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About this compilation

This compilation

This is a compilation of the *Public Service Regulations 1999* that shows the text of the law as amended and in force on 11 December 2018 (the ***compilation date***).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1.1 Name of Regulations

These Regulations are the *Public Service Regulations 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:

(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 holder bound by Code of Conduct

(1) For the definition of ***statutory office holder*** in subsection 14(3) of the Act, an office is prescribed if:

(a) it is held by a person who is engaged or employed under an Act; and

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(b) the holder is assisted by, or has dealings with, APS employees in a supervisory capacity, or in another capacity related to the holder's day to day working relationship with APS employees; and

(c) the office is not:

(i) an office of Agency Head; or

(ii) a judicial office.

(2) For the definition of ***statutory office holder*** in subsection 14(3) of the Act, an appointment is prescribed if:

(a) it is the appointment of a person under an Act; and

(b) the appointee is assisted by, or has dealings with, APS employees in a supervisory capacity or another capacity related to the appointee's day to day working relationship with APS employees; and

(c) the appointment is not:

(i) an appointment as an Agency Head; or

(ii) a judicial appointment; or

(iii) an appointment as a member of the Australian Defence Force; or

(iv) an appointment as a member of the Administrative Appeals Tribunal; or

(vii) an appointment as a member of the National Native Title Tribunal; or

(viii) an appointment as a member of the Fair Work Commission; or

(ix) an appointment as a member of the Veterans' Review Board.

(3) For subsection 14(2A) of the Act:

(a) a statutory office holder is bound by the Code of Conduct only to the extent to which the statutory office holder:

(i) is assisted by APS employees in a supervisory capacity or another capacity related to the statutory office holder's day to day working relationship with APS employees; or

(ii) deals with APS employees in a supervisory capacity, or in another capacity related to the statutory office holder's day to day working relationship with APS employees; and

(b) if there is an inconsistency between the requirements of:

(i) the Code of Conduct; and

(ii) an Australian law that relates to a statutory office holder's office or appointment;

the Code of Conduct does not bind the statutory office holder to the extent of the inconsistency.

Note: The Code of Conduct requires the upholding of the APS Values and APS Employment Principles, among other things.

(4) For subsection14(2A) of the Act, a statutory office holder is bound by the Code of Conduct as if the Code of Conduct referred to the statutory office holder's office or appointment and matters related to the office or appointment.

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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.

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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:
  (a) the Agency Head may, in writing, direct the employee to do either or both of the following within a specified period:
    (i) undergo an examination by a nominated medical practitioner for an assessment of the employee's fitness for duty;
    (ii) give the Agency Head a report of the examination; and
  (b) the nominated medical practitioner may give the Agency Head a report of the examination.

(3) In this regulation:

nominated medical practitioner means a person who is:
  (a) registered, or licensed, as a health practitioner under a law of a State or Territory that provides for the registration or licensing of health practitioners; and
  (b) 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:
  (a) an Agency Head believes that the state of health of an APS employee in the Agency:
    (i) may be affecting the employee's work performance; or
    (ii) has caused, or may cause, the employee to have an extended absence from work; or
    (iii) may be a danger to the employee; or
    (iv) has caused, or may cause, the employee to be a danger to other employees or members of the public; or
    (v) may be affecting the employee's standard of conduct; or
  (b) an APS employee is to be assigned new duties and the Agency Head believes the employee's state of health may affect the employee's ability to undertake the duties; or

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(c) an APS employee is to travel overseas as part of the APS employee's employment.

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, in writing, direct the APS employee to do either or both of the following within a specified period:

(a) undergo an examination by a nominated medical practitioner for an assessment of the employee's fitness for duty;

(b) give the Agency Head a report of the examination.

(2A) The nominated medical practitioner may give the Agency Head a 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 published in the Public Service *Gazette* within 14 days after the day the scheme is approved.

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: Paragraph 10A(1)(b) of the Act provides that the usual basis for engagement of an APS employee is as an ongoing APS employee.

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3.5 Engagement of non-ongoing non-SES employees

(1) For subsection 22(4) of the Act, this regulation prescribes circumstances in which an Agency Head may engage a person as a non-SES employee for a specified term or for the duration of a specified task.

Note 1: Paragraph 10A(1)(c) of the Act requires engagement and promotion decisions to be based on merit. Chapter 2 of the Commissioner's Directions explains how this employment principle is to be applied.

