



# Public Service Regulations 1999

**Statutory Rules 1999 No. 300 as amended**

made under the

*Public Service Act 1999*

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## **Part 1 Preliminary**

### **1.1 Name of Regulations** [see Note 1]

These Regulations are the *Public Service Regulations 1999*.

### **1.2 Commencement** [see Note 1]

These Regulations commence on the commencement of the *Public Service Act 1999*.

### **1.3 Definitions — the dictionary**

- (1) The dictionary at the end of these Regulations defines certain words and expressions, and includes references to certain words and expressions that are defined elsewhere in these Regulations (*signpost definitions*).

*Note* The dictionary only includes a signpost definition for a word or expression if the word or expression is used in more than one regulation.

- (2) The dictionary includes certain words and expressions relevant to these Regulations that are defined in the *Public Service Act 1999*.

*Note* These definitions are indicated by an asterisk (\*) and have been included for information only to assist readers of the regulations. Minor changes from the Act definitions are indicated by square brackets ([ ]).

- (3) A definition in these Regulations applies to each use of the word or expression in these Regulations, unless the contrary intention appears.

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## **Part 2                    The Australian Public Service**

### **Division 2.1            The Code of Conduct**

#### **2.1            Duty not to disclose information (Act s 13)**

- (1) This regulation is made for subsection 13 (13) of the Act.
- (2) This regulation does not affect other restrictions on the disclosure of information.
- (3) An APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programs.
- (4) An APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if the information:
  - (a) was, or is to be, communicated in confidence within the government; or
  - (b) was received in confidence by the government from a person or persons outside the government;whether or not the disclosure would found an action for breach of confidence.
- (5) Subregulations (3) and (4) do not prevent a disclosure of information by an APS employee if:
  - (a) the information is disclosed in the course of the APS employee's duties; or
  - (b) the information is disclosed in accordance with an authorisation given by an Agency Head; or
  - (c) the disclosure is otherwise authorised by law; or
  - (d) the information that is disclosed:



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- (i) is already in the public domain as the result of a disclosure of information that is lawful under these Regulations or another law; and
  - (ii) can be disclosed without disclosing, expressly or by implication, other information to which subregulation (3) or (4) applies.
- (6) Subregulations (3) and (4) do not limit the authority of an Agency Head to give lawful and reasonable directions in relation to the disclosure of information.

*Note* Under section 70 of the *Crimes Act 1914*, it is an offence for an APS employee to publish or communicate any fact or document which comes to the employee's knowledge, or into the employee's possession, by virtue of being a Commonwealth officer, and which it is the employee's duty not to disclose.

**2.2 Statutory office holders bound by the Code of Conduct (Act s 14)**

- (1) For the purposes of the definition of *statutory office holder* in subsection 14 (3) of the Act, an office is prescribed if it is in a class of offices that:
- (a) are not an office of Agency Head; and
  - (b) are not judicial offices; and
  - (c) are held by non-APS employees who:
    - (i) are acting in relation to the exercise of their direct or indirect supervisory duties in relation to APS employees; and
    - (ii) are engaged or employed under an Act.
- (2) For the purposes of the definition of *statutory office holder* in subsection 14 (3) of the Act, an appointment is prescribed if it is in a class of appointments that:
- (a) are not appointments to an office of Agency Head; and
  - (b) are not judicial appointments; and
  - (c) relate to non-APS employees who:
    - (i) are acting in relation to the exercise of their direct or indirect supervisory duties in relation to APS employees; and

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(ii) are appointed under an Act.

(3) In this regulation:

*non-APS employee* means a person employed or appointed under an Act who is not an APS employee.

**2.3 Limitation on sanctions for breaches of Code of Conduct (Act s 15)**

(1) This regulation applies if:

- (a) an APS employee in an Agency is found to have breached the Code of Conduct; and
- (b) under paragraph 15 (1) (e) of the Act, the Agency Head imposes on the employee the sanction of deduction from salary, by way of fine.

(2) For the purposes of subsection 15 (2) of the Act, the deduction must not be more than 2% of the APS employee's annual salary.

**Division 2.2 Whistleblowers reports**

**2.4 Procedures for dealing with whistleblowers reports (Act s 16)**

(1) An Agency Head must establish procedures for dealing with a report made by an APS employee under section 16 of the Act.

*Note* Section 16 deals with reports of breaches (or alleged breaches) of the Code of Conduct.

(2) The procedures must:

- (a) have due regard to procedural fairness and comply with the *Privacy Act 1988*; and
- (b) provide that an APS employee in the Agency may report breaches (or alleged breaches) of the Code of Conduct to the Agency Head, or a person authorised by the Agency Head; and

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- (c) provide that if the Commissioner or the Merit Protection Commissioner agrees that a report relates to an issue that would be inappropriate to report to the Agency Head, the APS employee may make the report to:
  - (i) the Commissioner, or a person authorised by the Commissioner; or
  - (ii) the Merit Protection Commissioner, or a person authorised by the Merit Protection Commissioner; and
- (d) ensure that if a report is made to the Agency Head, the Agency Head will, unless he or she considers the report to be frivolous or vexatious:
  - (i) investigate it; or
  - (ii) authorise another person to investigate it; and
- (e) ensure that if a report is made to a person authorised by the Agency Head, the person will investigate the report, unless the person considers it to be frivolous or vexatious; and
- (f) provide information about the protection available under section 16 of the Act to persons making reports; and
- (g) enable an APS employee who has made a report, and who is not satisfied with the outcome of the investigation of the report, to refer the report to:
  - (i) the Commissioner, or a person authorised by the Commissioner; or
  - (ii) the Merit Protection Commissioner, or a person authorised by the Merit Protection Commissioner; and
- (h) ensure that the findings of an investigation are dealt with as soon as practicable.

**2.5 Commissioner's functions relating to whistleblowers reports (Act s 41)**

- (1) For the purposes of paragraphs 41 (1) (c) and (l) of the Act, if:
  - (a) an Agency Head establishes procedures for dealing with a report made by an APS employee under section 16 of the Act; and

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- (b) a report is made, in accordance with the procedures, to the Commissioner;

the Commissioner's functions include the functions set out in subregulation (2).

*Note* Section 16 of the Act deals with reports of breaches (or alleged breaches) of the Code of Conduct.

- (2) The Commissioner must, unless he or she considers the report to be frivolous or vexatious:
  - (a) investigate it; or
  - (b) authorise another person to investigate it.

**2.6 Merit Protection Commissioner's functions relating to whistleblowers reports (Act s 50)**

- (1) For the purposes of paragraphs 50 (1) (a) and (e) of the Act, if:
  - (a) an Agency Head establishes procedures for dealing with a report made by an APS employee under section 16 of the Act; and
  - (b) a report is made, in accordance with the procedures, to the Merit Protection Commissioner;

the Merit Protection Commissioner's functions include the functions set out in subregulation (2).

*Note* Section 16 of the Act deals with reports of breaches (or alleged breaches) of the Code of Conduct.

- (2) The Merit Protection Commissioner must, unless he or she considers the report to be frivolous or vexatious:
  - (a) investigate it; or
  - (b) authorise another person to investigate it.

**2.7 Other functions relating to whistleblowers reports**

- (1) Subregulation (2) applies if:
  - (a) an Agency Head establishes procedures for dealing with a report made by an APS employee under section 16 of the Act; and

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- (b) a report is made, in accordance with the procedures, to a person authorised by the Commissioner or the Merit Protection Commissioner.

*Note* See para 2.4 (2) (c).

- (2) The person must investigate the report, unless the person considers it to be frivolous or vexatious.
- (3) Subregulation (4) applies if:
  - (a) an Agency Head establishes procedures for dealing with a report made by an APS employee under section 16 of the Act; and
  - (b) a report is made, in accordance with the procedures, to the Commissioner or the Merit Protection Commissioner; and
  - (c) the Commissioner or the Merit Protection Commissioner authorises a person to investigate the report.

*Note* See para 2.5 (2) (b) and 2.6 (2) (b).

- (4) The person must investigate the report.

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## **Part 3 APS employees**

### **Division 3.1 Employer powers etc of Agency Heads**

#### **3.1 Condition of engagement — health clearance (Act s 20)**

- (1) This regulation applies to an APS employee whose engagement in an Agency is subject, under paragraph 22 (6) (e) of the Act, to a condition dealing with health clearances.
- (2) While the engagement is subject to the condition, the Agency Head may, by written notice, direct the employee to:
  - (a) undergo a medical examination by a nominated medical practitioner for an assessment of the employee's fitness for duty; and
  - (b) give the Agency Head a medical report of the examination.
- (3) In this regulation:

*nominated medical practitioner* means a registered medical practitioner nominated by an Agency Head to assess the fitness for duty of an APS employee in the Agency.

*Note 1* The *Privacy Act 1988* has rules about keeping records of personal information.

*Note 2* Arrangements will be made in Agencies to ensure that employees know the period in which an engagement is subject to a condition dealing with health clearances.

#### **3.2 Direction to attend medical examination (Act s 20)**

- (1) This regulation applies if an Agency Head believes that the state of health of an APS employee in the Agency:
  - (a) may be affecting the employee's work performance; or
  - (b) has caused, or may cause, the employee to have an extended absence from work; or
  - (c) may be a danger to the employee; or

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- (d) has caused, or may cause, the employee to be a danger to other employees or members of the public; or
- (e) may be affecting the employee's standard of conduct.

*Note* Examples of absences that could be treated as extended absences are:

- (a) an absence from work of at least 4 continuous weeks; and
- (b) a combined total of absences from work, within a 13 week period, whether based on a single or separate illness or injury, of at least 4 weeks.

The examples are consistent with the former *Public Service Regulations 1935*.

- (2) The Agency Head may, by written notice, direct the APS employee to:
  - (a) undergo a medical examination by a nominated medical practitioner for an assessment of the employee's fitness for duty; and
  - (b) give the Agency Head a medical report of the examination.
- (3) In this regulation:

*nominated medical practitioner* has the meaning given by subregulation 3.1 (3).

*Note* The *Privacy Act 1988* has rules about keeping records of personal information.

**3.3 Approval of schemes for non-ongoing APS employees to gain skills and experience (Act s 20)**

- (1) For the purposes of subsection 20 (2) of the Act, an Agency Head may approve a scheme for persons engaged for a specified term, or for the duration of a specified task, in the Agency to gain skills and experience for the purpose of assisting them to participate in the workforce.
- (2) The approval of a scheme must be notified in the electronic APS Employment *Gazette* within 14 days after the day when the scheme is approved if:
  - (a) the scheme is approved on or after 8 August 2007; or
  - (b) the scheme was approved on or after 25 July 2007 and before 8 August 2007, and notice of the approval was not published in the *Gazette* before 8 August 2007.

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**3.4 Engagement of SES employees (Act s 22)**

- (1) For the purposes of subsection 22 (4) of the Act, this regulation sets out the circumstances in which a person may be engaged as an SES employee for a specified term.
- (2) The person may be engaged for a specified term if the term does not exceed 5 years.
- (3) For the purposes of subsection 22 (5) of the Act, if the person has been engaged for a specified term of less than 5 years:
  - (a) the engagement may be extended once or more than once; but
  - (b) the engagement may be extended only to the extent that the total term does not exceed 5 years.

*Note* Subsection 22 (3) of the Act provides that the usual basis for engagement of an APS employee is as an ongoing APS employee.

**3.5 Engagement of non-SES employees (Act s 22)**

- (1) For the purposes of subsection 22 (4) of the Act, this regulation sets out the circumstances in which a person may be engaged as a non-SES employee for a specified term or for the duration of a specified task.

*Note* Subsection 22 (3) of the Act provides that the usual basis for engagement of an APS employee is as an ongoing APS employee.

- (2) The person may be engaged for a reason, and for a specified term, set out in the following table:

<b>Item</b>	<b>Reason</b>	<b>Specified term</b>
1	To enable the Agency to meet a temporary increase in the workload of the Agency, or of a component of the Agency, that the Agency Head does not expect to continue	Term not exceeding 18 months
2	The Agency has a temporary demand for employees with particular skills	Term not exceeding 18 months



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<b>Item</b>	<b>Reason</b>	<b>Specified term</b>
<i>Note</i>	In relation to this item, ongoing APS employees in the Agency with those skills are, or have been: <ul style="list-style-type: none"> <li>(a) given the opportunity to express interest in performing the relevant duties; and</li> <li>(b) considered for performance of those duties.</li> </ul>	
3	To replace an ongoing APS employee who is on leave authorised by the Agency	Term not exceeding 18 months
4	To replace an ongoing APS employee to whom other duties are temporarily assigned	Term not exceeding 18 months
5	To replace an ongoing APS employee who moves temporarily to another Agency	Term not exceeding 18 months
6	To replace an ongoing APS employee pending engagement of another ongoing APS employee	The lesser of: <ul style="list-style-type: none"> <li>(a) 6 months from the date of the engagement; and</li> <li>(b) the period ending when an ongoing APS employee is engaged</li> </ul>
7	To undertake duties for the Agency pending engagement of an ongoing APS employee to undertake the duties	The lesser of: <ul style="list-style-type: none"> <li>(a) 6 months from the date of the engagement; and</li> <li>(b) the period ending when an ongoing APS employee is engaged</li> </ul>

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<b>Item</b>	<b>Reason</b>	<b>Specified term</b>
8	The person: (a) has been offered, in writing, engagement as an ongoing APS employee; but (b) prefers to be engaged for a specified term	Term not exceeding 3 years
9	To enable the Agency to engage an ongoing Parliamentary Service employee as a non-ongoing APS employee	Term not exceeding 3 years

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*Note* When considering the replacement of an ongoing employee whose absence is likely to be prolonged or indefinite, an Agency Head is bound by subs 22 (3) of the Act, which provides that the usual basis for engagement of an APS employee is as an ongoing APS employee, and para 10 (1) (n) of the Act, which provides that the APS is a career-based service.

