) at the end of the process:
 - (i) the representative certified that the selection process complied with the Act and these Directions; and
 - (ii) the Commissioner endorsed the representative's certification of the process.

Note: Clause 2.9 requires the decision to be made within 12 months after the vacancy notification in the Public Service *Gazette* on which the selection process was based, including in relation to the same, or similar, vacancies. In relation to SES engagement or promotion decisions, the Commissioner must have endorsed the certification of that process before any engagement or promotion action may proceed.

Part 2.2

Engagement and promotion— exceptions to standard provisions

This Part determines the circumstances in which the merit principle in engagement and promotion (Employment Principle 10A(1)(c)) may be modified.

These circumstances include:

- engagement on a short-term, irregular or intermittent basis
- engagement of non-ongoing APS employee as ongoing employee in exceptional circumstances
- engagement of ongoing SES employee as non-ongoing SES employee
- affirmative measure—Indigenous employment
- affirmative measure—intellectual disability
- affirmative measure—engagement of person with disability unable to participate in competitive selection process
- engagement of person from state or territory jurisdiction
- re-engagement of election candidates
- promotion on completion of an appointment to a statutory office
- engagement of non-APS employee following a machinery of government change
- engagement of an ongoing Parliamentary Service employee as an ongoing APS employee
- re-engagement of a former APS employee.

2.11 Purpose of Part 2.2

The purpose of this Part is to modify the requirements of Part 2.1 and the scope and application of Employment Principle 10A(1)(c) in relation to engagement and promotion decisions in specific circumstances where this is appropriate.

2.12 Engagement on a short-term, irregular or intermittent basis

- (1) An Agency Head may engage a person to perform duties as a non-ongoing employee without complying with Part 2.1 if:
 - (a) the engagement is for a specified term or the duration of a specified task and the period of employment is 12 months or less; and
 - (b) taking into account any expected extension of the engagement, the period of employment will not be for more than 12 months.

- (2) An Agency Head may engage a person to perform duties as a non-ongoing employee without complying with Part 2.1 if the engagement is for duties that are irregular or intermittent.
- (3) An Agency Head must ensure as far as practicable that a vacancy in the Agency to which this clause applies is brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for it, for example by advertising and providing access to non-ongoing employment registers.
- (4) As a minimum requirement, the Agency Head must be satisfied that the person to be engaged has the work-related qualities genuinely required to perform the relevant duties.

Note: The Regulations (regulations 3.4 and 3.5) provide for matters regarding the engagement of non-ongoing employees.

2.13 Engagement of non-ongoing APS employee as ongoing employee in exceptional circumstances

- (1) An Agency Head may, in writing, ask the Commissioner to authorise the engagement by the Agency Head of a non-ongoing APS employee as an ongoing APS employee without complying with Part 2.1, if the Agency Head is satisfied that:
 - (a) the duties of the relevant employment are more appropriately undertaken by an ongoing APS employee; and
 - (b) the person to be engaged as an ongoing APS employee has the work-related qualities genuinely required to perform the relevant duties; and
 - (c) the engagement as an ongoing APS employee is at the person's classification (or equivalent) as a non-ongoing APS employee; and
 - (d) the original engagement of the person as a non-ongoing APS employee, or an extension of the engagement of the person as a non-ongoing APS employee, complied with all aspects of Part 2.1; and
 - (e) the engagement is necessary for the Agency's operations.
- (2) The Commissioner may authorise the engagement if the Commissioner is satisfied that exceptional circumstances exist to justify the engagement.

2.14 Engagement of ongoing SES employee as non-ongoing SES employee

An Agency Head may engage a person who is an ongoing SES employee to perform duties as a non-ongoing SES employee without complying with Part 2.1 if:

- (a) the person is to be engaged for a specified term or specified task; and
- (b) the person resigns as an ongoing SES employee in order to commence the engagement as a non-ongoing SES employee for a specified term or specified task; and

- (c) the engagement as a non-ongoing SES employee for a specified term or specified task is at the same classification as the person's current SES classification or at a lower SES classification.

Note: Engagement of non-ongoing SES employees is subject to the provisions of the Regulations (regulation 3.4).

2.15 Affirmative measure—Indigenous employment

- (1) In notifying a vacancy in accordance with clause 2.9, an Agency Head may, consistently with Commonwealth law, identify a vacancy as open only to Aboriginals or Torres Strait Islanders within the meaning of the *Racial Discrimination Act 1975*.
- (2) The Agency Head must ensure that, in all other respects, a decision to fill the vacancy is made in a way that meets the requirements of Part 2.1.
- (3) The Agency Head must ensure that the selection process for a vacancy identified under this clause accepts as applicants only persons who:
 - (a) are of Aboriginal and/or Torres Strait Islander descent; and
 - (b) identify as Aboriginal and/or Torres Strait Islander; and
 - (c) are accepted by their community as being Aboriginal and/or Torres Strait Islander.

2.16 Affirmative measure—intellectual disability

- (1) In notifying a vacancy in accordance with clause 2.9, an Agency Head may, consistently with Commonwealth law, identify a vacancy as open only to persons with intellectual disability.
- (2) The Agency Head must ensure that, in all other respects, a decision to fill the vacancy is made in a way that meets the requirements of Part 2.1.
- (3) The Agency Head must ensure that the selection process for a vacancy identified under this clause accepts as applicants only persons with an appropriate referral or assessment by a registered medical practitioner or a disability employment service provider.

2.17 Affirmative measure—engagement of person with disability unable to participate in competitive selection process

- (1) This clause applies in relation to a person with disability who has been assessed by a disability employment service provider as likely to be unable, because of their disability, to compete successfully on merit in a competitive selection process that complies with Part 2.1.
- (2) An Agency Head may engage the person as an APS employee to fill a vacancy where that vacancy is designed and created for, or identified as suitable for, the person in consultation with the disability employment service provider, without complying with Part 2.1.