Note 2: The usual basis for engagement of an APS employee is as an ongoing APS employee, see paragraph 10A(1)(b) of the Act. An Agency Head is expected to have regard to that paragraph before engaging a person as a non-ongoing APS employee.

Specified task

(2) If an Agency Head engages a person as a non-ongoing employee for a specified task, the Agency Head must, at the time of the engagement:

(a) be able to reasonably estimate the duration of the task; and

(b) be satisfied that the services of the person are unlikely to be required after the task is complete.

Specified term

(3) An Agency Head may engage a person as a non-ongoing employee for a specified term if:

(a) the duties of the employment are to be performed by the person only for a limited period, and the performance of those duties by that person is unlikely to be required after that period; or

Examples: The agency:

(a) has a temporary increase in its workload; or

(b) has a temporary demand for employees with particular skills; or

(c) needs to replace an ongoing employee who is on leave or who is assigned to other duties.

(b) the particular skills, knowledge or experience required to perform the duties of the employment can best be met by employing a person who has recently worked in the industry that corresponds to the employment for which the person is being engaged; or

(c) the purpose of the employment is to assist the person to gain:

(i) skills and experience, by participating in the workforce under a scheme approved by the Agency Head or by the Australian Public Service Commissioner; or

(ii) a formal occupational qualification, licence, accreditation or registration; or

(d) the person has received a written offer of ongoing employment, but prefers to be engaged as a non-ongoing employee; or

(e) the person is an ongoing Parliamentary Service employee.

(4) If an Agency Head engages a person as a non-ongoing employee for a specified term, as described in subregulation (3):

(a) the period of the engagement:

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(i) must be a period that represents a reasonable estimate of the time required for the performance of the duties; and

(ii) for a person engaged in accordance with paragraph (3)(a) or (b)—must not be more than 18 months; and

(b) for a person engaged in accordance with paragraph (3)(a) or (b)—any extension of the engagement must be for a period that represents a reasonable estimate of the length of time required for the performance of the duties; and

(c) subject to subregulation (5), the total period of the engagement, including any extensions of the engagement, must not exceed 3 years.

(5) The period of 3 years mentioned in paragraph (4)(c) may be extended, for a period of not more than 12 months, only if:

(a) the Agency Head considers that the engagement is necessary for the Agency's operations; and

(b) the Australian Public Service Commissioner:

(i) is satisfied that special circumstances exist; and

(ii) authorises the Agency Head to extend the engagement.

(6) In addition to subregulations (3), (4) and (5):

(a) an Agency Head may engage a person as a non-ongoing employee for a specified term if:

(i) the person is an employee of a State or Territory, or an authority of a State or Territory; and

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

(b) the period of engagement mentioned in paragraph (a) is the period decided by the Agency Head.

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.

(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:

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(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.

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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.

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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.

(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.

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Regulation 4.4

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.

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.

(1A) The Merit Protection Commissioner may issue instructions, in writing, about the procedures to be followed by an Agency Head who is appointed, under subregulation 4.7(1B), to act on behalf of an ISAC in performing the functions of the ISAC under this Part.

(2) The instructions must not be inconsistent with the Act, these Regulations or the Commissioner's Directions.

(3) An ISAC, or an Agency Head appointed under subregulation 4.7(1B) to act on behalf of 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

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(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.

(1A) In conducting an assessment under subregulation (1), the ISAC may seek and accept expert opinion about the work-related qualities and capabilities of candidates.

(1B) The ISAC may appoint the relevant Agency Head to act on behalf of the ISAC in conducting some or all of an assessment under subregulation (1).

(1C) The Agency Head:

(a) must act in accordance with instructions given to the Agency Head by the ISAC; and

(b) must act in accordance with instructions from the Merit Protection Commissioner only to the extent that the Agency Head is appointed as an agent of the ISAC under subregulation (1B).

(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.

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) The engagement, promotion or assignment of duties must be published in the Public Service *Gazette* as having been made in accordance with an ISAC recommendation.

Note: This subregulation also applies to any subsequent engagement, promotion or assignment of duties made by an Agency Head 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

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(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 of a candidate 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.