- (3) The person may be engaged for the duration of a specified task if:
- (a) the Agency Head can reasonably estimate the duration of the task at the time of engagement; and
  - (b) at that time, the Agency Head reasonably considers that the services of the person are unlikely to be required after completion of the task; and
  - (c) ongoing APS employees in the Agency with the skills required to undertake duties in relation to the task are:
    - (i) given the opportunity to express interest in performing those duties; and
    - (ii) considered for performance of the duties.
- (4) The person may be engaged for a specified term, or for the duration of a specified task, if the engagement is for the purpose of the person gaining skills and experience under a scheme that is:
- (a) approved under regulation 3.3; or
  - (b) the subject of a general direction in force under subsection 21 (1) of the Act.

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- (5) The person may be engaged for a specified term, or for the duration of a specified task, if the engagement is for the purpose of meeting a practical requirement for:
  - (a) the award of a qualification to the person by an educational institution; or
  - (b) accreditation of the person by a professional body.
- (6) The person may be engaged for a specified term, or for the duration of a specified task, if the engagement is for the purpose of providing the person with occupational experience that is required under a law of the Commonwealth, or of a State or Territory, for licensing or registration to engage in the occupation.

*Note* The Commissioner's Directions (in particular Ch 3, Diversity in employment, and Ch 4, Merit in employment) contain requirements that apply to the engagement of employees.

**3.6 Extension of specified terms of engagement of certain non-SES employees (Act s 22)**

- (1) For the purposes of subsection 22 (5) of the Act, the engagement of a person for a reason mentioned in item 1 in the table in subregulation 3.5 (2) may be extended if:
  - (a) the reason continues to exist; and
  - (b) the total term does not exceed 3 years; and
  - (c) the Agency cannot fully meet its objectives by using the services of an ongoing APS employee in the Agency; and
  - (d) the temporary increase in workload of the Agency, or the component of the Agency, is a result of implementing a policy that does not involve an ongoing increase in the usual workload of the Agency or component.
- (2) For the purposes of subsection 22 (5) of the Act, the engagement of a person for a reason mentioned in item 2, 3, 4 or 5 in the table in subregulation 3.5 (2) may be extended if:
  - (a) the reason continues to exist; and
  - (b) the total term does not exceed 3 years; and
  - (c) the Agency cannot fully meet its objectives by using the services of an ongoing APS employee in the Agency; and

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- (d) the Agency Head certifies that extension of the engagement is in the public interest.

*Note* The Commissioner's Directions (in particular Ch 3, Diversity in employment, and Ch 4, Merit in employment) contain requirements that apply to the engagement of employees.

- (3) For subsection 22 (5) of the Act, the engagement of a person for a reason mentioned in item 9 in the table in subregulation 3.5 (2) may be extended if:
- (a) the reason continues to exist; and
  - (b) the total term does not exceed 3 years; and
  - (c) the Agency cannot fully meet its objectives by using the services of an ongoing APS employee in the Agency.

**3.8 Promotion of ongoing APS employees — date of effect**

- (1) A promotion of an ongoing APS employee takes effect in accordance with this regulation.
  - (2) If the promotion decision is not subject to review by a PRC, the promotion of the employee takes effect:
    - (a) either:
      - (i) if the promotion is notified on or after 8 August 2007 — 4 weeks after the promotion is notified in the electronic APS Employment *Gazette* in accordance with regulation 3.12; or
      - (ii) if the promotion was notified before 8 August 2007 — 4 weeks after the promotion was notified in the *Gazette* in accordance with regulation 3.12 of these Regulations as in force immediately before 8 August 2007; or
    - (b) if another date of effect is agreed between the employee, the Agency Head and, if the employee is moving from another Agency, the current Agency Head — on the agreed date of effect.
- (2A) For paragraph 3.8 (2) (b), the date of effect of a promotion decision must not be earlier than the date that the promotion is notified in accordance with regulation 3.12.

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- (3) If the promotion decision is subject to review by a PRC, the promotion of the employee takes effect in accordance with subregulation (4), (5), (5A), (5B), (5C) or (6).
- (4) If no application for review by a PRC is made before the end of the application period, the promotion of the employee takes effect:
  - (a) 2 weeks after the end of the application period; or
  - (b) if another date of effect (except a date before the end of the application period) is agreed between the employee, the Agency Head and, if the employee is moving from another Agency, the current Agency Head — on the agreed date of effect.
- (5) If an application for review by a PRC is made before the end of the application period, and the application is withdrawn before the PRC makes a decision on the application, the promotion of the employee takes effect:
  - (a) 2 weeks after the Agency Head is notified of the withdrawal of the application; or
  - (b) if another date of effect (except a date before the end of the application period) is agreed between the employee, the Agency Head and, if the employee is moving from another Agency, the current Agency Head — on the agreed date of effect.
- (5A) Subregulation (5B) applies if:
  - (a) an application for review by a PRC is made before the end of the application period; and
  - (b) the Merit Protection Commissioner appoints a PRC to deal with the application; and
  - (c) the application lapses before the PRC makes a decision on the application.
- (5B) The promotion of the employee takes effect:
  - (a) 2 weeks after the Agency Head is notified by the Merit Protection Commissioner that the application has lapsed; or

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- (b) if another date of effect is agreed between:
  - (i) the employee; and
  - (ii) the Agency Head; and
  - (iii) if the employee is moving from another Agency, the current Agency Head —  
on the agreed date of effect.
  
- (5C) If an application for review by a PRC is made before the end of the application period, and 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 promotion of the employee takes effect:
  - (a) either:
    - (i) if the promotion is notified on or after 8 August 2007 — 4 weeks after the promotion is notified in the electronic APS Employment *Gazette* in accordance with regulation 3.12; or
    - (ii) if the promotion was notified before 8 August 2007 — 4 weeks after the promotion was notified in the *Gazette* in accordance with regulation 3.12 of these Regulations as in force immediately before 8 August 2007; or
  - (b) if another date of effect is agreed between:
    - (i) the employee; and
    - (ii) the Agency Head; and
    - (iii) if the employee is moving from another Agency, the current Agency Head —  
on the agreed date of effect.
  
- (6) If an application for review by a PRC is made before the end of the application period and not withdrawn, the promotion of the employee takes effect in accordance with the review decision:
  - (a) 4 weeks after the Agency Head is notified of the review decision; or
  - (b) if another date of effect is agreed between the employee, the Agency Head and, if the employee is moving from another Agency, the current Agency Head — on the agreed date of effect.

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(7) In this regulation:

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

*Note* Division 5.2 provides for review of certain APS promotion decisions by a PRC.

**3.8A Engagement of ongoing Parliamentary Service employee at higher classification — date of effect**

(1) If the engagement of an ongoing Parliamentary Service employee as an ongoing APS employee is not subject to review by a PRC, the engagement takes effect:

(a) either:

(i) if the engagement decision is notified on or after 8 August 2007 — 4 weeks after the decision is notified in the electronic APS Employment *Gazette* in accordance with regulation 3.12; or

(ii) if the engagement decision was notified before 8 August 2007 — 4 weeks after the decision was notified in the *Gazette* in accordance with regulation 3.12 of these Regulations as in force immediately before 8 August 2007; or

(b) if a later date of effect is agreed between the ongoing Parliamentary Service employee and the Agency Head — on the agreed date of effect.

(2) If the engagement of an ongoing Parliamentary Service employee as an ongoing APS employee is subject to review by a PRC, the engagement takes effect in accordance with the following table.

<b>Item</b>	<b>Is an application for review made before the end of the application period?</b>	<b>Engagement takes effect</b>
1	No	Either: (a) 2 weeks after the end of the application period; or

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<b>Item</b>	<b>Is an application for review made before the end of the application period?</b>	<b>Engagement takes effect</b>
		(b) if a later date of effect is agreed between the ongoing Parliamentary Service employee and the Agency Head — on the agreed date of effect.
2	Yes Application is withdrawn before the PRC makes a decision on the application	Either: (a) 2 weeks after the Agency Head is notified of the withdrawal; or (b) if a later date of effect is agreed between the ongoing Parliamentary Service employee and the Agency Head — on the agreed date of effect.
3	Yes Merit Protection Commissioner appoints a PRC to deal with the application Application lapses before the PRC makes a decision on the application	Either: (a) 2 weeks after the Agency Head is notified by the Merit Protection Commissioner that the application has lapsed; or (b) if a later date of effect is agreed between the ongoing Parliamentary Service employee and the Agency Head — on the agreed date of effect.
4	Yes Merit Protection Commissioner decides under subregulation 5.10 (1) that it is not necessary to appoint a PRC to deal with the application	Either: (a) if the engagement decision is notified on or after 8 August 2007 — 4 weeks after the decision is notified in the electronic APS Employment <i>Gazette</i> in accordance with regulation 3.12; or (b) if the engagement decision was notified before 8 August 2007 — 4 weeks after the decision was notified in the <i>Gazette</i> in accordance with regulation 3.12 of these Regulations as in force immediately before 8 August 2007; or (c) if a later date of effect is agreed between the ongoing Parliamentary Service employee and the Agency Head — on the agreed date of effect.



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Item	Is an application for review made before the end of the application period?	Engagement takes effect
5	Yes  Under regulation 5.18, PRC does not uphold the application in relation to the engagement of the ongoing Parliamentary Service employee	Either:  (a) 2 weeks after the ongoing Parliamentary Service employee is notified of the decision; or  (b) if a later date of effect is agreed between the ongoing Parliamentary Service employee and the Agency Head — on the agreed date of effect.
6	Yes  Under regulation 5.18, PRC upholds the application in relation to the engagement of the ongoing Parliamentary Service employee	The engagement of the Parliamentary Service employee whose application is upheld commences in accordance with the terms of the offer of employment made under section 22 of the Act  <i>Note</i> See subregulation 5.20 (4).

(3) In this regulation:

***application period*** means the period in which an application for review of an engagement decision may be made (including any extension of that period).

*Note 1* Paragraph 3.12 (1) (l) provides further information about the notification of the engagement decision if the engagement is at a higher classification than the person's classification as an ongoing Parliamentary Service employee.

*Note 2* Division 5.2 provides for review, by a PRC, of an engagement decision where the engagement is at a higher classification than the person's classification as an ongoing Parliamentary Service employee.

*Note 3* See the definition of ***higher***, for a classification, in the Dictionary.

### **3.9 Ongoing moves between Agencies (Act s 26)**

(1) For subsection 26 (2) of the Act, this regulation applies if:

- (a) a written agreement is entered into between an Agency Head and an ongoing APS employee for the APS employee to move to the Agency Head's Agency from another Agency; and
- (b) the agreement does not specify the period of the move.

**Regulation 3.9A**

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- (2) If the move is associated with a promotion:
  - (a) the agreement has effect according to its terms; and
  - (b) the move takes effect as provided by regulation 3.8.
- (3) If the move is not associated with a promotion:
  - (a) the agreement has effect according to its terms; and
  - (b) the move takes effect:
    - (i) 4 weeks after the pre-move Agency Head is told by the APS employee of the agreement; or
    - (ii) if a different date of effect is agreed between the post-move Agency Head, the pre-move Agency Head and the APS employee — on the agreed date of effect.
- (4) Paragraph (3) (b) has effect in relation to the move of an SES employee subject to the Commissioner's Directions.

**3.9A Other moves between Agencies (Act s 26)**

- (1) For subsection 26 (2) of the Act, this regulation applies if, after the commencement of this regulation:
  - (a) a written agreement is entered into between an Agency Head and an ongoing APS employee for the APS employee to move to the Agency Head's Agency from another Agency; and
  - (b) the agreement specifies the period of the move.
- (2) If the pre-move Agency Head approved the period, in writing, before the agreement was entered into, the agreement has effect, according to its terms, as an agreement to move to the Agency for the specified period.
- (3) If the pre-move Agency Head did not approve the period, in writing, before the agreement was entered into, the agreement has effect:
  - (a) as an agreement to make an ongoing move to the Agency; and
  - (b) as if the period were not specified.

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- (4) The move takes effect:
  - (a) 4 weeks after the pre-move Agency Head is told by the APS employee of the agreement; or
  - (b) if a different date of effect is agreed between the post-move Agency Head, the pre-move Agency Head and the APS employee — on the agreed date of effect.
- (5) Subregulation (4) has effect in relation to the move of an SES employee subject to the Commissioner's Directions.

**3.9B Variation of period of agreement**

- (1) This regulation applies if, after the commencement of this regulation, a post-move Agency Head and an ongoing APS employee vary the length of the period specified in an agreement that:
  - (a) is described in subregulation 3.9A (1); and
  - (b) has effect in accordance with subregulation 3.9A (2).
- (2) If the pre-move Agency Head approved the variation of the period, in writing, before the agreement was varied, the variation of the period of the move has effect according to its terms.
- (3) If the pre-move Agency Head did not approve the variation of the period, in writing, before the agreement was varied, the variation of the period of the move has no effect.

**3.10 Suspension from duties (Act s 28)**

- (1) An Agency Head may suspend an APS employee employed in the Agency from duties if the Agency Head believes on reasonable grounds that:
  - (a) the employee has, or may have, breached the Code of Conduct; and
  - (b) the employee's suspension is in the public, or the Agency's, interest.
- (2) The suspension may be with remuneration.