Note: If the engagement is to be as a non-ongoing APS employee for a specified term, or for the duration of a specified task, the requirements of regulation 3.5 of the Regulations apply to the engagement, including requirements relating to the grounds for the engagement and the term of the engagement.

2.18 Engagement of person from state or territory jurisdiction

An Agency Head may engage a person as a non-ongoing APS employee for a specified term without complying with Part 2.1 if:

- (a) the person is an employee of a State or Territory, or of an authority of a State or Territory; and
- (b) the Agency Head has entered into an agreement with the State or Territory, or the authority of the State or Territory, to engage the person as a non-ongoing employee for a specified term.

2.19 Re-engagement of election candidates

- (1) If an Agency Head acts under section 32 of the Act (right of return for election candidates) and Schedule 1 of these Directions to engage a person as an APS employee, Part 2.1 does not apply in relation to the engagement.
- (2) For paragraph 32(1)(a) of the Act, the following are specified elections:
 - (a) an election for a member of a House of the Parliament of the Commonwealth or of a State;
 - (b) an election for a member of the Legislative Assembly of the Australian Capital Territory or the Northern Territory;
 - (c) an election for a member of the Torres Strait Regional Authority established under Division 5 of Part 3A of the *Aboriginal and Torres Strait Islander Act 2005*.

2.20 Promotion on completion of an appointment to a statutory office

- (1) An Agency Head may, in writing, request the Commissioner to authorise the promotion of an ongoing APS employee without complying with Part 2.1 if the following apply:
 - (a) the employee was granted leave without pay for appointment to a statutory office of a kind that requires the Commissioner, or a representative of the Commissioner, to be a participant in the selection process for the office;
 - (b) the employee's appointment to the statutory office has not expired, or expired no more than 3 months before the Commissioner was asked to authorise the promotion;
 - (c) the duties to which the employee is to be assigned are assessed by the Agency Head as being at an APS classification that is equivalent to, or lower than, the duties of the statutory office;
 - (d) the Agency Head is satisfied that the employee has the necessary work-related qualities to perform duties at the APS classification to which the employee is to be promoted.

- (2) The Commissioner may authorise the promotion, and in deciding whether to do so may also take into account the following:
 - (a) how long the employee was appointed to the statutory office;
 - (b) the selection process for the appointment to the statutory office; and
 - (c) any other matter the Commissioner considers relevant.
- (3) If the Commissioner authorises the promotion, the Agency Head may promote the employee.

2.21 Engagement of non-APS employee following a machinery of government change

If the Commissioner acts under paragraph 72(1)(c) or (d) of the Act to engage a person, or determine that a person becomes engaged, in a specified Agency, Part 2.1 does not apply in relation to the engagement.

2.22 Engagement of an ongoing Parliamentary Service employee as an ongoing APS employee

An Agency Head may engage a person who is an ongoing Parliamentary Service employee as an ongoing APS employee without complying with Part 2.1 if the person is to be employed at a comparable classification or lower, as set out in Schedule 2.

2.23 Re-engagement of a former APS employee

- (1) The relevant Agency Head may engage a former employee as an ongoing or non-ongoing APS employee without complying with Part 2.1 if the Agency Head is satisfied that it is appropriate because:
 - (a) following an investigation of the circumstances in which the person's former employment ended, the Agency Head is satisfied that it should not have ended; or
 - (b) the engagement gives effect to a settlement of an application for relief in relation to the termination of the employee's employment; or
 - (c) an appropriate authority has recommended or ordered the reinstatement of the person, for example:
 - (i) the Federal Court of Australia;
 - (ii) the Fair Work Commission;
 - (iii) the Australian Human Rights Commission.
- (2) An engagement under this clause must be on the same basis (ongoing or non-ongoing) as the person's former employment and must be at the same or a lower classification.

Part 2.3 Assignment of duties and movement of employees between agencies

This Part makes Directions under section 11A of the Act dealing with the assignment of duties to employees under section 25 of the Act, other than promotions, and the movement of employees under section 26 of the Act. Those sections read:

25 Assignment of duties

An Agency Head may from time to time determine the duties of an APS employee in the Agency, and the place or places at which the duties are to be performed.

26 Voluntary moves between Agencies

- (1) An Agency Head may enter into an agreement in writing with an APS employee for the employee to move to the Agency Head's Agency from another Agency.
- (2) Subject to Commissioner's Directions made under subsection 11A(1), the agreement has effect according to its terms, by force of this section.

In making decisions in these matters, Agency Heads must comply with the APS Values and the APS Employment Principles.

2.24 Minimum requirements for decisions relating to assignment of duties at or below classification

The Agency Head must ensure that decisions relating to the ongoing or temporary assignment of duties to an employee under section 25 of the Act at or below the employee's classification level (including where this involves a temporary movement from another APS Agency):

- (a) are based on an assessment of the employee's work-related qualities and the work-related qualities genuinely required to perform the relevant duties; and
- (b) take into account efficient and effective organisational performance.

Note 1: Subsection 23(4) of the Act restricts the circumstances where an employee's classification may be reduced without their consent.

Note 2: Part 2.1 imposes additional obligations in relation to promotions.

2.25 Minimum requirements for decisions relating to the temporary assignment of higher duties

- (1) The Agency Head must ensure that decisions relating to the temporary assignment of duties to an employee at a higher classification level

(including where this involves a temporary movement from another APS Agency):

- (a) are based on an assessment of the employee's work-related qualities and the work-related qualities genuinely required to perform the relevant duties; and
 - (b) take into account efficient and effective organisational performance.
- (2) Decisions under subclause (1) must also take into account the following matters:
- (a) the duration of the vacancy and whether it would be more appropriate to fill the vacancy on an ongoing basis;
 - (b) the relative importance to the Agency of the duties to be performed at the higher classification and the other duties to be performed in the Agency;
 - (c) the expected cost to the Agency of the employee performing duties at the higher classification;
 - (d) the need for APS employees to be given the opportunity to gain experience in performing duties at a higher classification.