(1A) However, subregulation (1) does not apply if:

(a) either of the following occurs after the ISAC has made its recommendation:

(i) the candidate is found to have breached the Code of Conduct, and the Agency Head believes that the candidate is no longer suitable for the employment opportunity;

(ii) the candidate has lost a qualification which is essential for the candidate's suitability for the employment opportunity; and

Example: A security clearance.

(b) the Agency Head has consulted with the Merit Protection Commissioner about the candidate; and

(c) the Agency Head acts in accordance with the recommendation of the ISAC in relation to the next suitable candidate.

(2) The promotion must be published in the Public Service *Gazette* as a promotion decision that is subject to review under Division 5.2.

4.12 Offence

(1) A person commits an offence if the person obstructs 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*.

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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;
(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).

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Regulation 5.4

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 and the APS Employment Principles.

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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.

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

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(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

(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 Employment Principle that engagement and promotion decisions are based on merit, see paragraph 10A(1)(c) of the Act. A decision relating to engagement or

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promotion is based on merit if the matters set out in subsection 10A(2) of the Act are satisfied.

5.9 Application for review

(1) An application for review of a promotion 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 Public Service *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 Public Service *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 Public Service *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 Public Service *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 Chapter 2 of the Commissioner's Directions.

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.

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Regulation 5.11

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.

(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.

(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.

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(5) Subject to paragraph 5.33(1)(a):

(a) a person mentioned in subregulation (1) is not entitled to have access to a statement mentioned in subregulation (1) or (1A) that is given to the Merit Protection Commissioner by another person mentioned in subregulation (1) or (1A); and

(b) a person mentioned in subregulation (1A) is not entitled to have access to a statement mentioned in subregulation (1) or (1A) that was given to the Merit Protection Commissioner by another person mentioned in subregulation (1) or (1A).

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.

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.

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Regulation 5.17

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.

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: Chapter 2 of the Commissioner's Directions 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.

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(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: Chapter 2 of the Commissioner's Directions provides for the date of effect of a promotion decision if an application for review has been made to a PRC.

Note 2: Chapter 2 of the Commissioner's Directions 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.

5.21 Offence

(1) A person commits an offence if the person obstructs 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*.

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Division 5.3—Application by APS employees for review of other actions

Subdivision 5.3.1—Reviewable action

5.22 Entitlement to review

(1) A non-SES employee (the ***affected employee***) is entitled to review of APS action under this Division if the action is:
  (a) action by:
    (i) an Agency Head; or
    (ii) an APS employee; or
    (iii) the Australian Public Service Commissioner under section 41B of the Act; and
  (b) reviewable action (including the action of finding that the affected employee has breached the Code of Conduct).

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

(2) If the affected employee makes an application for review under this Division, the affected employee ceases to be entitled to review under this Division if, after the application is made:
  (a) the employee ceases to be employed; or
  (b) the employee is promoted to an SES position.

(3) A former APS employee is not entitled to review under this Division.

Note: For rights of former APS employees to review, see Part 7.

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.

(3) Also, the action is not, or ceases to be, ***reviewable action*** if the person who is, or would be, conducting the review considers that the action should not be reviewable for any of the following reasons:
  (a) the application by the affected employee for review of the action is misconceived or lacking in substance;
  (b) the application by the affected employee for review of the action is frivolous or vexatious;

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(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.

(4) Also, an action mentioned in an item of the table is not, or ceases to be, reviewable action if a circumstance mentioned in the item applies.

Actions that are not, or cease to be, reviewable

Item	Action	Circumstance
1	An application for primary review of an APS action made to the relevant Agency Head under subregulation 5.24(1)	The application is not made within 120 days of the APS action
2	An application for primary review of an APS action made to the Merit Protection Commissioner under paragraph 5.24(2)(a)	The application is not made within 60 days of the determination that the affected employee has breached the Code of Conduct
3	An application for primary review of an APS action made to the Merit Protection Commissioner under paragraph 5.24(2)(b)	The application is not made within 60 days of the sanction for breach of the Code of Conduct being imposed
4	An application for primary review of an APS action made to the Merit Protection Commissioner under subregulation 5.24(3)	The application is not made within 60 days of the APS action
5	An application made to the Merit Protection Commissioner for secondary review of an APS action if the Agency Head has told the affected employee under regulation 5.26 that the APS action is not reviewable	The application is not made within 60 days of the affected employee being told that the APS action is not reviewable
6	An application made to the Merit Protection Commissioner for secondary review of an APS action if: (a) the Agency Head has told the affected	The application is not made within 60 days of the affected employee being told of the Agency Head's decision