**Regulation 3.11**

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- (3) If the suspension is to be without remuneration, the period without remuneration is to be:
  - (a) not more than 30 days; or
  - (b) if exceptional circumstances apply — a longer period.
- (4) The Agency Head must review the suspension at reasonable intervals.
- (5) The Agency Head must immediately end the suspension if the Agency Head no longer believes on reasonable grounds:
  - (a) that the APS employee has, or may have, breached the Code of Conduct; or
  - (b) that the employee's suspension is in the public, or the Agency's, interest.
- (6) The Agency Head must immediately end the suspension if a sanction has been imposed on the APS employee for the relevant breach of the Code of Conduct.
- (7) In exercising powers under this regulation, the Agency Head must have due regard to procedural fairness unless the Agency Head is satisfied on reasonable grounds that, in the particular circumstances, it would not be appropriate.

**3.11 Termination of employment of non-ongoing APS employees (Act s 29)**

- (1) For the purposes of subsection 29 (4) of the Act, this regulation sets out procedures applicable to the termination of the engagement of a non-ongoing APS employee.
- (2) If an employment arrangement sets out procedures that apply to the termination of the non-ongoing APS employee, the procedures apply to the termination of the engagement of the employee unless the procedures:
  - (a) are prohibited content (within the meaning given by the *Workplace Relations Act 1996*); or
  - (b) would be prohibited content of that kind if the employment arrangement were a workplace agreement.

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

*Note* The *Workplace Relations Act 1996* has rules and entitlements that apply to termination of employment.

**3.12 Notification in electronic APS Employment Gazette of certain employment decisions**

- (1A) A decision listed in subregulation (1) must be notified in the electronic APS Employment *Gazette* if:
- (a) the decision is made on or after 8 August 2007; or
  - (b) the decision was made before 8 August 2007 and was not notified in the *Gazette* before 8 August 2007.
- (1) For subregulation (1A), the following decisions are listed:
- (a) engagement of a person as an ongoing APS employee;
  - (b) 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 estimated to take more than 12 months;
  - (c) engagement of a person as an APS employee under paragraph 72 (1) (c) or (d) of the Act:
    - (i) as an ongoing APS employee; or
    - (ii) for a specified term of more than 12 months; or
    - (iii) for the duration of a specified task that is reasonably estimated to take more than 12 months;
  - (d) in relation to a person who is engaged as an APS employee for a specified term of less than 12 months — extension of the engagement that results in the term of engagement being more than 12 months;
  - (e) movement (other than a promotion or temporary movement) by an ongoing APS employee to perform duties in another Agency if the opportunity to apply for the relevant employment was notified in the *Gazette* or in the electronic APS Employment *Gazette*;

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- (f) assignment of duties (other than a temporary assignment of duties or an assignment of duties because of a promotion) to an ongoing APS employee in an Agency if the opportunity to apply for the relevant employment was notified in the *Gazette* or in the electronic APS Employment *Gazette*;
  - (g) assignment to an SES employee of duties at a lower classification without the employee's agreement;
  - (h) promotion of an ongoing APS employee;
  - (i) termination, and the grounds for termination, of the employment of an ongoing APS employee under section 29 of the Act;
  - (j) retirement of an SES employee within the period specified in a notice given to the employee under section 37 of the Act;
  - (k) promotion of an ongoing APS employee, following the decision of a PRC under subparagraph 5.18 (1) (b) (ii), which has not been notified under paragraph (h);
  - (l) engagement of an ongoing Parliamentary Service employee as an ongoing APS employee if the engagement:
    - (i) follows a decision of a PRC mentioned in subparagraph 5.18 (1) (b) (iii); and
    - (ii) has not been notified under paragraph (a).
- (2) If a decision mentioned in paragraph (1) (a) was made in accordance with the measures mentioned in clause 4.2 of the Commissioner's Directions, the notification of the decision must include a statement to the effect that:
- 'This engagement is made in accordance with the provisions of subclause 4.2 (2) of the *Public Service Commissioner's Directions 1999* — similar employment opportunity previously notified.'
- (2A) If the person whose engagement is mentioned in paragraph (1) (a):
- (a) was an ongoing Parliamentary Service employee immediately before the engagement; and

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- (b) was engaged at a higher classification than the Parliamentary Service employee's classification as a Parliamentary Service employee;

the notification of the decision must include a statement to the effect that:

'This decision to engage 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 Regulations.'

*Note* See the definition of **higher**, for a classification, in the Dictionary.

- (3) If a decision mentioned in paragraph (1) (a) was made in accordance with the measures mentioned in clause 4.2A of the Commissioner's Directions, the notification of the decision must include a statement to the effect that:

'This engagement was authorised by the Public Service Commissioner on (*date*) under clause 4.2A of the *Public Service Commissioner's Directions 1999* — exceptional circumstances.'

- (4) If a decision mentioned in paragraph (1) (h) was made in accordance with the measures mentioned in clause 4.6A of the Commissioner's Directions, the notification of the decision must include a statement to the effect that:

'This promotion is made in accordance with the provisions of subclause 4.6A (2) of the *Public Service Commissioner's Directions 1999* — similar employment opportunity previously notified.'

**3.12A Notification in electronic APS Employment Gazette of cancellation of certain employment decisions**

- (1) This regulation applies if a decision (a ***cancellation decision***) has been made:
- (a) to cancel a decision (other than in the circumstance described in paragraph (b)) that is mentioned in paragraph 3.12 (1) (a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) ; or

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- (b) following a decision of a PRC under subparagraph 5.18 (1) (b) (ii) — to cancel a decision that is mentioned in paragraph 3.12 (1) (h).
- (2) A cancellation decision, and the date of effect of the cancellation decision, must be notified in the electronic APS Employment *Gazette* if:
  - (a) the cancellation decision is made on or after 8 August 2007; or
  - (b) the cancellation decision was made before 8 August 2007 and was not notified in the *Gazette* before 8 August 2007.

**Division 3.2 Right of return for election candidates**

**3.13 Prescribed elections (Act s 32)**

For the purposes of paragraph 32 (1) (a) of the Act, the following elections are prescribed:

- (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) a zone election under Division 7 of Part 3 of the *Aboriginal and Torres Strait Islander Commission Act 1989*;
- (d) an election for a member of the Torres Strait Regional Authority, established under section 142 of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

**3.14 Entitlement to return to APS employment (Act s 32)**

- (1) A person to whom section 32 of the Act applies is entitled to be again engaged as an APS employee if, within the required time, the person applies to the relevant authority.
- (2) However, the person is not entitled to be again engaged as an APS employee if:



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- (a) before the person resigned to contest the election, the person was engaged for a specified term or for the duration of a specified task; and
  - (b) when the person applies to be again engaged as an APS employee, the term (including any extension of the term) has expired or the task has been completed.
- (3) In subregulation (1):
- relevant authority* means:
- (a) if the Agency in which the person was employed when the person resigned still exists — the Agency Head of that Agency; or
  - (b) if the functions to which the person's duties related, or mainly related, have been transferred to another Agency — the Agency Head of that Agency; or
  - (c) in any other case — the Commissioner.
- required time* means:
- (a) for a person who contested an election the result of which is not disputed — 2 months after the declaration of the result of the election; and
  - (b) for a person who contested an election the result of which is disputed:
    - (i) if the election was an election mentioned in paragraph 3.13 (c) or (d) — 2 months after the Federal Court of Australia makes a final decision on the petition disputing the result, or the petition is withdrawn; and
    - (ii) in any other case — 2 months after a court of disputed returns decides the petition disputing the result, or the petition is withdrawn or lapses.

**3.15 Entitlements on return to APS employment (Act s 32)**

- (1) This regulation applies to a person to whom section 32 of the Act applies who is entitled to be again engaged as an APS employee.
- (2) The person must be engaged on the same basis on which the person was engaged before resigning to contest the election.

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- (3) The person must be engaged at the same classification as the person had before resigning to contest the election (the *previous classification*).
- (4) The person must be assigned duties that are the same as, or similar to, the duties the person had before resigning to contest the election or, if such duties are unavailable, other duties at the previous classification.
- (5) The person must be engaged on:
  - (a) the same terms and conditions of employment that applied to the person when the person resigned; or
  - (b) 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.
- (6) For the purposes mentioned in subregulation (7), the continuity of the person's service is taken not to have been broken by the period between the person's resignation and the person's again being engaged as an APS employee but that period does not count as service.
- (7) The purposes are:
  - (a) calculation of leave entitlements under the Australian Fair Pay and Conditions Standard or an employment arrangement that applies to the employee; or
  - (b) calculation of the employee's redundancy pay, however described, under 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*.

**Division 3.3 Miscellaneous**

**3.16 Knowledge of Act, Regulations and Commissioner's Directions**

Each APS employee must inform himself or herself about the Act, these Regulations and the Commissioner's Directions.

## **Part 4                      Independent Selection    Advisory Committees**

### **4.1            Function of ISAC**

- (1) The function of an ISAC is to make recommendations to an Agency Head about the suitability of candidates for:
  - (a) engagement connected with employment in the Agency;  
or
  - (b) promotion to employment in the Agency; or
  - (c) assignment to duties in connection with employment in the Agency.
- (2) The employment must be at a classification mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules.

### **4.2            Establishment of ISAC**

- (1) The Merit Protection Commissioner may establish an ISAC at the request of an Agency Head.
- (2) The Merit Protection Commissioner may charge the Agency Head a fee for carrying out functions for the Agency Head under this Part.

### **4.3            Constitution of ISAC**

- (1) An ISAC must comprise:
  - (a) a Convenor nominated by the Merit Protection Commissioner; and
  - (b) a person nominated by the relevant Agency Head; and
  - (c) an APS employee nominated by the Merit Protection Commissioner.

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- (2) The Merit Protection Commissioner must be satisfied that the APS employee nominated under paragraph (1) (c) has the skills and personal qualities necessary to undertake his or her role independently and impartially.
- (3) The APS employee nominated under paragraph (1) (c) must be made available for the purposes of the ISAC, subject to the operational efficiency of the Agency in which he or she is employed.
- (4) If a member of an ISAC ceases to act as a member before the ISAC has made its recommendation to the relevant Agency Head, the ISAC is to be reconstituted by the remaining members and another member nominated in accordance with subregulation (1).
- (5) The reconstituted ISAC must have regard to matters put before, or decided by, the ISAC as previously constituted.
- (6) A person is not subject to direction in carrying out his or her duties as a member of an ISAC, except:
  - (a) by a Court; or
  - (b) by instructions issued under regulation 4.5.

**4.4 ISAC procedures — minimum requirements**

- (1) The procedures used by an ISAC in performing its functions under this Part must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;
  - (b) the functions must be carried out in private;
  - (c) the functions of the ISAC must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) A person appearing before an ISAC must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

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**4.5 ISAC procedures — Merit Protection Commissioner's instructions**

- (1) The Merit Protection Commissioner must, as soon as practicable after the commencement of this regulation, issue instructions about the procedures to be followed by an ISAC in performing its functions under this Part.
- (2) The instructions must not be inconsistent with the Act, these Regulations or the Commissioner's Directions.
- (3) An ISAC must comply with the instructions.

**4.6 Assistance to ISAC**

The Merit Protection Commissioner must take all reasonable steps to ensure that staff and other resources are available to assist an ISAC to carry out its functions efficiently and effectively.

**4.7 Assessment and recommendation by ISAC**

- (1) If an ISAC is established in respect of an employment opportunity, the ISAC must:
  - (a) assess the relative merits of the candidates for the relevant employment on the basis of:
    - (i) the relative suitability of the candidates for the duties; and
    - (ii) the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
    - (iii) the relative capacity of the candidates to achieve outcomes related to the duties; and
  - (b) report on the assessment to the relevant Agency Head; and
  - (c) make a recommendation to the Agency Head, primarily on the basis of the assessment, as to which candidate it considers to be the most suitable for the relevant employment.
- (2) If the ISAC considers that none of the candidates is suitable for the relevant employment, the ISAC must make a recommendation to the Agency Head to that effect.

**Regulation 4.8**

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**4.8 Non-agreement on recommendation by ISAC**

- (1) This regulation applies if all members of an ISAC do not agree on a recommendation.
- (2) If 2 members agree on a recommendation, that recommendation is taken to be the recommendation of the ISAC.
- (3) If there is no agreement between any of the members, the Convenor's recommendation is taken to be the recommendation of the ISAC.

**4.9 ISAC recommendation not binding**

The recommendation of an ISAC is not binding on an Agency Head.

**4.10 Effect of acting on ISAC recommendation**

- (1) An engagement, promotion or assignment of duties made in accordance with an ISAC recommendation is not subject to review under Part 5.
- (2) For regulation 3.12, the engagement, promotion or assignment of duties must be notified in the electronic APS Employment *Gazette* as having been made in accordance with an ISAC recommendation.
- (3) The engagement, promotion or assignment of duties is not affected by:
  - (a) a defect in the nomination of a member of the ISAC; or
  - (b) a failure to comply with the instructions issued under regulation 4.5.

**4.11 Effect of not acting in accordance with ISAC recommendation**

- (1) If, instead of acting in accordance with an ISAC recommendation in respect of an employment opportunity, an Agency Head promotes another ongoing APS employee to the relevant employment, the promotion is subject to review under Division 5.2.

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**Regulation 4.12**

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- (2) For regulation 3.12, the promotion must be notified in the electronic APS Employment *Gazette* as a promotion decision that is subject to review under Division 5.2.