Note: Part 2.1 imposes additional obligations in relation to promotions.

2.26 Assignment from non-SES classification to SES classification

A decision may be made to assign duties on an ongoing basis at an SES classification to an employee who is not an SES employee, provided that the employee's classification is in the same classification group as the SES classification. Such a decision may be made only with the agreement of the Commissioner, whether or not the decision is part of a move to another Agency.

Note: The Classification Rules, which contain the SES Band 1, 2 and 3 classifications, also include a number of classifications in the same Groups as the SES classifications which are not within the SES.

2.27 Moves between agencies

- (1) This clause applies to moves between APS Agencies under section 26 of the Act that are not associated with a promotion.
- (2) For subsection 26 (2) of the Act, a written agreement between an Agency Head and an ongoing APS employee for the employee to move to the Agency Head's Agency (the *new* Agency) from another Agency (the *original* Agency) has effect subject to this clause and clause 6.8.

Agreement for ongoing move

- (3) If the agreement relates to an ongoing move, the move takes effect:
 - (a) if a date of effect is agreed in writing between the APS employee and the two Agency Heads—on the agreed date of effect; and
 - (b) otherwise—4 weeks after the employee informs the original Agency Head in writing.

Note: The date of effect of a move that is a promotion is dealt with in Part 2.4.

Agreement for temporary move

- (4) If the agreement relates to a temporary move, the following apply:
 - (a) if the original Agency Head approves the proposed temporary move in writing, the move takes effect on the agreed date of effect;
 - (b) if the original Agency Head did not approve the proposed temporary move in writing and the employee commences duties in the new Agency, the move takes effect, from the date the employee commences duties in the new Agency, as an ongoing move to the new Agency at the employee's existing classification

Variation of period of agreement

- (5) If paragraph (3)(a) applies to the agreement, and the new Agency Head and the APS employee agree to vary the period of the move, then:
 - (a) if the original Agency Head approves the variation in writing—the variation has effect according to its terms; and
 - (b) if the original Agency Head does not approve the variation in writing—the variation has no effect.

Part 2.4 Gazettal of employment decisions and date of effect of promotions

2.28 Purpose of Part 2.4

The purpose of this Part is to:

- (a) set out requirements for notifying certain employment decisions in the *Public Service Gazette*; and
- (b) provide for the date of effect of a promotion decision.

2.29 Decisions that must be notified in the *Gazette*

- (1) An Agency Head must notify an employment decision of any of the following kinds in the *Public Service Gazette* within 3 months after the decision is made:
 - (a) an engagement of a person as an ongoing APS employee (including under paragraph 72(1)(c) or (d) of the Act);
 - (b) an engagement of a person as an APS employee for a specified term of more than 12 months or for the duration of a specified task that is reasonably expected to take more than 12 months (including under paragraph 72(1)(c) or (d) of the Act);
 - (c) in relation to a person who is engaged as an APS employee for a specified term of 12 months or less—an extension of the engagement that results in the term of engagement being more than 12 months;
 - (d) a movement (other than a temporary movement) by an ongoing APS employee to perform duties in another Agency, if the vacancy was notified in the *Public Service Gazette*;
 - (e) an assignment of duties (other than a temporary assignment of duties) to an ongoing APS employee in an Agency, if the vacancy was notified in the *Public Service Gazette*;
 - (f) the promotion of an ongoing APS employee;
 - (g) the promotion of an ongoing APS employee, following the decision of a Promotion Review Committee under subparagraph 5.18(1)(b)(ii) of the Regulations that has not been notified under paragraph (f);
 - (h) the engagement of an ongoing Parliamentary Service employee as an ongoing APS employee if the engagement:
 - (i) follows a decision of a Promotion Review Committee mentioned in subparagraph 5.18(1)(b)(iii) of the Regulations; and
 - (ii) has not been notified under paragraph (a);
 - (i) the termination, and the grounds for termination, of the employment of an ongoing APS employee under section 29 of the Act;
 - (j) the retirement of an SES employee with the payment of an incentive under section 37 of the Act.

- (2) A notification must include the employee's name unless the Agency Head decides that the name should not be included, because of the person's work-related or personal circumstances.
- (3) The Agency Head may not make a decision under subclause (2), unless he or she has obtained the approval of the Commissioner, who will consult the Merit Protection Commissioner in the case of a non-SES employee.
- (4) If a notification that does not include the employee's name relates to a promotion that is subject to review:
- (a) the Agency must, on or before the day of the notification, notify all parties who are eligible to seek review of the promotion so they are aware of their rights of review; and
 - (b) the Agency must, at the same time as parties are notified, advise the Merit Protection Commissioner that eligible parties have been notified.
- (5) If an engagement notified under paragraph (1)(a), or a promotion notified under paragraph (1)(f), was made as a result of a selection process that complied with Part 2.1 in relation to a similar vacancy, the notification of the decision must include a statement to the following effect:
- This engagement/promotion is made following a selection process that complies with Part 2.1 of the Australian Public Service Commissioner's Directions 2013—similar vacancy previously notified.*
- (6) If a person whose engagement is notified under paragraph (1)(a):
- (a) was an ongoing Parliamentary Service employee immediately before the engagement; and
 - (b) was engaged at a higher classification than the person's classification as a Parliamentary Service employee;
- the notification of the decision must include a statement to the following effect:
- This engagement of an ongoing Parliamentary Service employee at a higher classification may be subject to review by a Promotion Review Committee in accordance with Part 5 of the Public Service Regulations 1999.*
- Note:* See Schedule 2 for comparison of Parliamentary Service classifications with APS classifications.
- (7) If an engagement notified under paragraph (1)(a) was made under clause 2.13 (engagement of non-ongoing APS employee as ongoing employee in exceptional circumstances), the notification of the decision must include a statement to the following effect:
- This engagement was authorised by the Australian Public Service Commissioner under clause 2.13 of the Australian Public Service Commissioner's Directions 2013—exceptional circumstances.*