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Actions that are not, or cease to be, reviewable		
Item	**Action**	**Circumstance**
	employee of the Agency Head's decision under subregulation 5.27(5); and (b) the affected employee is dissatisfied with the decision	
7	An application made to the Merit Protection Commissioner for secondary review of an APS action	The application for primary review of the action was an application referred to in item 1

(5) However, an action mentioned in an item of the table in subregulation (4) is reviewable action if the person who is, or would be, conducting the review considers that there are exceptional circumstances explaining the failure to make an application within the period in the item.

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
  (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.

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(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 subregulations 5.23(3) and (4), the person who would have conducted the review must tell the employee in writing:
  (a) that the action is not reviewable; and
  (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:
  (a) does not refer an application for review to the Merit Protection Commissioner; and
  (b) considers that the employee is entitled to review under this Division;

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

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(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.

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) If the Merit Protection Commissioner considers that the employee is entitled to review under this Division, the Merit Protection Commissioner:
(a) must review the action; and
(b) may, subject to the minimum requirements mentioned in subregulation 5.33(1), conduct the review in any manner the Merit Protection Commissioner thinks fit; and
(c) must make a recommendation to the Agency Head, in writing, about the action; and
(d) must tell the Agency Head, in writing, the reasons for the recommendation; and
(e) must tell the employee, in writing, of the recommendation and reasons given to the Agency Head.

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.

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(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

If the Merit Protection Commissioner considers that the employee is entitled to review under this Division, the Merit Protection Commissioner:

(a) must review the action; and

(b) may, subject to the minimum requirements mentioned in subregulation 5.33(1), conduct the review in any manner the Merit Protection Commissioner thinks fit; and

(c) must make a recommendation about the action; and

(d) must tell the Agency Head, in writing, the recommendation and reasons for the recommendation; and

(e) must tell the employee, in writing, of the recommendation and reasons given to the Agency Head.

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

(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.

(2A) If the Agency Head acts in accordance with the recommendation, the Agency Head is not required to seek the view of the employee before acting on the recommendation.

Note: The views of the APS employee have already been sought by the Merit Protection Commissioner during the review in accordance with the principles of procedural fairness.

(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.

(3A) If, after the recommendation:

(a) the Agency Head considers making a finding of a breach of the Code of Conduct; and

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(b) the Agency Head had not made the finding before the recommendation was made; and

(c) the finding was not mentioned in the recommendation;

the Agency Head must comply with the procedures established under subsection 15(3) of the Act before deciding whether to make the finding.

(3B) If, after the recommendation:

(a) the Agency Head considers imposing a sanction, for breach of the Code of Conduct, that the Agency Head had not imposed before the recommendation was made; and

(b) the sanction was not mentioned in the recommendation;

the Agency Head must comply with the procedures established under subsection 15(3) of the Act before deciding whether to impose the sanction.

(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 the Merit Protection Commissioner 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.

5.35 Requirement to provide information or documents

(1) The Merit Protection Commissioner 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.

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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 commits an offence if the person obstructs a person conducting a review in carrying out his or her 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 were functions under this Division.

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

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Part 6—The Australian Public Service Commissioner

Note: Other functions of the Australian Public Service Commissioner are set out in the following regulations:
(a) regulation 3.5 (engagement of non-SES employees);
(b) regulation 9.2 (use and disclosure of personal information).

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

For paragraph 41(2)(p) of the Act, the Australian Public Service Commissioner may:

(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).

6.1A Australian Public Service Commissioner's functions—inquiries into alleged breaches of Code of Conduct by statutory office holders (Act s 41(2)(p))

Australian Public Service Commissioner's function

(1) For paragraph 41(2)(p) of the Act, a function of the Australian Public Service Commissioner is to inquire into an alleged breach of the Code of Conduct by a statutory office holder.

Australian Public Service Commissioner's discretions

(2) The Australian Public Service Commissioner may:

(a) decline to conduct an inquiry; or

(b) discontinue an inquiry under subregulation (1).