**4.12 Offence**

- (1) A person must not obstruct an ISAC in carrying out its functions under this Part.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element of an offence against subregulation (1) that the functions being carried out by the ISAC were functions under this Part.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

**Regulation 5.1**

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## **Part 5                      Review of actions**

### **Division 5.1                Statement of intent and outline**

#### **5.1                      General policy about review**

- (1) It is the policy of the Australian Government that APS Agencies should achieve and maintain workplaces that encourage productive and harmonious working environments.
- (2) It is intended that this Part should provide for a fair system of review of APS actions.
- (3) Employees' concerns are intended to be dealt with quickly, impartially, and fairly.
- (4) The review processes are intended to be consistent with the use of alternative dispute resolution methods to reach satisfactory outcomes where appropriate.
- (5) Nothing in this Part is intended to prevent an application for review from being resolved by conciliation or other means at any time before the review process is completed.

#### **5.2                      Outline of Part 5**

This Part makes provision in relation to the following matters:

- (a) the entitlement of APS employees to review of certain promotion decisions and other APS actions;
- (b) the entitlement of ongoing Parliamentary Service employees to review of certain promotion decisions;
- (c) the entitlement of APS employees and ongoing Parliamentary Service employees to review of certain engagement decisions;
- (d) the responsibilities and powers of Agency Heads and the Merit Protection Commissioner in relation to review of APS actions;



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**Regulation 5.5**

- (e) the role and powers of Promotion Review Committees constituted for the review of a decision mentioned in this regulation.

*Note* Certain reporting powers for the Merit Protection Commissioner are set out in subsection 33 (6) of the Act.

**5.3 Review of certain promotion and engagement decisions**

Division 5.2 provides for applications for review of certain promotion decisions and engagement decisions to be made to the Merit Protection Commissioner for review by a Promotion Review Committee.

*Note* A decision by a Promotion Review Committee is binding on an Agency Head: see subregulation 5.20 (1).

**5.4 Review of other APS action**

Division 5.3 provides for:

- (a) applications for primary review of other APS actions to be made to the relevant Agency Head or, in certain circumstances, to the Merit Protection Commissioner; and  
(b) applications for secondary review of actions that were the subject of primary review by an Agency Head to be made to the Merit Protection Commissioner.

*Note* A recommendation made on an application to the Merit Protection Commissioner for primary or secondary review is not binding on an Agency Head: see r 5.32.

**5.5 Agency Head's responsibility**

An Agency Head is responsible for ensuring that applications for review can be dealt with in accordance with:

- (a) this Part; and  
(b) the Commissioner's Directions; and  
(c) the Agency Head's responsibility to uphold and promote the APS Values.

Part 5	Review of actions
Division 5.2	Review of certain APS promotion decisions and engagement decisions (including decisions involving Parliamentary Service employees)

## Regulation 5.6

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### Division 5.2      **Review of certain APS promotion decisions and engagement decisions (including decisions involving Parliamentary Service employees)**

#### 5.6      **Application of Division 5.2**

- (1) This Division applies if:
  - (a) a decision (a *promotion decision*) is made by an Agency Head to promote an ongoing APS employee to employment at a classification mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules; and
  - (b) the promotion decision is not made in accordance with the recommendation of an Independent Selection Advisory Committee; and
  - (c) the promotion decision is not made in accordance with a PRC decision.
- (2) This Division also applies if:
  - (a) an engagement decision is made by an Agency Head to engage an ongoing Parliamentary Service employee as an ongoing APS employee at a classification mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules; and
  - (b) the engagement decision is not made in accordance with the recommendation of an Independent Selection Advisory Committee; and
  - (c) the engagement decision is not made in accordance with a PRC decision.
- (3) In this Division, a decision to engage an ongoing Parliamentary Service employee is an *engagement decision* if the engagement is at a higher classification than the ongoing Parliamentary Service employee's classification as a Parliamentary Service employee, worked out in accordance with Schedule 2.

*Note* See the definition of *higher*, for a classification, in the Dictionary.

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**5.7 Entitlement for review: promotion decision**

- (1) If:
- (a) an ongoing APS employee applies for promotion to relevant employment; and
  - (b) a promotion decision is made in relation to the relevant employment;

the ongoing APS employee is entitled to apply to the Merit Protection Commissioner to have the promotion decision reviewed by a Promotion Review Committee.

*Note* A Promotion Review Committee may be appointed to deal with:

- (a) applications from APS employees and Parliamentary Service employees in relation to the same promotion decision; and
- (b) applications relating to promotion decisions and engagement decisions.

- (2) If:
- (a) an ongoing Parliamentary Service employee applies for engagement to relevant employment; and
  - (b) the engagement would be at a higher classification than the Parliamentary Service employee's classification as a Parliamentary Service employee; and
  - (c) a promotion decision is made in relation to the relevant employment;

the ongoing Parliamentary Service employee is entitled to apply to the Merit Protection Commissioner to have the promotion decision reviewed by a Promotion Review Committee.

*Note* A Promotion Review Committee may be appointed to deal with:

- (a) applications from APS employees and Parliamentary Service employees in relation to the same promotion decision; and
- (b) applications relating to promotion decisions and engagement decisions.

**5.7A Entitlement for review: engagement decision**

- (1) If:
- (a) an ongoing APS employee applies for promotion to relevant employment; and

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- (b) an engagement decision is made in relation to the relevant employment;

the ongoing APS employee is entitled to apply to the Merit Protection Commissioner to have the engagement decision reviewed by a Promotion Review Committee.

*Note* A Promotion Review Committee may be appointed to deal with:

- (a) applications from APS employees and Parliamentary Service employees in relation to the same promotion decision; and
- (b) applications relating to promotion decisions and engagement decisions.

- (2) If:

- (a) an ongoing Parliamentary Service employee applies for engagement to relevant employment; and
- (b) the engagement would be at a higher classification than the Parliamentary Service employee's classification as a Parliamentary Service employee; and
- (c) an engagement decision is made in relation to the relevant employment;

the ongoing Parliamentary Service employee is entitled to apply to the Merit Protection Commissioner to have the engagement decision reviewed by a Promotion Review Committee.

*Note* A Promotion Review Committee may be appointed to deal with:

- (a) applications from APS employees and Parliamentary Service employees in relation to the same engagement decision; and
- (b) applications relating to promotion decisions and engagement decisions.

### **5.8 Grounds for review**

A promotion decision or engagement decision may only be reviewed under this Division on the grounds of merit.

*Note* It is an APS value that employment decisions are based on merit: see para 10 (1) (b) of the Act. For the purposes of that paragraph, a decision relating to engagement or promotion is based on merit if the matters set out in subs 10 (2) of the Act are satisfied.

### **5.9 Application for review**

- (1) An application for review of a promotion decision under this Division must:

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- (a) be in writing; and
  - (b) be received by the Merit Protection Commissioner:
    - (i) within:
      - (A) the period specified in the *Gazette* or in the electronic APS Employment *Gazette* as part of notifying the promotion; or
      - (B) if the Merit Protection Commissioner has given an extension of time to a class of employees before the end of the period mentioned in subparagraph (A) — that extension of time; and
    - (ii) at the place specified in the *Gazette* or in the electronic APS Employment *Gazette*.
- (1A) An application for review of an engagement decision under this Division must:
- (a) be in writing; and
  - (b) be received by the Merit Protection Commissioner:
    - (i) within:
      - (A) the period specified in the *Gazette* or in the electronic APS Employment *Gazette* as part of notifying the engagement; or
      - (B) if the Merit Protection Commissioner has given an extension of time to a class of employees before the end of the period mentioned in subparagraph (A) — that extension of time; and
    - (ii) at the place specified in the *Gazette* or in the electronic APS Employment *Gazette*.
- (2) The making of an application for review of a promotion decision or engagement decision under this Division operates to stay the decision until it takes effect in accordance with Division 3.1.

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### **5.10 Appointment of PRC**

- (1) If the Merit Protection Commissioner receives an application for review of a promotion decision or an engagement decision under this Division, the Merit Protection Commissioner must:
  - (a) consider the circumstances in which the application was made; and
  - (b) if he or she believes that a review of the promotion decision or engagement decision is necessary — appoint a PRC to deal with the application.
- (2) A particular PRC may be appointed to deal with:
  - (a) applications by ongoing APS employees and ongoing Parliamentary Service employees for review of a promotion decision; and
  - (b) applications by ongoing APS employees and ongoing Parliamentary Service employees for review of an engagement decision; and
  - (c) applications in relation to more than 1 promotion or engagement decision.

### **5.11 Constitution of PRC**

- (1) A PRC must comprise:
  - (a) a Convenor nominated by the Merit Protection Commissioner; and
  - (b) an APS employee nominated by the relevant Agency Head; and
  - (c) an APS employee nominated by the Merit Protection Commissioner.
- (2) The Merit Protection Commissioner must be satisfied that the APS employee nominated under paragraph (1) (c) has the skills and personal qualities necessary to undertake his or her role independently and impartially.
- (3) The APS employee nominated under paragraph (1) (c) must be made available for the purposes of the PRC, subject to the operational efficiency of the Agency in which he or she is employed.

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- (4) If a member of a PRC ceases to act as a member before the PRC has made its recommendation to the relevant Agency Head, the PRC is to be reconstituted by the remaining members and another member nominated in accordance with subregulation (1).
- (5) The reconstituted PRC must have regard to matters put before, or decided by, the PRC as previously constituted.
- (6) A person is not subject to direction in carrying out his or her duties as a member of a PRC, except:
  - (a) by a Court; or
  - (b) by instructions issued under regulation 5.15.

**5.12 Statements by parties**

- (1) An applicant for review of a promotion decision, and the person promoted, must each give the Merit Protection Commissioner a statement in writing setting out his or her claim for promotion or engagement to the relevant employment.
- (1A) An applicant for review of an engagement decision, and the person engaged, must each give the Merit Protection Commissioner a statement in writing setting out his or her claim for promotion or engagement to the relevant employment.
- (2) The statement must be given within 14 days after the closing date for lodging applications for review of the decision.
- (3) However if:
  - (a) within that 14 days, the applicant, or the person promoted or engaged, asks the Merit Protection Commissioner for a longer period within which to give the statement; and
  - (b) the Merit Protection Commissioner agrees to allow a longer period;the statement must be given within the longer period allowed.

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- (4) If the statement is not given within the time required under subregulation (2) or (3), the PRC may consider and decide the application without the statement.

**5.13 Frivolous or vexatious applications**

A PRC may refuse to consider, or further consider, an application for review if each member of the PRC is satisfied that the application is frivolous or vexatious.

**5.14 PRC procedures — minimum requirements**

- (1) The procedures used by a PRC in conducting a review under this Division must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;
  - (b) the review must be conducted in private;
  - (c) the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) A person appearing before a PRC must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

**5.15 PRC procedures — Merit Protection Commissioner's instructions**

- (1) The Merit Protection Commissioner must, as soon as practicable after the commencement of this regulation, issue instructions about the procedures to be followed by a PRC in performing its functions under this Division.
- (2) The instructions must not be inconsistent with the Act, these Regulations or the Commissioner's Directions.
- (3) A PRC must comply with the instructions.



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**5.16 Assistance to PRC**

The Merit Protection Commissioner must take all reasonable steps to ensure that staff are available to assist a PRC to carry out its functions efficiently and effectively.

**5.17 Requirement to provide information or documents**

- (1) A PRC may, by written notice given to an Agency Head, require the Agency Head to give to the PRC stated information or documents relevant to the review.
- (2) The Agency Head must give the information or documents in the way, and at or within the time, stated in the notice.

**5.18 Conduct of review by PRC**

- (1) In considering an application for review of a promotion decision or an engagement decision, a PRC must:
  - (a) assess the relative merits of the person promoted or engaged, and each applicant for review of the decision, on the basis of:
    - (i) the relative suitability of each person for the duties; and
    - (ii) the relationship between each person's work-related qualities and the work-related qualities genuinely required for the duties; and
    - (iii) the relative capacity of each person to achieve outcomes related to the duties; and
  - (b) decide, primarily on the basis of the assessment, that:
    - (i) the promotion or engagement decision should be upheld; or
    - (ii) an applicant for review should be promoted to the relevant employment; or
    - (iii) an applicant for review should be engaged to the relevant employment.
- (2) The PRC must tell the relevant Agency Head, in writing, of its decision.

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#### **5.19 Non-agreement on decision by PRC**

- (1) This regulation applies if all members of a PRC do not agree on a decision in relation to an application for review of a promotion decision or engagement decision.
- (2) If 2 members agree on a decision, that decision is taken to be the decision of the PRC.
- (3) If there is no agreement between any of the members, the Convenor's decision is taken to be the decision of the PRC.

#### **5.20 Effect of PRC decision**

- (1) The decision of a PRC is binding on the relevant Agency Head.  
*Note* Regulation 3.8 provides for the date of effect of a PRC decision.
- (2) The decision of a PRC is not affected by:
  - (a) a defect in the nomination of a member of the PRC; or
  - (b) a failure to comply with instructions issued under regulation 5.15.
- (3) If a PRC has decided, after conducting a review under regulation 5.18, that an applicant for review who is an ongoing APS employee should be promoted to the relevant employment, the applicant is taken to have been promoted to the relevant employment.
- (4) If a PRC has decided, after conducting a review under regulation 5.18, that an applicant for review who is an ongoing Parliamentary Service employee should be engaged to the relevant employment, the Agency Head must offer the ongoing Parliamentary Service employee the relevant employment opportunity not later than 2 weeks after the Agency Head is notified of the review decision.

*Note 1* Regulation 3.8 provides for the date of effect of a promotion decision if an application for review has been made to a PRC.

*Note 2* Regulation 3.8A provides for the date of effect of an engagement decision if the engagement is at a higher classification than the person's classification as an ongoing Parliamentary Service employee where an application for review has been made to a PRC.