2.30 Cancellation decisions that must be notified in the *Gazette*

- (1) An Agency Head must notify a decision (a ***cancellation decision***) to cancel a decision of any of the following kinds in the Public Service *Gazette* within 3 months after the cancellation decision is made:
 - (a) an engagement of a person notified under paragraph 2.29(1)(a) or (b);
 - (b) an extension of an engagement notified under paragraph 2.29(1)(c);
 - (c) a movement notified under paragraph 2.29(1)(d);
 - (d) an assignment of duties notified under paragraph 2.29(1)(e);
 - (e) a promotion notified under paragraph 2.29(1)(f) (whether the cancellation decision is made by the Agency Head, or is the result of a decision of a Promotion Review Committee);
 - (f) a termination notified under paragraph 2.29(1)(i);
 - (g) a retirement notified under paragraph 2.29(1)(j).
- (2) The notification of a cancellation decision must include the date of effect of the cancellation decision.
- (3) The notification of a cancellation decision must include the person's name unless the original notification did not include the name.

2.31 Date of effect of promotions

- (1) Subject to clause 6.8, this clause applies to a decision (a ***promotion decision***) to:
 - (a) promote an ongoing APS employee; or
 - (b) engage an ongoing Parliamentary Service employee as an ongoing APS employee at a higher classification than the employee's Parliamentary Service classification, as set out in Schedule 2.
- (2) In this clause:

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

notification, for a promotion decision, means the notification of the decision under clause 2.29.

PRC review means review by a Promotion Review Committee under Part 5 of the *Public Service Regulations 1999*.
- (3) In this clause, a reference to a ***date of effect*** of a promotion decision having been agreed is a reference to a date that has been agreed as the date of effect by:
 - (a) the employee; and
 - (b) the Agency Head; and
 - (c) if the employee is moving from another Agency—the original Agency Head.

Not subject to review

- (4) If the promotion decision is not subject to PRC review, the decision takes effect:
 - (a) if a date of effect has been agreed that is not earlier than the notification—that date; or
 - (b) otherwise—4 weeks after notification.

No application for review

- (5) If the promotion decision is subject to PRC review, but no application for review is made before the end of the application period, the decision takes effect:
 - (a) if a date of effect has been agreed that is not earlier than the end of the application period—that date; or
 - (b) otherwise—2 weeks after the end of the application period.

Application for review is withdrawn

- (6) If the promotion decision is subject to PRC review and an application for review is made before the end of the application period, but is withdrawn before the PRC makes a decision on the application, the decision takes effect:
 - (a) if a date of effect has been agreed that is not earlier than the end of the application period—that date; or
 - (b) otherwise—2 weeks after the Agency Head is notified of the withdrawal of the application.

Application for review lapses

- (7) If the promotion decision is subject to PRC review, an application for review is made before the end of the application period and a PRC is appointed, but the application lapses before the PRC completes the review, the decision takes effect:
 - (a) if a date of effect has been agreed that is after the Agency Head is notified of the lapse of the application—that date; or
 - (b) otherwise—2 weeks after the Agency Head is notified.

PRC is not appointed

- (8) If the promotion decision is subject to PRC review, an application for review is made before the end of the application period, but the Merit Protection Commissioner decides under subregulation 5.10 (1) that it is not necessary to appoint a PRC to deal with the application, the decision takes effect:
 - (a) if a date of effect has been agreed that is after the Agency Head is notified of the decision of the Merit Protection Commissioner—that date; or
 - (b) otherwise—the later of:

- (i) the day the Agency Head is notified; and
- (ii) 4 weeks after the notification.

PRC upholds original promotion decision

- (9) If the promotion decision is subject to PRC review, an application for review is made before the end of the application period and a PRC is appointed, and the PRC upholds the decision, the promotion decision takes effect:
 - (a) if a date of effect has been agreed that is after the Agency Head is notified of the decision of the PRC—that date; or
 - (b) otherwise—4 weeks after the Agency Head is notified.

PRC varies original promotion decision

- (10) If the promotion decision is subject to PRC review, an application for review is made before the end of the application period and a PRC is appointed, and the PRC varies the decision, the promotion decision takes effect:
 - (a) if a date of effect has been agreed that is after the Agency Head is notified of the decision of the PRC — that date; or
 - (b) otherwise—4 weeks after the Agency Head is notified.

The non-discrimination and diversity principles in employment

This Chapter provides for some specific actions to give effect to APS Employment Principles 10A(1)(f) and (g), which read:

(1) The APS is a career-based public service that:

....

- (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.

It is expected that an Agency workplace diversity program will include measures directed at eliminating employment-related disadvantages in the Agency on the basis of:

- being Aboriginal and/or Torres Strait Islander;
- gender;
- race or ethnicity;
- disability; or
- being a member of a group that, from time to time, is identified as having an employment-related disadvantage.

3.1 How an Agency Head upholds APS Employment Principle 10A(1)(f) (non-discrimination)

In upholding and promoting APS Employment Principle 10A(1)(f), an Agency Head must put in place measures in the Agency directed at ensuring that all relevant anti-discrimination laws are complied with.

3.2 How an Agency Head upholds APS Employment Principle 10A(1)(g) (diversity)

In upholding and promoting APS Employment Principle 10A(1)(g), an Agency Head must put in place measures in the Agency directed at ensuring that:

- (a) the diversity of APS employees is recognised, fostered and made best use of within the workplace, taking into account the organisational and business goals of the Agency and the skills required to perform the relevant duties; and
- (b) APS employees are helped to balance their work, family and other caring responsibilities effectively.

3.3 Measures for workplace diversity programs

Note: Section 18 of the Act requires an Agency Head to establish a workplace diversity program to assist in giving effect to the APS Employment Principles. The content and scope of a workplace diversity program may vary with the kind of agency and with its size and resources. The Commissioner will provide guidance for agencies in deciding what is appropriate.