(3) In deciding whether to decline to conduct, or to discontinue, an inquiry, the Australian Public Service Commissioner must have regard to the following:

(a) whether the subject matter of the inquiry is addressed in another law relating to the statutory office holder;

(b) whether the statutory office holder is bound by rules that require behavioural standards similar to those required by the Code of Conduct;

Example: An Act may include provisions for dealing with a conflict of interest relating to a statutory office holder.

(c) any existing reporting and inquiry mechanisms that apply to the statutory office holder;

(d) whether sufficient detail about the allegation has been provided;

(e) whether the allegation refers to specific decisions or actions by the statutory office holder;

(f) whether the allegation is vexatious, frivolous, misconceived, or lacking in substance.

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(4) If the Australian Public Service Commissioner inquires into an alleged breach of the Code of Conduct, the Australian Public Service Commissioner may:
   (a) determine whether a breach of the Code of Conduct has occurred; and
   (b) make recommendations.

(5) A determination or recommendation mentioned in subregulation (4) forms part of the results of the inquiry.

(6) The Australian Public Service Commissioner must tell the statutory holder the results of an inquiry.

(7) The Australian Public Service Commissioner must tell the Secretary the relevant portfolio department, or other relevant Agency Head, of the results of an inquiry unless the Australian Public Service Commissioner is satisfied that it would be inappropriate to do so.

   Example: It would be inappropriate to do so if the Agency Head is personally involved in the matter.

(8) If the Australian Public Service Commissioner is satisfied that the results of the inquiry are sufficiently serious, the Australian Public Service Commissioner must tell the Agency Minister or, if applicable, the Presiding Officers the results of the inquiry.

(9) If the Australian Public Service Commissioner:
   (a) has not told the Agency Minister or the Presiding Officers the results of the inquiry in accordance with subregulation (8); and
   (b) is not satisfied with the statutory office holder's response to the Australian Public Service Commissioner;

   the Australian Public Service Commissioner may tell the Agency Minister or, if applicable, the Presiding Officers the results of the inquiry and give an explanation of why the Australian Public Service Commissioner is not satisfied with the statutory office holder's response.

6.1B Australian Public Service Commissioner's functions—inquiries into public interest disclosures that relate to alleged breaches of the Code of Conduct (Act s41(2)(o))

(1) For paragraph 41(2)(o) of the Act, this regulation relates to the function of the Australian Public Service Commissioner to inquire into a public interest disclosure (the ***disclosure***), to the extent that the disclosure relates to one or more alleged breaches of the Code of Conduct.

Inquiry into disclosure

(2) The Australian Public Service Commissioner may inquire into the disclosure if the Australian Public Service Commissioner is satisfied that it would be inappropriate for the discloser to make the disclosure to an Agency Head.

(3) The Australian Public Service Commissioner may inquire into the disclosure if the discloser:

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(a) has made the disclosure to an Agency Head; and
(b) is not satisfied with the outcome that followed the disclosure.

Decision to decline to inquire

(4) The Australian Public Service Commissioner may decide to decline to inquire into the disclosure, or to decline to inquire further, if the Australian Public Service Commissioner concludes that conducting or continuing the inquiry would not be justified in all the circumstances.

Examples: The circumstances that exist in a particular case may include some or all of the following:
(a) the disclosure has been, or is being, considered by the Merit Protection Commissioner;
(b) the disclosure would be dealt with more appropriately by another means;
(c) the disclosure is vexatious, frivolous, misconceived, or lacking in substance;
(d) the discloser has provided insufficient detail;
(e) the disclosure does not to any extent concern serious disclosable conduct;
(f) it would not be practical to inquire, or inquire further, because the discloser has not consented to the use or disclosure of identifying information about the discloser.

Process of inquiry

(5) If the Australian Public Service Commissioner inquires into the disclosure, the Australian Public Service Commissioner must:
(a) consider, having regard to all the circumstances, whether to give a person about whom the disclosure has been made an opportunity to be heard in relation to the disclosure; and
(b) take reasonable steps to report the outcome of the inquiry to the discloser and the relevant Agency Head.

Note: Inquiring into public interest disclosures is a function of the Australian Public Service Commissioner. Section 72A of the Act deals with circumstances in which the Australian Public Service Commissioner may make a record of, disclose or otherwise use certain information for the purposes of, or in connection with, the performance of his or her functions.