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**5.21 Offence**

- (1) A person must not obstruct a PRC in carrying out its functions under this Division.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element of an offence against subregulation (1) that the functions being carried out by the PRC were functions under this Division.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

**Division 5.3 Review of other APS actions**

**Subdivision 5.3.1 Reviewable action**

**5.22 Entitlement for review**

A non-SES employee (the *affected employee*) is entitled to review of APS action under this Division if:

- (a) the action is action by an Agency Head or an APS employee; and  
(b) the action is reviewable action.

*Note* A locally engaged employee is not an APS employee and, therefore, is not entitled to review of action under this Division.

**5.23 What APS action is reviewable action**

- (1) An APS action is *reviewable action* if the affected employee is entitled, under subsection 33 (1) of the Act, to review of the action.
- (2) However, the action is not, or ceases to be, *reviewable action* if:
- (a) it is action mentioned in Schedule 1; or  
(b) the affected person has applied to have the action reviewed by a Court or Tribunal and the action may be reviewed by that Court or Tribunal.

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- (3) Also, the action is not, or ceases to be, *reviewable action* if the person or committee that is, or would be, conducting the review considers that the action should not be reviewable for any of the following reasons:
- (a) the application for review of the action is made outside the periods mentioned in regulation 5.23A, and there are no exceptional circumstances explaining the delay;
  - (b) the application by the affected employee for review of the action is frivolous or vexatious;
  - (c) the affected employee has previously applied for review of the action under this Division;
  - (d) the affected employee has applied to have the action reviewed under Division 5.2;
  - (e) the affected employee has applied, or could apply, to have the action reviewed by an external review body and review by the review body would be more appropriate than review under this Division;
  - (f) the affected employee does not have sufficient direct personal interest in review of the action;
  - (g) review, or further review, of the action is not otherwise justified in all the circumstances.

*Examples of external review bodies for paragraph (e)*

- 1 Commonwealth Ombudsman.
- 2 Australian Information Commissioner.
- 3 Australian Human Rights Commission.

*Example for paragraph (g)*

Review may not be justified because the applicant does not respond to a request under regulation 5.35 for further information about why the review is sought.

**5.23A When applications for review must be made**

- (1) An application for primary review of an APS action must be made:
- (a) if the application is made to an affected employee's Agency Head under subregulation 5.24 (1) — within 120 days of the APS action; or

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- (b) if the application is made to the Merit Protection Commissioner under paragraph 5.24 (2) (a) — within 60 days of the determination that the affected employee has breached the Code of Conduct; or
  - (c) if the application is made to the Merit Protection Commissioner under paragraph 5.24 (2) (b) — within 60 days of the sanction for breach of the Code of Conduct being imposed; or
  - (d) if the application is made to the Merit Protection Commissioner under subregulation 5.24 (3) — within 60 days of the APS action.
- (2) An application to the Merit Protection Commissioner for secondary review of an APS action must be made:
- (a) if the Agency Head has told an affected employee under regulation 5.26 that the APS action is not reviewable — within 60 days of the affected employee being told; or
  - (b) if the Agency Head has told an affected employee of the Agency Head's decision under subregulation 5.27 (5) and the affected employee is dissatisfied with the decision — within 60 days of the affected employee being told.

**Subdivision 5.3.2 Primary review**

**5.24 Application for primary review**

- (1) An affected employee may apply in writing to the relevant Agency Head for primary review of a reviewable action.
- (2) However, the application must be made to the Merit Protection Commissioner if the application is for review of:
  - (a) a determination that the affected employee has breached the Code of Conduct; or
  - (b) a sanction imposed for breach of the Code of Conduct.
- (3) Also, the employee may apply in writing to the Merit Protection Commissioner for review of the action if:
  - (a) the Agency Head was directly involved in the action; or

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- (b) it is not appropriate, because of the seriousness or sensitivity of the action, for the Agency Head to deal with the application; or
  - (c) the action is claimed to be victimisation or harassment of the employee for having made a previous application for review of action.
- (4) The application must state briefly:
- (a) why the review is sought; and
  - (b) if a particular outcome is sought — the outcome sought.

*Examples of outcomes*

- 1    Reconsideration of the action.
- 2    Re-assignment of duties.

**5.25      Referral to Merit Protection Commissioner**

- (1) If an application for review of a reviewable action is made to the relevant Agency Head, the Agency Head may, with the Merit Protection Commissioner's agreement, refer the application to the Merit Protection Commissioner.
- (2) The Agency Head may, for example, refer the application to the Merit Protection Commissioner if:
  - (a) the Agency Head was directly involved in the action; or
  - (b) the Agency Head thinks that it is not appropriate, because of the seriousness or sensitivity of the action, for the Agency Head to deal with the application.
- (3) If the Agency Head refers the application to the Merit Protection Commissioner, the Agency Head must tell the employee in writing.

*Note* Regulation 5.28 deals with review of applications referred to the Merit Protection Commissioner by an Agency Head.

**5.26      Notice that action not reviewable**

If an application for review of an APS action is made and the action is not reviewable action under subregulation 5.23 (3), the person who would have conducted the review must tell the employee in writing:

- (a) that the action is not reviewable; and

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- (b) the reasons why it is considered that the action is not reviewable; and
- (c) if the application was not made or referred to the Merit Protection Commissioner — of the employee's right to apply to the Merit Protection Commissioner under regulation 5.29 for secondary review of the action.

**5.27 Conduct of review by Agency Head**

- (1) If an Agency Head does not refer an application for review to the Merit Protection Commissioner, the Agency Head must review the action and attempt to resolve the employee's concerns about the action.
- (2) Subject to subregulation 5.33 (1), the Agency Head may conduct the review in any manner the Agency Head thinks fit.
- (3) The Agency Head may:
  - (a) confirm the action; or
  - (b) vary the action; or
  - (c) set the action aside and substitute a new action.
- (4) Subregulation (3) does not limit the employer powers of the Agency Head in relation to the action or the affected employee.

*Example*

The Agency Head may take other appropriate action to rectify effects of the action or restore the affected employee to the position in which the employee would have been if the action had not been taken.

- (5) The Agency Head must tell the employee in writing of:
  - (a) any decision made on the application; and
  - (b) the reasons for the decision; and
  - (c) any action to be taken as a result of the review; and
  - (d) the applicant's right to apply to the Merit Protection Commissioner under regulation 5.29 for secondary review of the action.

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**5.28      Conduct of review by Merit Protection Commissioner etc**

- (1) This regulation applies if an application for review of an APS action is:
  - (a) made to the Merit Protection Commissioner under subregulation 5.24 (2) or (3); or
  - (b) referred to the Merit Protection Commissioner under subregulation 5.25 (1).
- (2) The Merit Protection Commissioner must nominate a person (who may be the Merit Protection Commissioner), or constitute a 3 person committee, to conduct the review.
- (3) If the Merit Protection Commissioner is to conduct the review, he or she must:
  - (a) review the action; and
  - (b) make a recommendation to the Agency Head in writing about the action; and
  - (c) tell the Agency Head in writing of the reasons for the recommendation; and
  - (d) tell the employee in writing of the recommendation and reasons given to the Agency Head.
- (4) If another person or a committee is to conduct the review, the person or committee must:
  - (a) review the action; and
  - (b) make a recommendation to the Merit Protection Commissioner in writing about the action; and
  - (c) tell the Merit Protection Commissioner in writing of the reasons for the recommendation.
- (5) After receiving the recommendation and reasons mentioned in paragraphs (4) (b) and (c), the Merit Protection Commissioner:
  - (a) must report to the Agency Head in writing about the recommendation and reasons; and
  - (b) may make a recommendation to the Agency Head in writing about the action (which may be different to the recommendation made by the person or committee conducting the review); and



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- (c) must give the employee a copy of the report and any recommendation made by the Merit Protection Commissioner about the action.

**Subdivision 5.3.3 Secondary review**

**5.29 Application for secondary review**

- (1) An affected employee may apply in writing to the Merit Protection Commissioner for secondary review of a reviewable action if:
  - (a) the Agency Head has told the employee under regulation 5.26 that the action is not a reviewable action; or
  - (b) the employee is dissatisfied with the outcome of the Agency Head's review of the action under regulation 5.27.
- (2) The application must be made through the Agency Head.
- (3) The application must state briefly why the review is sought.

**5.30 Agency Head to give documents to Merit Protection Commissioner**

- (1) Within 14 days after receiving the application, the Agency Head must give to the Merit Protection Commissioner:
  - (a) the application; and
  - (b) any relevant documents relating to the primary review of the action.
- (2) The Agency Head must give to the affected employee a copy of any documents given to the Merit Protection Commissioner under paragraph (1) (b).

**5.31 Conduct of review**

- (1) The Merit Protection Commissioner must nominate a person (who may be the Merit Protection Commissioner), or constitute a 3 person committee, to conduct the review.

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- (2) If the Merit Protection Commissioner is to conduct the review, he or she must:
  - (a) review the action; and
  - (b) make a recommendation to the Agency Head in writing about the action; and
  - (c) tell the Agency Head in writing of the reasons for the recommendation; and
  - (d) tell the employee in writing of the recommendation and reasons given to the Agency Head.
- (3) If another person or a committee is to conduct the review, the person or committee must:
  - (a) review the action; and
  - (b) make a recommendation to the Merit Protection Commissioner in writing about the action; and
  - (c) tell the Merit Protection Commissioner in writing of the reasons for the recommendation.
- (4) After receiving the recommendation and reasons mentioned in paragraphs (3) (b) and (c), the Merit Protection Commissioner:
  - (a) must report to the Agency Head in writing about the recommendation and reasons; and
  - (b) may make a recommendation to the Agency Head in writing about the action (which may be different to the recommendation made by the person or committee conducting the review); and
  - (c) must give the employee a copy of the report and any recommendation made by the Merit Protection Commissioner about the action.

**Subdivision 5.3.4      Action following recommendation to Agency Head**

**5.32      Action by Agency Head**

- (1) If an Agency Head receives a recommendation under regulation 5.28 or 5.31, the Agency Head must, as soon as possible:
  - (a) consider the recommendation; and

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- (b) make a decision about the recommendation.
- (2) The Agency Head may:
  - (a) confirm the relevant action; or
  - (b) vary the action; or
  - (c) set the action aside and substitute a new action.
- (3) Subregulation (2) does not limit the employer powers of the Agency Head in relation to the action or the affected employee.

*Example*

The Agency Head may take other appropriate action to rectify effects of the action or restore the affected employee to the position in which the employee would have been if the action had not been taken.

- (4) The Agency Head must tell the employee and the Merit Protection Commissioner in writing of:
  - (a) the decision; and
  - (b) the reasons for the decision.

*Note* Subsection 33 (6) of the Act allows for matters to be reported to an Agency Minister, the Prime Minister and the Parliament if the Merit Protection Commissioner is not satisfied with the response to recommendations contained in a report to an Agency Head.

**Subdivision 5.3.5 Other provisions about review**

**5.33 Review procedures — minimum requirements**

- (1) The procedures used for a review conducted under this Division must meet the following minimum requirements:
  - (a) the procedures must have due regard to procedural fairness;
  - (b) the review must be conducted in private;
  - (c) the review must be finished as quickly, and with as little formality, as a proper consideration of the matter allows.
- (2) A person appearing before a person or committee conducting a review under regulation 5.28 or 5.31 must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

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**5.34      Review procedures — Merit Protection  
Commissioner’s instructions**

- (1) The Merit Protection Commissioner must, as soon as practicable after the commencement of this regulation, issue instructions about the procedures to be followed by a person or committee conducting a review under regulation 5.28 or 5.31.
- (2) The instructions must not be inconsistent with the Act, these Regulations or the Commissioner’s Directions.
- (3) A person or committee conducting a review under regulation 5.28 or 5.31 must comply with the instructions.

**5.35      Requirement to provide information or documents**

- (1) A person or committee carrying out a review under this Division may, by written notice given to an Agency Head or APS employee, require the Agency Head or APS employee to give the person or committee stated information or documents relevant to the review.
- (2) The Agency Head or APS employee must give the information or documents in the way, and at or within the time, stated in the notice.

**5.36      Making of application does not operate as stay**

The making of an application for review of an APS action under this Division does not operate to stay the action.

**5.37      Offence**

- (1) A person must not obstruct a person or committee conducting a review in carrying out its functions under this Division.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element of an offence against subregulation (1) that the functions being carried out by the person or committee were functions under this Division.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

## Part 6                      The Public Service Commissioner

*Note* Functions of the Commissioner in relation to whistleblowers reports are set out in r 2.5.

### 6.1            **Commissioner's functions — inquiries into Merit Protection Commissioner's behaviour (Act s 41 (1))**

For the purposes of paragraph 41 (1) (1) of the Act, the Commissioner must:

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

### 6.2            **Commissioner's functions — inquiries into alleged breaches of Code of Conduct by Agency Heads (Act s 41 (3))**

For the purposes of paragraph 41 (3) (c) of the Act, the following Statutory Agencies are prescribed:

- (a) the Auditor-General and the APS employees assisting the Auditor-General, declared by paragraph 40 (1A) (a) of the *Auditor-General Act 1997* to be a Statutory Agency for the purposes of the Act;
- (b) the Australian Statistician and the APS employees assisting the Statistician, declared by paragraph 16 (4) (a) of the *Australian Bureau of Statistics Act 1975* to be a Statutory Agency for the purposes of the Act;
- (c) the Chief Executive Officer of Customs (*CEO*) and the APS employees assisting the CEO, declared by paragraph 15 (2) (a) of the *Customs Administration Act 1985* to be a Statutory Agency for the purposes of the Act;

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- (d) the Commissioner of Taxation and the APS employees assisting the Commissioner of Taxation, declared by paragraph 4A (2) (a) of the *Taxation Administration Act 1953* to be a Statutory Agency for the purposes of the Act;
- (e) the Ombudsman and the APS employees assisting the Ombudsman, declared by paragraph 31 (2) (a) of the *Ombudsman Act 1976* to be a Statutory Agency for the purposes of the Act.