A workplace diversity program for an Agency must include measures directed at ensuring that:

- (a) the corporate, business and human resource plans of the Agency demonstrate that the Agency values the diverse backgrounds of its employees and values, and is able to access and make use of, the diverse skills and experience of its employees; and
- (b) workplace structures, systems and procedures assist employees in balancing their work, family and other caring responsibilities effectively; and
- (c) the diversity of the Australian community is reflected in strategies to attract, recruit and retain employees, in line with the organisational and business goals of the Agency and the skills required to perform the relevant duties.

3.4 Workplace diversity program to be published

- (1) As soon as practicable after establishing a workplace diversity program for an Agency, the Agency Head must publish the program on the Agency's website.
- (2) If the Agency Head revises the workplace diversity program in any way, the Agency Head must, as soon as practicable after revising the program, publish the revised program on the Agency's website.

3.5 Evaluation and assessment of effectiveness and outcomes of workplace diversity program

- (1) An Agency Head must:
 - (a) develop performance indicators to evaluate the effectiveness and outcomes of the Agency's workplace diversity program; and
 - (b) evaluate and report on the effectiveness and outcomes of the program annually.
- (2) An Agency Head must give the Commissioner the information the Commissioner requires to enable the Commissioner to:
 - (a) evaluate and make an assessment of the effectiveness of Agencies' workplace diversity programs; and
 - (b) make the assessment for the purpose of the Commissioner's report under section 44 of the Act.

Note: This requirement is in addition to the Agency Head's duty to give the Commissioner information for the Commissioner to prepare an annual report — see s 44 of the Act.

3.6 Review of workplace diversity program

At least once every 4 years, an Agency Head must review the Agency's workplace diversity program to ensure that it continues:

- (a) to assist in giving effect to the relevant APS Employment Principles;
and
- (b) to achieve the outcomes mentioned in clause 3.3.

4.1 How an Agency Head upholds APS Employment Principle 10A(1)(d)

In upholding and promoting APS Employment Principle 10A(1)(d), an Agency Head will support employees to achieve effective performance by ensuring that the Agency:

- (a) builds the capability necessary to achieve the outcomes properly expected by the Government;
- (b) has fair and open performance management processes and practices that support a culture of high performance, in which all performance is effectively managed;
- (c) provides each APS employee with a clear statement of the performance and behaviour expected of him or her, and an opportunity to discuss his or her responsibilities;
- (d) requires employees to participate constructively in agency-based performance management processes and practices;
- (e) invests in building the capability of managers to manage performance effectively; and
- (f) uses its performance management processes to guide salary movement and reward.

4.2 Initiating Code of Conduct proceedings in relation to performance matters

Where the conduct of an APS employee raises concerns that relate both to effective performance and to possible breaches of the Code of Conduct, the Agency Head must, before making a decision to initiate an inquiry under procedures established by the Agency Head under subsection 15(3) of the Act, have regard to any relevant standards and guidance issued by the Commissioner.

5.1 Providing a safe workplace

- (1) An Agency Head must put in place measures in the Agency directed at ensuring that the Agency complies with all applicable work health and safety legislation.
- (2) Employees must take proper steps to support these measures, having regard to their duties and responsibilities.

Division 1—Preliminary

6.1 Purpose of Chapter 6

The purpose of this Chapter is to set out the basic procedural requirements that must be complied with by the procedures established by an Agency Head under subsection 15 (3) of the Act for:

- (a) determining whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct; and
- (b) determining what sanction, if any, should be imposed on an APS employee for a breach of the Code of Conduct.

Note: The requirements set out in this Chapter and the procedures established under subsection 15 (3) of the Act apply only in relation to a suspected breach of the Code of Conduct by an APS employee in respect of which a determination may be made. Not all suspected breaches of the Code of Conduct need to be dealt with by way of a determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate. (See also clause 4.2.)

6.2 Application to former APS employees

- (1) In this Chapter, unless the contrary intention appears, a reference to an APS employee in an Agency includes a reference to a former APS employee who is suspected of having breached the Code of Conduct while an employee in the Agency.
- (2) Subparagraph 6.3(a)(ii) and clause 6.4 do not apply in relation to a former employee.

Division 2—Basic procedural requirements

6.3 Employee must be informed that a determination is being considered

A determination may not be made in relation to a suspected breach of the Code of Conduct by an APS employee unless reasonable steps have been taken to:

- (a) inform the employee of:
 - (i) the details of the suspected breach (including any subsequent variation of those details); and
 - (ii) the sanctions that may be imposed on the employee under subsection 15 (1) of the Act; and
- (b) give the employee a reasonable opportunity to make a statement in relation to the suspected breach.

6.4 Employee must be informed before a sanction is imposed

If a determination is made that an APS employee has breached the Code of Conduct, a sanction may not be imposed unless reasonable steps have been taken to:

- (a) inform the employee of:
 - (i) the determination; and
 - (ii) the sanction or sanctions that are under consideration; and
 - (iii) the factors that are under consideration in determining any sanction to be imposed; and
- (b) give the employee a reasonable opportunity to make a statement in relation to sanctions under consideration.

6.5 Person making determination to be independent and unbiased

An Agency Head must take reasonable steps to ensure that:

- (a) the person who determines whether an APS employee has breached the Code of Conduct is, and appears to be, independent and unbiased; and
- (b) the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.

6.6 Determination process to be informal

The process for determining whether an APS employee has breached the Code of Conduct must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

6.7 Record of determination and sanctions

If a determination is made in relation to a suspected breach of the Code of Conduct by an APS employee, a written record must be made of:

- (a) the suspected breach; and
- (b) the determination; and
- (c) any sanctions imposed as a result of a determination that the employee breached the Code of Conduct; and
- (d) if a statement of reasons was given to the employee—the statement of reasons.

Note: The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this clause.