**6.3 Non-disclosure of information by Commissioner, etc**

- (1) This regulation applies to the following persons:
  - (a) the Commissioner;
  - (b) a member of the staff assisting the Commissioner;
  - (c) a person acting under the direction or authority of the Commissioner.
- (2) The person must not, directly or indirectly, make a record of, or divulge or communicate to any other person, any information that was:
  - (a) acquired by the person while he or she was performing duties as a person described in subregulation (1); and
  - (b) disclosed or obtained under paragraph 41 (1) (c) of the Act.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the following physical elements of an offence against subregulation (2):
  - (a) that the duties performed by the person were duties as a person described in subregulation (1);
  - (b) that the information was disclosed or obtained under paragraph 41 (1) (c) of the Act.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) Subregulation (2) applies to the person:
  - (a) while he or she is performing duties as a person described in subregulation (1); and
  - (b) after he or she ceases to perform the duties.

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- (4) Subregulation (2) does not prevent the person:
- (a) from making a record of, or divulging or communicating to any other person, information acquired by the person:
    - (i) in the performance of duties as a person described in subregulation (1); and
    - (ii) for purposes connected with the exercise of the powers, and with the performance of the functions, of the Commissioner under the Act; or
  - (b) from divulging or communicating to any other person information given by an APS employee, in the performance of the APS employee's duties, with the consent of the APS employee's Agency Head or the responsible Minister; or
  - (c) from divulging or communicating to any other person information given by a person, otherwise than as described in paragraph (b), with the consent of the person who gave the information.
- (5) Subregulation (2) does not prevent the Commissioner from disclosing, in a report made under the Act, matters that, in his or her opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.
- (6) A person who is, or has been, a person described in subregulation (1) is not competent and may not be required, in any proceedings before a court (whether exercising federal jurisdiction or not) or before a person authorised by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear, receive or examine evidence, to disclose any information acquired by the person by reason of his or her being or having been a person described in subregulation (1), being information that was disclosed or obtained under the provisions of section 16 or 41 of the Act.
- (7) This regulation does not prevent the Commissioner from disclosing information, or making a statement, to any person or to the public or a section of the public with respect to the performance of a function of the Commissioner under the Act if, in the opinion of the Commissioner:

**Regulation 6.4**

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- (a) it is in the interests of any Agency or person to disclose the information or to make the statement; or
  - (b) it is otherwise in the public interest to disclose the information or to make the statement.
- (8) The Commissioner must not disclose information or make a statement under subregulation (7) with respect to a particular inquiry if the disclosure of the information, or the making of the statement, is likely to interfere with the carrying out of the inquiry, or of any other inquiry.
- (9) If the Commissioner discloses information or makes a statement under subregulation (7) with respect to a particular inquiry, the Commissioner must not disclose the name of an applicant, or any other matter that would allow an applicant to be identified, unless it is fair and reasonable in all the circumstances to do so.

**6.4 Immunity from suit**

- (1) This regulation applies in relation to the following persons:
- (a) the Commissioner;
  - (b) a member of the staff assisting the Commissioner;
  - (c) a person acting under the direction or authority of the Commissioner.
- (2) The person is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise, or purported exercise, of the Commissioner's function under paragraph 41 (1) (c) of the Act.

*Note* Paragraph 41 (1) (c) deals with inquiring into reports about breaches (or alleged breaches) of the Code of Conduct (see also s 16 of the Act and r 2.5).



## **Part 7                      The Merit Protection Commissioner**

### **7.1            Prescribed functions (Act s 50)**

- (1) The Merit Protection Commissioner's functions set out in Part 5 are prescribed for the purposes of paragraph 50 (1) (d) of the Act.
- (2) The Merit Protection Commissioner's functions set out in this Part are prescribed for the purposes of paragraph 50 (1) (e) of the Act.

*Note* Functions of the Merit Protection Commissioner in relation to whistleblowers reports are set out in r 2.6.

### **7.2            Investigation of complaints by former employees**

- (1) The Merit Protection Commissioner may investigate a complaint by a former APS employee that relates to the employee's entitlements on separation from the APS.
- (2) The Merit Protection Commissioner may make recommendations to the employee's former Agency Head in relation to the complaint.

### **7.3            Review of actions of statutory office holders who are not Agency Heads**

- (1) A non-SES employee may apply to the Merit Protection Commissioner for review of an action of a statutory office holder that:
  - (a) relates to the employee's APS employment; and
  - (b) is not termination of the employee's employment; and
  - (c) if the statutory office holder were an Agency Head, would be reviewable action for Division 5.3.

**Regulation 7.4**

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- (2) The Merit Protection Commissioner may, by written notice given to the statutory office holder, require the statutory office holder to give the Merit Protection Commissioner:
  - (a) a report about the action; and
  - (b) other stated information or documents relevant to the review.
- (3) The statutory office holder must give the report and other information or documents in the way, and at or within the time, stated in the notice.
- (4) The Merit Protection Commissioner must:
  - (a) review the action; and
  - (b) make a recommendation to the statutory office holder in writing about the action; and
  - (c) tell the statutory office holder in writing of the reasons for the recommendation; and
  - (d) tell the employee in writing of the recommendation and reasons given to the statutory office holder.
- (5) If the Merit Protection Commissioner is not satisfied with the statutory office holder's response to the Merit Protection Commissioner's recommendation, the Merit Protection Commissioner may give a report on the matter to the relevant Agency Minister.

**7.4 Other functions of Merit Protection Commissioner**

- (1) This regulation applies if:
  - (a) a person or body asks the Merit Protection Commissioner to perform any of the functions mentioned in subregulation (2); and
  - (b) the Merit Protection Commissioner is not required by a law of the Commonwealth to perform the function.

*Examples of persons and bodies*

- 1 Commonwealth authorities to which the Act does not apply.
- 2 State and Territory departments and authorities.
- 3 Local government bodies.
- 4 Private corporations and bodies.

**Regulation 7.6**

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- (2) The functions are:
- (a) reviewing action that relates to the employment of a person by the person or body; and
  - (b) investigating action that relates to the employment of a person by the person or body; and
  - (c) providing advice that relates to the employment of a person by the person or body; and
  - (d) providing services in connection with selection committees used by the person or body for the selection or employment of a person; and
  - (e) providing other services that relate to the employment of a person.
- (3) The Merit Protection Commissioner:
- (a) may perform the function (but is not required to do so); and
  - (b) may charge the person or body a fee for carrying out the function (but is not required to do so).

**7.5 Independence of Merit Protection Commissioner**

The Merit Protection Commissioner is not subject to direction in carrying out his or her duties under Part 4 or 5 of these Regulations, except by a Court.

**7.6 Non-disclosure of information by Merit Protection Commissioner, etc**

- (1) This regulation applies to the following persons:
- (a) the Merit Protection Commissioner;
  - (b) a member of the staff assisting the Merit Protection Commissioner;
  - (c) a person acting under the direction or authority of the Merit Protection Commissioner;
  - (d) a person (other than an employee of the Agency) to whom the Merit Protection Commissioner has delegated any of his or her powers under section 78 of the Act;

**Regulation 7.6**

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- (e) a member of a Review Committee established under paragraph 33 (4) (d) of the Act;
  - (f) a member of an Independent Selection Advisory Committee;
  - (g) a person (other than the Merit Protection Commissioner) who is required to assist the Commissioner to investigate a complaint under regulation 7.2;
  - (h) a person (other than the Merit Protection Commissioner) who is required to assist the Commissioner to review action under regulation 7.3.
- (2) The person must not, directly or indirectly, make a record of, or divulge or communicate to any other person, any information that was:
- (a) acquired by the person while he or she was performing duties as a person described in subregulation (1); and
  - (b) disclosed or obtained:
    - (i) under section 33 or paragraph 50 (1) (a) of the Act; or
    - (ii) during the investigation of a complaint under regulation 7.2; or
    - (iii) during the review of action under regulation 7.3; or
    - (iv) while acting as a member of an Independent Selection Advisory Committee.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the following physical elements of an offence against subregulation (2):
- (a) that the duties performed by the person were duties as a person described in subregulation (1);
  - (b) that the information was disclosed or obtained under section 33 or paragraph 50 (1) (a) of the Act;
  - (c) that the investigation was under regulation 7.2;
  - (d) that the review was under regulation 7.3.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

**Regulation 7.6**

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- (3) Subregulation (2) applies to the person:
- (a) while he or she is performing duties as a person described in subregulation (1); and
  - (b) after he or she ceases to perform the duties.
- (4) Subregulation (2) does not prevent the person:
- (a) from making a record of, or divulging or communicating to any other person, information acquired by the person:
    - (i) while he or she is performing duties as a person described in subregulation (1); and
    - (ii) for purposes connected with the exercise of the powers, and with the performance of the functions, of the Merit Protection Commissioner under the Act; or
  - (b) from divulging or communicating to any other person information given by an APS employee, in the performance of the APS employee's duties, with the consent of the APS employee's Agency Head or the responsible Minister; or
  - (c) from divulging or communicating to any person information given by a person, otherwise than as described in paragraph (b), with the consent of the person who gave the information.
- (5) Subregulation (2) does not prevent the Merit Protection Commissioner from disclosing, in a report made under the Act, matters that, in his or her opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.
- (6) A person who is, or has been, a person described in subregulation (1) is not competent and may not be required, in any proceedings before a court (whether exercising federal jurisdiction or not) or before a person authorised by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear, receive or examine evidence, to disclose any information acquired by the person by reason of his or her being or having been a person described in subregulation (1), being information that was disclosed or obtained under the provisions of section 33 or paragraph 50 (1) (a) of the Act.

**Regulation 7.7**

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- (7) This regulation does not prevent the Merit Protection Commissioner from disclosing information, or making a statement, to any person or to the public or a section of the public with respect to the performance of a function of the Merit Protection Commissioner under the Act if, in the opinion of the Merit Protection Commissioner:
- (a) it is in the interests of any Agency or person to disclose the information or to make the statement; or
  - (b) it is otherwise in the public interest to disclose the information or to make the statement.
- (8) The Merit Protection Commissioner must not disclose information or make a statement under subregulation (7) with respect to a particular inquiry or review if the disclosure of the information, or the making of the statement, is likely to interfere with the carrying out of the inquiry or review, or of any other inquiry or review.
- (9) If the Merit Protection Commissioner discloses information or makes a statement under subregulation (7) with respect to a particular inquiry or review, the Merit Protection Commissioner must not disclose the name of an applicant, or any other matter that would allow an applicant to be identified, unless it is fair and reasonable in all the circumstances to do so.

**7.7 Immunity from suit**

- (1) This regulation applies in relation to the following persons:
- (a) the Merit Protection Commissioner;
  - (b) a member of the staff assisting the Merit Protection Commissioner;
  - (c) a person acting under the direction or authority of the Merit Protection Commissioner;
  - (d) a member of a PRC;
  - (e) a member of an ISAC.
- (2) The person is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise, or purported exercise, of any power or authority conferred by the Act.

## Part 8                      **Administrative arrangements and re-organisations**

### **8.1            Employment conditions after machinery of government changes — movement of APS employees (Act s 72)**

- (1) For the purposes of paragraph 72 (5) (a) of the Act, this regulation prescribes arrangements for determining variations of the remuneration and other conditions of employment applicable to an APS employee who is moved to another Agency in accordance with a determination under paragraph 72 (1) (a) of the Act.
- (2) The annual salary that applies to the APS employee on the day when the move occurs is the greater of:
  - (a) the annual salary that applied to the APS employee immediately before the move; and
  - (b) the annual salary that would, apart from this regulation, apply to the APS employee after the move.
- (3) Before or after the move, the other conditions of employment of the APS employee may be varied:
  - (a) after consultation by the Agency Head with:
    - (i) the APS employee; or
    - (ii) that APS employee and any other APS employees who are to be or who have moved to the Agency; or
    - (iii) a class of the APS employees who are to be or who have moved to the Agency that includes the APS employee; and
  - (b) in accordance with a determination under subsection 24 (1) of the Act to the effect that some or all of the conditions of employment are to be the same as those that applied to the APS employee immediately before the move; and

**Regulation 8.2**

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- (c) to have effect no sooner than the day when the move occurs.

*Note* A determination by an Agency Head under subsection 24 (1) of the Act is of no effect to the extent that it would reduce the benefit to an APS employee of a condition of employment applicable to the employee under the Australian Fair Pay and Conditions Standard or an award, workplace agreement, pre-reform certified agreement, AWA or pre-reform AWA.

- (4) However, if:
- (a) a determination mentioned in paragraph (3) (b) applies to the APS employee; and
  - (b) an employment arrangement:
    - (i) commences on or after the day when the APS employee moves; and
    - (ii) applies on its face to the APS employee or a class of APS employees that includes the APS employee;
- the determination mentioned in paragraph (3) (b) ceases to apply to the APS employee, and the conditions of employment under the employment arrangement apply to the APS employee.