6.8 Procedure when an employee is to move to another Agency during an investigation

- (1) This clause applies if:
 - (a) an ongoing APS employee in an Agency is suspected of having breached the Code of Conduct ; and
 - (b) the employee has been informed of the matters mentioned in paragraph 6.3(a); and
 - (c) the matter has not yet been resolved; and
 - (d) a decision has been made that, apart from this clause, would result in the movement of the employee under section 26 of the Act to another Agency (including on promotion).
- (2) Unless the original Agency Head and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
- (3) For this clause, the matter is taken to be resolved when:
 - (a) a determination is made, as mentioned in clause 6.3; or
 - (b) it is decided that a determination is not necessary.

Summary of this Chapter

This Chapter provides Directions on a range of employment matters including the restrictions on engaging redundancy benefit recipients, the termination of employment of non-ongoing employees and minimum requirements relating to employees who apply for leave without pay to undertake employment under the *Governor-General Act 1974* or the *Members of Parliament (Staff) Act 1984*.

7.1 Restrictions on engaging redundancy benefit recipients

Meaning of redundancy benefit recipient

- (1) For this clause, a person is a **redundancy benefit recipient** if:
- (a) the person has received a redundancy benefit from an APS Agency or the Australian Parliamentary Service; and
 - (b) the redundancy benefit period has not elapsed.

Meaning of redundancy benefit

- (2) For this clause, subject to subclause (3), each of the following payments is a **redundancy benefit**:
- (a) a severance payment, or similar payment, made to an employee on the ending of the employee's employment;
 - (b) a payment made to an employee as a result of the shortening of a retention period;
 - (c) an incentive to retire payment under section 37 of the Act or section 37 of the *Parliamentary Service Act 1999*.
- (3) Each of the following payments is not a **redundancy benefit**:
- (a) a payment made to an employee as redundancy pay under section 119 of the *Fair Work Act 2009*;

Note: The amount of the payment mentioned in paragraph (a) is known as the National Employment Standards redundancy amount.

- (b) a payment made:
 - (i) to a person who was engaged for a specified term or for the duration of a specified task; and
 - (ii) as compensation for the early termination of the person's employment;
- (c) a payment made to a person if:
 - (i) the person was engaged overseas to perform duties overseas as an employee under section 74 of the Act; and
 - (ii) the person's employment ended otherwise than at the initiative of the employer;

- (d) a payment made to a person in lieu of notice of termination of employment.

Meaning of redundancy benefit period

- (4) For this clause, the **redundancy benefit period**, for a person who receives a redundancy benefit as a result of the ending of the person's employment, begins when the employment ends and lasts for the number of weeks and days calculated as follows:

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

- (5) In calculating the redundancy benefit period:
 - (a) where an employee has periods of full-time and part-time service, and the period of part-time service falls last (so that the person's redundancy benefit is calculated on the basis of the part-time weekly salary), the weekly salary to be used is the full-time equivalent of that part-time weekly salary; and
 - (b) where the calculation results in a redundancy benefit period that includes part days, the redundancy benefit period is to be rounded down to the nearest equivalent whole day.

Engagement restrictions

- (6) An Agency Head may engage a redundancy benefit recipient as an APS employee, or under section 74 of the Act to perform duties overseas as an employee, only if the Agency Head considers that the engagement is essential for the Agency's operations, having regard to the nature of the duties to be performed and the work-related qualities of the person.
- (7) In addition to the requirement in subclause (6), an Agency Head must also:
 - (a) obtain the Commissioner's approval before engaging a redundancy benefit recipient as either:
 - (i) an ongoing APS employee; or
 - (ii) a non-ongoing SES employee; and
 - (b) consult with the Commissioner before engaging a redundancy benefit recipient, where the engagement is:
 - (i) as a non-ongoing APS employee (at a non-SES classification) for a specified term of more than 6 months; or
 - (ii) as a non-ongoing APS employee (at a non-SES classification) for the duration of a specified task where it is estimated that the duration of the task is likely to be more than 6 months; or
 - (iii) to perform duties overseas as an employee under section 74 of the Act; and
 - (c) consult with the Commissioner before extending the engagement (at a non-SES classification) of a non-ongoing employee who is a redundancy benefit recipient, where the total term of engagement will exceed 6 months.

7.2 Termination of employment of non-ongoing APS employees

- (1) This clause sets out procedures applicable to the termination of the employment of a non-ongoing APS employee.
- (2) If an employment arrangement sets out procedures applicable to the termination of the employment of the non-ongoing APS employee, the procedures apply to the termination of the employment unless the procedures:
 - (a) if the employment arrangement is a fair work instrument—are an unlawful term; or
 - (b) if the employment arrangement is a transitional instrument that is not an award—are prohibited content; or
 - (c) if the employment arrangement is not a fair work instrument or a transitional instrument—would be an unlawful term if the employment arrangement were a fair work instrument.

Note 1: The engagement of a non-ongoing APS employee may be terminated on the grounds of a breach of the APS Code of Conduct only in accordance with procedures established by an Agency Head under subsection 15 (3) of the Act.

Note 2: The *Fair Work Act 2009* has rules and entitlements that apply to termination of employment.

Note 3: An Agency Head cannot terminate the employment of an SES employee unless the Commissioner has issued a certificate under section 38 of the Act that the termination has satisfied the requirements of these Directions and is in the public interest.

Note 4: The Dictionary defines *employment arrangement*.

7.3 Incentive to retire—SES employee

An Agency Head must not give a notice to an SES employee under section 37 of the Act unless the Commissioner is satisfied that the following requirements have been met:

- (a) the employee is an ongoing SES employee; and
- (b) the employee is advised of possible options for assignment, including assignment to a group of duties at a lower classification; and
- (c) the employee is given reasonable access to independent financial advice and career counselling; and
- (d) the Commissioner has agreed to the amount to be paid to the employee by the Agency Head if the employee retires within the period specified in the notice.

Note 1: A notice given to an SES employee under subsection 37 (1) of the Act must be in writing and must state that the employee will become entitled to a payment of a specified amount if the employee retires within a period specified in the notice.

Note 2: Under clause 2.29, the retirement of an SES employee within the period specified in a notice given under section 37 of the Act must be notified in the *Public Service Gazette*.

7.4 Matters relating to leave without pay

- (1) An Agency Head must grant leave without pay to an ongoing APS employee who applies for the leave to undertake or continue employment:
 - (a) for the purposes of section 13 of the *Governor-General Act 1974*; or
 - (b) for the purposes of section 13 or 20 of the *Members of Parliament (Staff) Act 1984*.
- (2) If an APS employee who has been granted leave without pay to undertake or continue employment for the purposes mentioned in paragraph (1)(a) or (b) notifies his or her Agency Head, in writing, that he or she wishes to return to the Agency to undertake duties:
 - (a) the Agency Head must arrange for the APS employee to return to the Agency as soon as practicable; and
 - (b) the Agency Head must arrange for the APS employee to undertake duties at the employee's classification immediately before the employee was granted leave without pay or, if the classification no longer exists, at an equivalent classification determined by the Agency Head.

Note 1: The right of return under subclause (2) applies in relation to leave without pay whether granted before or after the commencement of these provisions.

Note 2: APS employees also have certain rights of return from leave granted under the *Australian Civilian Corps Act 2011* and these are provided in the *Prime Minister's Australian Civilian Corps Directions 2012*.

7.5 Transitional—Prime Minister's Public Service Amendment Directions 2005 (No. 1)

- (1) This clause applies if:
 - (a) an Agency Head granted an application by an APS employee under subclause 2.1(1) of the *Prime Minister's Public Service Directions 1999*, as in force before the commencement of the *Prime Minister's Public Service Amendment Directions 2005 (No. 1)* on 19 October 2005, for leave without pay to undertake or continue employment in a full-time statutory appointment; and
 - (b) the period of leave has not expired.
- (2) The grant of leave without pay is not affected by the amendments made by *Prime Minister's Public Service Amendment Directions 2005 (No. 1)* or by the repeal of the *Prime Minister's Public Service Directions 1999*.
- (3) If the APS employee applies to his or her Agency Head, in writing, for leave without pay to continue the employment, the Agency Head may grant the application.
- (4) If the APS employee notifies his or her Agency Head, in writing, that he or she wishes to return to the Agency to undertake duties:
 - (a) the Agency Head must arrange for the APS employee to return to the Agency as soon as practicable; and

- (b) the Agency Head must arrange for the APS employee to undertake duties at the employee's classification immediately before the employee was granted leave without pay or, if the classification no longer exists, at an equivalent classification determined by the Agency Head.

8.1 Delegation by the Commissioner

- (1) The Commissioner may, in writing, delegate to a senior official any of the Commissioner's powers or functions under these Directions (other than under this clause).
- (2) A person (the *first delegate*) to whom powers or functions are delegated under subclause (1) may, in writing, delegate any of those powers or functions to another person (the *second delegate*).
- (3) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subclause (2), the first delegate must give corresponding directions to the second delegate.
- (4) A power or function that is exercised or performed by a person under a delegation under subclause (2) is taken, for the purposes of these Directions, to have been exercised or performed by the Commissioner.
- (5) A person exercising powers or functions under a delegation under this clause must comply with any directions given by the Commissioner.
- (6) For subclause (1):
senior official means:
 - (a) a person who holds any office or appointment under an Act; or
 - (b) an SES employee or acting SES employee.

8.2 Delegation by Agency Head

- (1) An Agency Head may, in writing, delegate to a person any of the Agency Head's powers or functions under these Directions (other than under this clause).
- (2) However, an Agency Head cannot delegate powers or functions to an outsider without the prior written consent of the Commissioner.
- (3) A person (the *first delegate*) to whom powers or functions are delegated under subclause (1) may, in writing, delegate any of the powers or functions to another person (the *second delegate*).
- (4) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subclause (3), the first delegate must give corresponding directions to the second delegate.
- (5) A power or function that is exercised or performed by a person under a delegation under subclause (3) is taken, for the purposes of these Directions, to have been exercised or performed by the person who originally delegated the corresponding power or function under subclause (1).

- (6) A person exercising powers or functions under a delegation under this clause must comply with any directions of the Agency Head who delegated the power or function.
- (7) For subclause (2):
 - outsider* means a person other than:
 - (a) an APS employee; or
 - (b) a person appointed to an office by the Governor-General, or by a Minister, under a law of the Commonwealth.

SCHEDULE 1 RE-ENGAGEMENT OF ELECTION CANDIDATES

Note: This Schedule relates to clause 2.19.

1 Entitlement to return to APS employment

- (1) This schedule applies to a person if:
 - (a) the person is a former APS employee in the Agency, whose employment ended because he or she resigned to contest an election; and
 - (b) section 32 of the Act applies to the person; and
 - (c) the person applies to the Agency Head to be engaged pursuant to section 32 of the Act and clause 2.19;
 - (i) within the time limit; or
 - (ii) if the Commissioner has made a declaration under subclause 4— as soon as practicable after receiving notice of the declaration; and
 - (d) if the former employment was non-ongoing:
 - (i) the employment would not have ended except for the resignation; and
 - (ii) the person applies to the Agency Head to be engaged before the employment would have ended if the person had not resigned.
- (2) Where the Agency Head engages the person as an APS employee pursuant to section 32 of the Act and clause 2.19, the person must be:
 - (a) engaged on the same basis (ongoing or non-ongoing) as the person's employment before resigning and at the same or a lower classification;
 - (b) assigned duties that are the same as, or similar to, the duties the person had immediately before the resignation or, if such duties are unavailable, other duties at the same classification; and
 - (c) engaged on:
 - (i) the same terms and conditions of employment that applied to the person when the person resigned; or
 - (ii) if the remuneration, or another term or condition, applying to the person's previous classification has changed since the person resigned—the changed terms and conditions.
- (3) The continuity of the service of the person is taken not to have been broken by the period between the person's resignation and the person's re-engagement as an APS employee, but that period does not count as service for the purposes of:
 - (a) the National Employment Standards; or
 - (b) an employment arrangement that applies to the employee.