**8.2 Employment conditions after machinery of government changes — engagement of non-APS employees (Act s 72)**

- (1) For the purposes of paragraph 72 (5) (b) of the Act, this regulation prescribes arrangements for determining variations of the remuneration and other conditions of employment applicable to a person who ceases to be employed as a non-APS employee and becomes engaged as an APS employee in accordance with a determination under paragraph 72 (1) (c) of the Act.
- (2) Before or after the engagement, the remuneration and other conditions of employment of the person may be varied:
  - (a) after consultation by the Agency Head with:
    - (i) the person; or
    - (ii) that person and any other persons who are to be or who have become engaged as APS employees; or



**Regulation 8.2**

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- (iii) a class of the persons who are to be or who have become engaged as APS employees that includes the person; and
- (b) in accordance with a determination under subsection 24 (1) of the Act to the effect that some or all of the remuneration and other conditions of employment are to be the same as those that applied to the person immediately before the person ceased to be employed as a non-APS employee; and
- (c) to have effect no sooner than the day when the person becomes engaged as an APS employee.

*Note* A determination by an Agency Head under subsection 24 (1) of the Act is of no effect to the extent that it would reduce the benefit to an APS employee of a condition of employment applicable to the employee under the Australian Fair Pay and Conditions Standard or an award, workplace agreement, pre-reform certified agreement, AWA or pre-reform AWA.

- (3) However, if:
  - (a) a determination mentioned in paragraph (2) (b) applies to the APS employee; and
  - (b) an employment arrangement:
    - (i) commences on or after the day when the person becomes engaged as an APS employee; and
    - (ii) applies on its face to the person as an APS employee or a class of APS employees that includes the person;

the determination mentioned in paragraph (2) (b) ceases to apply to the APS employee, and the conditions of employment under the employment arrangement apply to the APS employee.

**Regulation 8A.1**

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## **Part 8A                      Attachment of salaries to satisfy judgment debts**

### **8A.1      Definitions**

- (1) In this Part:

*debtor* means a Secretary, a Head of an Executive Agency, or an APS employee who owes a judgment debt.

*net salary* has the meaning given by subregulation (2).

*paying officer*, in relation to a debtor, means a person appointed under regulation 8A.4 who is responsible for dealing with the debtor.

*total gross salary* has the meaning given by subregulation (3).

- (2) The *net salary* of a debtor is the debtor's total gross salary, less any amount to be deducted:
- (a) to pay income tax; or
  - (b) to pay child support in accordance with the *Child Support (Assessment) Act 1989*; or
  - (c) as a contribution that:
    - (i) the debtor is required to make to a superannuation fund relating to the debtor's engagement in the Agency; and
    - (ii) is the minimum amount required by law or the rules of the fund.
- (3) The *total gross salary* of a debtor is the amount of:
- (a) the debtor's gross salary as a Secretary, a Head of an Executive Agency or an APS employee (not including any payment of compensation under the *Safety, Rehabilitation and Compensation Act 1988*); and
  - (b) the allowances, in the nature of salary, that are paid regularly to the debtor;
- without any reduction for salary sacrifice arrangements or other arrangements with a similar purpose.

**Regulation 8A.4**

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**8A.2 Application of Part 8A**

This Part does not apply in relation to a debtor:

- (a) whose estate has been sequestrated, either voluntarily or compulsorily, for the benefit of creditors; and
- (b) who has not yet obtained a certificate of discharge.

**8A.3 Application of State and Territory law**

A law of a State or a Territory that deals with satisfying a judgment debt:

- (a) applies to a debtor's judgment debt to the extent that the law deals with the calculation of interest on the debt; and
- (b) does not apply to the judgment debt for any other purpose.

**8A.4 Paying officer**

- (1) If an Agency Head believes that the making of deductions from a debtor's salary is required, the Agency Head must appoint 1 or more persons as paying officers for the purpose of making those deductions.
- (1A) However, if the Agency Head is the debtor:
  - (a) the Agency Head must not appoint a paying officer under subregulation (1); and
  - (b) the Agency Head must act under this subregulation without considering whether the making of deductions from the Agency Head's salary is required; and
  - (c) the Agency Head must, in writing, delegate his or her power under subregulation (1) to appoint a paying officer to an SES employee in the Agency; and
  - (d) the SES employee must:
    - (i) decide whether the making of deductions from the Agency Head's salary is required; and
    - (ii) if the SES employee decides that the making of the deductions is required — appoint a person as a paying officer for the purpose of making those deductions; and

**Regulation 8A.5**

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- (e) the Agency Head must not take any action, or make any arrangement, in relation to the administration under this Part of the Agency Head's debt, other than:
  - (i) making the delegation mentioned in paragraph (c); and
  - (ii) if a paying officer is appointed — assisting the paying officer in the repayment of the debt.
- (2) If a person is appointed as a paying officer:
  - (a) the appointment authorises the person to act as a paying officer only in relation to the debtor to whom the appointment relates; and
  - (b) the person is responsible for making deductions from the debtor's salary to satisfy the judgment debt against the debtor.
- (3) A debtor is not authorised to be the paying officer for himself or herself.

**8A.5 Authority to make deductions**

- (1) Deductions from a debtor's salary in order to satisfy a judgment debt may be started only if:
  - (a) the paying officer has received a statutory declaration, made by the judgment creditor, that the judgment debt exists and has not been discharged; and
  - (b) the paying officer has received a copy of the judgment to which the judgment debt relates, certified by the Registrar or other appropriate officer of the relevant court; and
  - (c) the paying officer has received the fee (if any) required under regulation 8A.6; and
  - (d) the paying officer has given the debtor a notice in accordance with subregulation (2); and
  - (e) the debtor does not, within the time specified in the notice given under subregulation (2), satisfy the paying officer that the judgment debt has been satisfied.

*Note* Regulation 8A.7 deals with cases where there are 2 or more judgment debts against a debtor.

- (2) The paying officer must:

**Regulation 8A.6**

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- (a) notify the debtor, as soon as practicable, that it is proposed to make the deductions; and
  - (b) require the debtor to state, in writing, by a time specified in the notice, whether the judgment has been satisfied, and:
    - (i) if the judgment debt has been satisfied — to give the paying officer evidence in support of that fact; and
    - (ii) if the judgment debt has not been satisfied — to state the amount due under the judgment at the time the statement is made.
- (3) If the debtor does not give the paying officer evidence that the judgment debt has been satisfied by the time specified in the notice under subregulation (2), the paying officer must deduct from the debtor's salary on each pay day for the debtor an amount equal to:
- (a) the deduction required under regulation 8A.9; or
  - (b) a lesser amount that, in the paying officer's opinion, is needed to satisfy the balance of the judgment debt.
- (4) After making the first deduction, the paying officer is authorised to continue to make deductions only if the paying officer has no reason to believe that the judgment debt has been discharged.
- (5) The paying officer must ensure that the amount of each deduction is paid to the judgment creditor.

**8A.6 Administration fee**

- (1) A judgment creditor (other than the Commonwealth) who requests the payment of a judgment debt must pay a fee of \$38 for the making of the deductions.
- (2) The fee is the price of the supply of a service for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*.
- (3) If a judgment creditor (other than the Commonwealth) requests the payment of a judgment debt, but does not pay the fee when making the request, the paying officer must notify the judgment creditor that:
  - (a) the fee is payable for making the deductions; and

**Regulation 8A.7**

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- (b) no deductions will be made unless the fee is paid.

**8A.7 More than 1 judgment debt**

- (1) If more than 1 judgment debt exists against a debtor, the paying officer:
- (a) must deal with the judgment debts in the order in which requests for deductions were received; and
  - (b) must not make a deduction for the purposes of a particular judgment debt until all judgment debts for which earlier requests were made have been satisfied.
- (2) If the paying officer receives 2 or more requests at the same time for the payment of judgment debts against a debtor, the paying officer must deal with the judgment debts in the order of the dates and times at which judgment was given for each debt, starting with the earliest judgment.

**8A.8 Effect of deductions**

If an amount is paid to a judgment creditor after a deduction is made from the debtor's salary on a pay day for the debtor:

- (a) an amount equal to that amount is taken to have been paid by the Commonwealth to the debtor on account of salary payable to the debtor on that pay day; and
- (b) an amount equal to that amount is taken to have been paid by the debtor to the judgment creditor for the purposes of the judgment debt.

**8A.9 Rate of deductions**

- (1) For paragraph 8A.5 (3) (a), the rate at which a deduction is to be made from the debtor's net salary on a pay day for the debtor is 20% unless subregulation (2), (3) or (4) applies.
- (2) If the paying officer is satisfied that the debtor:
- (a) is suffering serious financial hardship; or
  - (b) would suffer serious financial hardship if the rate of deduction is not reduced;
- the paying officer may reduce the rate at which deductions are to be made.

**Regulation 8A.10**

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- (3) If the debtor asks the paying officer, in writing, to make deductions at a rate greater than 20% of the debtor's net salary, the paying officer must comply with the request as soon as practicable.
- (4) If:
  - (a) deductions are being made at a rate greater than 20% of the debtor's net salary; and
  - (b) the debtor asks a paying officer, in writing, to reduce the rate of the deductions;the paying officer must reduce the rate as soon as practicable, but is not required to reduce the rate to less than 20%.

**8A.10 Move to another Agency**

- (1) If a debtor moves from an Agency (*Agency 1*) to another Agency (*Agency 2*), the debtor's paying officer in Agency 1 must notify the Agency Head of Agency 2 of:
  - (a) the existence of each judgment debt against the debtor; and
  - (b) the arrangements in Agency 1 for making deductions from the debtor's salary; and
  - (c) any deductions made for the purposes of each of those judgment debts.
- (2) If more than 1 judgment debt exists against the debtor:
  - (a) the debtor's paying officer in Agency 1 must advise the Agency Head of the order in which the judgment debts were to have been dealt with in accordance with regulation 8A.7; and
  - (b) the paying officer who is appointed in Agency 2 in relation to the debtor must deal with the judgment debts in that order.
- (3) The paying officer in Agency 2 is taken:
  - (a) to have received the statutory declaration, and copy of the judgment, mentioned in regulation 8A.5; and
  - (b) to have received the fee (if any) required under regulation 8A.6; and

**Regulation 8A.11**

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- (c) to have given to the debtor any notice that was given, in respect of the debtor, by a paying officer in another Agency.
- (4) The paying officer in Agency 2 must notify the judgment creditor of the move, and the deductions that the paying officer will make.
- (5) The judgment creditor is not required to pay another fee for the making of deductions.

**8A.11 Administration of deductions**

- (1) A paying officer in relation to a debtor may:
  - (a) require the judgment creditor to confirm that the judgment debt has not been discharged; and
  - (b) suspend the making of deductions until the paying officer receives the confirmation.
- (2) If a debtor's employment ceases, or is terminated, for any reason (including the debtor's death) the paying officer must notify the judgment creditor of the cessation or termination as soon as practicable.

**8A.12 Recovery of overpayment**

If a payment made to a judgment creditor for the purposes of a judgment debt exceeds the amount due under the judgment, the excess is repayable by the judgment creditor to the debtor.



## **Part 9                      Miscellaneous**

### **9.2            Release of personal information (Act s 76)**

- (1) For the purposes of paragraph 76 (a) of the Act, an Agency Head may disclose personal information (within the meaning of the *Privacy Act 1988*) that is in the possession, or under the control, of the Agency Head in any of the following circumstances:
  - (a) the disclosure is necessary for the performance or exercise of the employer powers of the Agency Head or another Agency Head;
  - (b) the disclosure is necessary for the performance of a function of the Public Service Commissioner or the Merit Protection Commissioner;
  - (c) the disclosure is necessary for the performance of a function of an ISAC;
  - (d) the disclosure is necessary for the review of APS action, or action of a statutory office holder, by:
    - (i) a PRC; or
    - (ii) the Merit Protection Commissioner; or
    - (iii) a person nominated, or a committee constituted, by the Merit Protection Commissioner to conduct the review;
  - (e) the disclosure is necessary for the performance of an outsourced personnel function.
- (2) For the purposes of paragraph 76 (b) of the Act, personal information that is disclosed by an Agency Head for the performance of an outsourced personnel function must not be further disclosed without the Agency Head's written authority.
- (3) A disclosure under subregulation (1) must be consistent with any guidelines issued by the Public Service Commissioner after consultation with the Australian Information Commissioner performing the privacy functions.

*Note* **Privacy functions** has the meaning given by section 9 of the *Australian Information Commissioner Act 2010*.

### Regulation 9.3

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(4) A disclosure of personal information in accordance with subregulation (1) or (2) is an authorised disclosure for the purposes of paragraph 1 (d) of Information Privacy Principle 11 set out in section 14 of the *Privacy Act 1988*.

(5) In this regulation:

***outsourced personnel function*** means a personnel function that was performed in the APS, but is being performed outside the APS under a contract at the time of the proposed disclosure.

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

### 9.3 Delegations

(1) The Commissioner may, in writing, delegate to a person any of the Commissioner's powers or functions under these Regulations (other than this regulation).

(2) The Merit Protection Commissioner may, in writing, delegate to a person any of the Merit Protection Commissioner's powers or functions under these Regulations (other than this regulation).

(3) An Agency Head may, in writing, delegate to a person any of the Agency Head's powers or functions under these Regulations (other than this regulation).

(4) However, an Agency Head cannot delegate powers or functions to an outsider without the prior written consent of the Commissioner.

(5) A person (the ***first delegate***) to whom powers or functions are delegated under subregulation (3) may, in writing, delegate any of the powers or functions to another person (the ***second delegate***).

(6) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subregulation (5), the first delegate must give corresponding directions to the second delegate.

**Regulation 9.3**

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- (7) A power or function that is exercised or performed by a person under a delegation under subregulation (5) is taken, for these Regulations, to have been exercised or performed by the person who originally delegated the corresponding power or function under subregulation (3).
- (8) A person exercising powers or functions under a delegation under this regulation must comply with any directions of the person who delegated the power or function.
- (9) In this regulation:
- 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 Non-reviewable actions

(subregulation 5.23 (2))

### *General*

1. Action about the policy, strategy, nature, scope, resources or direction of the APS or an Agency.
2. Action taken, or not taken, in accordance with a direction or reference given by a Minister under the Act or another Act.