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

- (4) If the Commissioner is satisfied that it is appropriate to do so (for example because the Agency in which the person was employed at the time of resignation is no longer responsible for those duties, or no longer exists), the Commissioner may declare that the person is taken to be a former employee of a specified Agency for the purposes of this Schedule.
- (5) In this Schedule:
time limit, for a person who contested an election, means:
 - (a) if the result of the election is not disputed—2 months after the declaration of the result of the election; and
 - (b) if the result of the election is disputed—2 months after a court of disputed returns decides the petition disputing the result, or the petition is withdrawn or lapses.

SCHEDULE 2 COMPARISON WITH PARLIAMENTARY SERVICE CLASSIFICATIONS

Note: This Schedule relates to clauses 2.22 and 2.29.

1 Meaning of *comparable classification or lower*

For clause 2.22, a person who is an ongoing Parliamentary Service employee is engaged as an ongoing APS employee at *a comparable classification or lower* if:

- (a) the person is engaged as an ongoing APS employee at a classification mentioned in an item in column 2 in the following table; and
- (b) immediately before the engagement, the person was engaged as an ongoing Parliamentary Service employee at one of the corresponding classifications mentioned in column 3 of the item.

1 Item	2 APS Group classification	3 Parliamentary Service Group classification
1	1	1
2	1,2	2
3	1,2,3	3
4	1,2,3,4	4
5	1,2,3,4,5	5
6	1,2,3,4,5,6,	6
7	1,2,3,4,5,6,7	7
8	1,2,3,4,5,6,7,8	8
9	1,2,3,4,5,6,7,8,9	9
10	1,2,3,4,5,6,7,8,9,10	10
11	1,2,3,4,5,6,7,8,9,10,11	11

2 Meaning of *higher classification*

For clause 2.29, a person who is an ongoing Parliamentary Service employee is engaged as an ongoing APS employee at a *higher classification* if:

- (a) the person is engaged as an ongoing APS employee at a classification mentioned in an item in column 2 in the following table; and
- (b) immediately before the engagement, the person was engaged as an ongoing Parliamentary Service employee at the corresponding classification mentioned in column 3 of the item.

1 Item	2 APS Group classification	3 Parliamentary Service Group classification
1	2,3,4,5,6,7,8,9,10,11	1
2	3,4,5,6,7,8,9,10,11	2
3	4,5,6,7,8,9,10,11	3
4	5,6,7,8,9,10,11	4
5	6,7,8,9,10,11	5
6	7,8,9,10,11	6
7	8,9,10,11	7
8	9,10,11	8
9	10,11	9
10	11	10

DICTIONARY

Note: See clause 4.

Note: Words and expressions defined in the *Public Service Act 1999* are indicated by an asterisk (*) (see subcl 4(2)). Minor changes from the Act are indicated by square brackets ([]).

Act means the *Public Service Act 1999*.

***Agency** means:

- (a) a Department; or
- (b) an Executive Agency; or
- (c) a Statutory Agency.

***Agency Head** means:

- (a) the Secretary of a Department; or
- (b) the Head of an Executive Agency; or
- (c) the Head of a Statutory Agency.

***APS** means the Australian Public Service established by section 9 [of the Act].

***APS employee** means:

- (a) a person engaged under section 22 [of the Act]; or
- (b) a person who is engaged as an APS employee under section 72 [of the Act].

***APS employment** means employment as an APS employee.

***APS employment principles** means the principles in subsection 10A(1) of the Act.

***APS Values** means the Values in section 10 [of the Act].

broadband has the meaning given in the Classification Rules.

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

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

Classification Rules means rules about classifications of APS employees made under section 23 of the Act from time to time.

***Code of Conduct** (or **Code**) means the rules made under section 13 [of the Act].

***Commissioner** means the Australian Public Service Commissioner appointed under [the] Act.

disability employment service provider means an organisation that facilitates access to employment for persons with disabilities.

employee means an APS employee.

employment arrangement means any of the following:

- (a) a fair work instrument;
- (b) a transitional instrument;
- (c) a determination under subsections 24 (1) or (3) of the Act;
- (d) a written contract of employment.

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

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

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

merit—see subsection 10A(2) of the Act.

***Merit Protection Commissioner** means the Merit Protection Commissioner appointed under [the] Act.

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

***non-SES employee** means an APS employee other than an SES employee.

***ongoing APS employee** means a person engaged as an ongoing APS employee, as mentioned in paragraph 22 (2) (a) [of the Act].

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

operational classification has the same meaning as in the Classification Rules.

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

prohibited content has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Note 1: Prohibited content is mentioned in Schedule 8 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, see for example item 30 of Schedule 8.

Note 2: An expression used in a transitional Schedule to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* that was defined in the *Workplace Relations Act 1996* has the same meaning in the transitional schedule as it had in that Act, see paragraph 4 (1)(a) of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

promotion, for an ongoing APS employee—see clause 2.2.

Public Service Gazette means the *Gazette* published in electronic form.

Note: The *Public Service Gazette* may be accessed at www.APSjobs.gov.au.

redundancy benefit—see clause 7.1.

redundancy benefit recipient—see clause 7.1.

Regulations means the *Public Service Regulations 1999*.

***SES** means the Senior Executive Service established by section 35 [of the Act].

***SES employee** has the meaning given by section 34 [of the Act].

Note: See the Classification Rules in relation to the classification of SES employees.

SES vacancy—see clause 2.4.

similar vacancy—see clause 2.5.

training classification has the same meaning as in the Classification Rules.

transitional instrument has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

unlawful term has the same meaning as in the *Fair Work Act 2009*.

vacancy—see clause 2.3.

workplace diversity program means a program established by an Agency Head under section 18 of the Act.

work-related qualities—see clause 2.6.