*Note* Under s 19 of the Act, an Agency Head is not subject to direction by any Minister in relation to the exercise of powers by the Agency Head under Div 1 or 2 of Pt 4 of the Act in relation to particular individuals.

3. The giving of a direction by the Public Service Commissioner under section 11, 15 or 36 of the Act.
4. Action taken, or not taken, for a special inquiry under section 43 or an inquiry under section 50 of the Act.
5. Action taken, or not taken, under section 72 of the Act.
6. Action arising under any of the following Acts:
  - *Australian Security Intelligence Organization Act 1979*
  - *Safety, Rehabilitation and Compensation Act 1988*
  - *Superannuation Act 1976*
  - *Superannuation Act 1990*.

### *Employment and conditions*

7. Action relating to the engagement of an APS employee.
8. Action of a PRC.
9. Action relating to the promotion of an ongoing APS employee as an SES employee (whether or not the employee is already an SES employee).

10. Action that determines, under section 25 of the Act, duties of an APS employee, or the place or places where they are to be performed, unless the action involves:
- (a) a reduction in classification; or
  - (b) a relocation to another place; or
  - (c) a promotion that meets the following criteria:
    - (i) the affected employee was an applicant for the promotion;
    - (ii) the promotion was to employment at a classification mentioned in Group 7 or 8 in Schedule 1 to the Classification Rules;
    - (iii) there were serious defects in the selection process; or
  - (d) the assignment to an employee of duties that the employee could not reasonably be expected to perform.

## Schedule 2      **Comparable and higher APS classifications to Parliamentary Service classifications**

(Dictionary, definitions of *comparable* and *higher*)

### 1      **Meaning of *comparable classification***

A person who is an ongoing Parliamentary Service employee is engaged as an ongoing APS employee at a *comparable classification* to the person's classification as an ongoing Parliamentary Service employee immediately before the engagement 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.

Item	APS Group classification	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*

A person who is an ongoing Parliamentary Service employee is engaged as an ongoing APS employee at a *higher classification* than the person's classification as an ongoing Parliamentary Service employee immediately before the engagement 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.

Item	APS Group classification	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

(regulation 1.3)

*Note* Words and expressions defined in the *Public Service Act 1999* are indicated by an asterisk (\*) (see subr 1.3 (2)). Minor changes from the Act are indicated by square brackets ([ ]). Except where otherwise indicated, the definitions are found in s 7 of the Act.

**Act** means the *Public Service Act 1999*.

\***action** includes a refusal or failure to act.

*Note* This word is defined in subs 33 (7) of the Act.

**affected employee**, for Division 5.3, see regulation 5.22.

\***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.

\***Agency Minister** means:

- (a) in relation to a Department — the Minister who administers the Department; or
- (b) in relation to an Executive Agency — the Minister who administers the Agency; or
- (c) in relation to a Statutory Agency — the Minister who administers the provision of the Act that provides for the appointment of the Head of Agency.

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

\***APS action** means action by a person in the capacity of an Agency Head or APS employee.

*Note* This expression is defined in subs 33 (7) of the Act.



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

**Australian Fair Pay and Conditions Standard** has the meaning given by the *Workplace Relations Act 1996*.

\***AWA** has the meaning given by Schedule 7A to the *Workplace Relations Act 1996*.

\***award** has the same meaning as in the *Workplace Relations Act 1996*.

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

**Classification Rules** means the *Public Service Classification Rules 2000*, as in force on 1 July 2006.

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

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

**Commissioner's Directions** means the *Public Service Commissioner's Directions 1999*, as in force on 2 April 2008.

**comparable**, for a classification, has the meaning given by Schedule 2.

**electronic APS Employment Gazette** means the Australian Public Service Employment *Gazette*, published in electronic form.

**employer powers**, for an Agency Head, means the rights, duties and powers of the Agency Head under Part 4 of the Act.

**employment** means APS employment.

**employment arrangement** means:

- (a) an award; or
- (b) a workplace agreement; or
- (c) a pre-reform certified agreement; or
- (d) an AWA; or
- (e) a pre-reform AWA; or
- (f) a determination under subsection 24 (1) or (3) of the Act; or
- (g) a written contract of employment.

**external review body** does not include a Court or Tribunal.

**higher**, for a classification, has the meaning given by Schedule 2.

**Independent Selection Advisory Committee** (or **ISAC**) means an Independent Selection Advisory Committee established under Part 4.

\***judgment debt** includes interest on a judgment debt.

*Note* This expression is defined in subs 75 (2) of the Act.

\***locally engaged employee** means a person engaged under section 74 [of the Act].

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

\***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 meaning given by the *Parliamentary Service Act 1999*.

**Parliamentary Service employee** has the meaning given by the *Parliamentary Service Act 1999*.

**post-move Agency** means the Agency to which an ongoing APS employee moves in accordance with an agreement under section 26 of the Act.

**post-move Agency Head** means the Agency Head of a post-move Agency.

**pre-move Agency** means the Agency from which an ongoing APS employee moves in accordance with an agreement under section 26 of the Act.

**pre-move Agency Head** means the Agency Head of a pre-move Agency.

**pre-reform AWA** has the meaning given by the *Workplace Relations Act 1996*.

**pre-reform certified agreement** has the meaning given by the *Workplace Relations Act 1996*.

\***Presiding Officer** means the President of the Senate or the Speaker of the House of Representatives.

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**promotion**, for an ongoing APS employee, has the meaning given by subclause 4.6 (1) of the Commissioner's Directions.

**Promotion Review Committee** (or **PRC**) means a Promotion Review Committee appointed under Division 5.2.

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

**relevant Agency Head**, for review of an APS action, means:

- (a) if the action is action by an Agency Head — that Agency Head; or
- (b) if the action is action by an APS employee — the Agency Head of the Agency in which the employee was employed at the time of the action.

**relevant employment** means employment as an ongoing APS employee at a classification mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules.

**reviewable action**, for Division 5.3, see regulation 5.23.

**\*senior official** means:

- (a) a person who holds any office or appointment under an Act; or
- (b) an SES employee or acting SES employee.

*Note* This expression is defined in subs 78 (12) of the Act.

**\*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].

**\*Statutory Agency** means a body or group of persons declared by an Act to be a Statutory Agency for the purposes of [the] Act.

**statutory office holder** means a statutory office holder for the purposes of section 14 of the Act.

**Tribunal** means a Tribunal constituted under an enactment.

**workplace agreement** has the meaning given by the *Workplace Relations Act 1996*.

**Table of Instruments****Notes to the *Public Service Regulations 1999*****Note 1**

The *Public Service Regulations 1999* (in force under the *Public Service Act 1999*) as shown in this compilation comprise Statutory Rules 1999 No. 300 amended as indicated in the Tables below.

**Table of Instruments**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i> or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
1999 No. 300	4 Dec 1999	5 Dec 1999 (see r. 2 and <i>Gazette</i> 1999, No. S584)	
2000 No. 359	20 Dec 2000	20 Dec 2000	—
2001 No. 328	13 Dec 2001	15 Dec 2001	—
2002 No. 214	12 Sept 2002	12 Sept 2002	—
2002 No. 264	6 Nov 2002	1 Dec 2002	—
2003 No. 317	11 Dec 2003	11 Dec 2003	—
2003 No. 364	23 Dec 2003	23 Dec 2003	—
2004 No. 133	18 June 2004	18 June 2004	—
2004 No. 396 (a)	23 Dec 2004	23 Dec 2004	—
2006 No. 50	17 Mar 2006 (see F2006L00820)	27 Mar 2006 (see r. 2)	—
<b>as amended by</b>			
2006 No. 119	4 June 2006 (see F2006L01673)	5 June 2006	—
2006 No. 183	14 July 2006 (see F2006L02346)	15 July 2006	—
2007 No. 215	23 July 2007 (see F2007L02267)	8 Aug 2007	—
2008 No. 72	2 May 2008 (see F2008L01099)	3 May 2008	—
2009 No. 185	3 Aug 2009 (see F2009L02973)	5 Aug 2009	—
2010 No. 182	5 July 2010 (see F2010L01807)	2 Aug 2010	—
2010 No. 270	28 Oct 2010 (see F2010L02818)	1 Nov 2010	—

(a) Statutory Rules 2004 No. 396 was disallowed by the Senate on 16 June 2005.

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 2</b>	
<b>Division 2.1</b>	
R. 2.1 .....	rs. 2006 No. 183
<b>Part 3</b>	
<b>Division 3.1</b>	
R. 3.3 .....	am. 2007 No. 215
R. 3.5 .....	am. 2003 No. 364
R. 3.6 .....	am. 2003 No. 364
R. 3.7 .....	am. 2000 No. 359 rep. 2007 No. 215
Note to r. 3.7 (2).....	ad. 2000 No. 359 rep. 2007 No. 215
R. 3.8 .....	am. 2000 No. 359; 2007 No. 215
Note to r. 3.8 (7).....	am. 2007 No. 215
Note 2 to r. 3.8 (7)	rep. 2007 No. 215
R. 3.8A.....	ad. 2003 No. 364 am. 2007 No. 215
Note 1 to r. 3.8A (3)	am. 2007 No. 215
R. 3.9 .....	rs. 2002 No. 264 am. 2004 No. 133
R. 3.9A.....	ad. 2002 No. 264 am. 2004 No. 133
R. 3.9B.....	ad. 2002 No. 264
R. 3.11 .....	am. 2006 No. 50; 2008 No. 72
Heading to r. 3.12 .....	rs. 2007 No. 215
R. 3.12 .....	am. 2000 No. 359; 2003 No. 364; 2004 No. 133; 2007 No. 215
R. 3.12A.....	ad. 2000 No. 359 rs. 2007 No. 215
<b>Division 3.2</b>	
R. 3.14 .....	am. 2004 No. 133
R. 3.15 .....	am. 2004 No. 133; 2006 No. 50; 2008 No. 72
<b>Part 4</b>	
R. 4.10 .....	am. 2007 No. 215
R. 4.11 .....	am. 2007 No. 215
R. 4.12 .....	am. 2001 No. 328

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 5</b>	
<b>Division 5.1</b>	
R. 5.2 .....	rs. 2003 No. 364
R. 5.3 .....	rs. 2003 No. 364
R. 5.5 .....	am. 2004 No. 133
<b>Division 5.2</b>	
Heading to Div. 5.2 .....	rs. 2003 No. 364
R. 5.6 .....	am. 2003 No. 364
R. 5.7 .....	rs. 2003 No. 364
R. 5.7A .....	ad. 2003 No. 364
R. 5.8 .....	am. 2003 No. 364
R. 5.9 .....	am. 2003 No. 364; 2007 No. 215
R. 5.10 .....	am. 2000 No. 359; 2003 No. 364
R. 5.12 .....	am. 2000 No. 359; 2003 No. 364
R. 5.18 .....	am. 2000 No. 359 rs. 2003 No. 364
R. 5.19 .....	am. 2003 No. 364
R. 5.20 .....	am. 2003 No. 364
Note to r. 5.20 (1) .....	am. 2007 No. 215
Note 2 to r. 5.20 (1) .....	rep. 2007 No. 215
R. 5.21 .....	am. 2001 No. 328
<b>Division 5.3</b>	
<b>Subdivision 5.3.1</b>	
R. 5.23 .....	am. 2009 No. 185; 2010 Nos. 182 and 270
R. 5.23A .....	ad. 2010 No. 182
<b>Subdivision 5.3.5</b>	
R. 5.37 .....	am. 2001 No. 328
<b>Part 6</b>	
R. 6.3 .....	am. 2001 No. 328
<b>Part 7</b>	
R. 7.6 .....	am. 2000 No. 359; 2001 No. 328
<b>Part 8</b>	
R. 8.1 .....	am. 2006 No. 50 (as am. by 2006 No. 119); 2008 No. 72
Note to r. 8.1 (3) .....	am. 2006 No. 50 (as am. by 2006 No. 119); 2008 No. 72
R. 8.2 .....	am. 2006 No. 50 (as am. by 2006 No. 119); 2008 No. 72
Note to r. 8.2 (2) .....	am. 2006 No. 50 (as am. by 2006 No. 119); 2008 No. 72
<b>Part 8A</b>	
Part 8A .....	ad. 2002 No. 214
R. 8A.1 .....	ad. 2002 No. 214

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 8A.2.....	ad. 2002 No. 214
R. 8A.3.....	ad. 2002 No. 214
R. 8A.4.....	ad. 2002 No. 214 am. 2003 No. 317
R. 8A.5.....	ad. 2002 No. 214
R. 8A.6.....	ad. 2002 No. 214
R. 8A.7.....	ad. 2002 No. 214
R. 8A.8.....	ad. 2002 No. 214
R. 8A.9.....	ad. 2002 No. 214
R. 8A.10.....	ad. 2002 No. 214
R. 8A.11.....	ad. 2002 No. 214
R. 8A.12.....	ad. 2002 No. 214
<b>Part 9</b>	
R. 9.1 .....	rep. 2002 No. 214
R. 9.2 .....	am. 2010 No. 270
Note to r. 9.2 (3).....	ad. 2010 No. 270
<b>Schedule 2</b>	
Schedule 2.....	ad. 2003 No. 364
<b>Dictionary</b>	
Dictionary.....	am. 2002 No. 264; 2003 No. 364; 2004 No. 133; 2006 No. 50; 2007 No. 215; 2008 No. 72