If the Australian Public Service Commissioner gives a person about whom a disclosure has been made an opportunity to be heard in relation to the disclosure, the Australian Public Service Commissioner may give the person information identifying the discloser to the extent the Australian Public Service Commissioner considers appropriate in the circumstances.

6.2 Australian Public Service Commissioner's functions—inquiries into alleged breaches of Code of Conduct by Agency Heads (Act s 41A)

For the purposes of paragraph 41A(2)(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;

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(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;

(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 Circumstances in which Australian Public Service Commissioner may decline to conduct, or may discontinue, inquiry into alleged breach of Code of Conduct by Agency Head

(1) For paragraphs 41A(3)(a) and (b) of the Act, a circumstance in which the Australian Public Service Commissioner may decide to decline to conduct, or to discontinue, an inquiry is that the Australian Public Service Commissioner concludes that conducting or continuing the inquiry is not in the public interest.

(2) In deciding to decline to conduct, or to discontinue, an inquiry into an alleged breach of the Code of Conduct, the Australian Public Service Commissioner may have regard to the following:

(a) whether the allegation is vexatious, frivolous, misconceived, or lacking in substance;

(b) whether sufficient detail about the allegation has been provided;

(c) whether the allegation refers to specific decisions or actions by the Agency Head;

(d) whether the allegation identifies conduct which, if proven, would constitute a breach of the Code of Conduct;

(e) whether the allegation relates to a decision properly taken, or to policy properly adopted, by the Agency Head, with which the person making the allegation disagrees;

(f) whether the cost of conducting an inquiry is justified in the circumstances.

6.4 Basic requirements for procedures for determining alleged breach of Code of Conduct by an APS employee or a former APS employee

(1) For paragraph 41B(3)(a) of the Act, this regulation prescribes basic requirements that the Australian Public Service Commissioner's written procedures must comply with.

(2) The procedures must require the Australian Public Service Commissioner not to make a determination in relation to an alleged breach of the Code of Conduct by an APS employee or a former APS employee unless:

(a) the Australian Public Service Commissioner has taken reasonable steps to tell the APS employee or the former APS employee the details of the suspected breach (including any variation of those details); and

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(b) the Australian Public Service Commissioner has taken reasonable steps to tell the employee of the sanctions that may be imposed on the employee under subsection 15(1) of the Act; and

(c) the APS employee or the former APS employee has been given a reasonable opportunity to make a statement in relation to the alleged breach.

(3) The procedures must require that the process for determining whether an APS employee or a former APS employee has breached the Code of Conduct be carried out as quickly and with as little formality as a proper consideration of the matter allows.

(4) The procedures must require that reasonable steps be taken to ensure that any person authorised under the Australian Public Service Commissioner's written procedures to determine whether an APS employee or a former APS employee has breached the Code of Conduct is, and appears to be, independent and unbiased.

(5) The procedures must require that a written record be prepared stating whether it has been determined that the APS employee or the former APS employee has breached the Code of Conduct.

6.5 Australian Public Service Commissioner may discontinue inquiry into alleged breach of Code of Conduct by an APS employee or a former APS employee

For subsection 41B(10) of the Act, the Australian Public Service Commissioner may discontinue an inquiry into an alleged breach of the Code of Conduct by an APS employee or a former APS employee if the Australian Public Service Commissioner reasonably believes that to continue the inquiry would not be appropriate in all the circumstances.

6.6 Protected information

For paragraph (c) of the definition of ***protected information*** in subsection 72A(1) of the Act, regulations 6.1 and 6.1A are prescribed.

6.7 Compellability of entrusted persons to give evidence

For paragraph 72A(7)(e) of the Act, regulations 6.1 and 6.1A are prescribed.

6.8 Giving information or producing documents

For paragraph 72C(2)(c), regulations 6.1 and 6.1A are prescribed.

6.9 Immunity from civil proceedings

For paragraph 78A(1)(h) of the Act, regulations 6.1 and 6.1A are prescribed.

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Part 7—The Merit Protection Commissioner

Division 7.1—Prescribed functions

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) For paragraph 50(1)(e) of the Act, the Merit Protection Commissioner's functions set out in Divisions 7.2, 7.3, 7.4 and 7.5 are prescribed.

(3) For paragraph 50A(2)(a) of the Act, the Merit Protection Commissioner's functions set out in Division 7.6 are prescribed.

7.1A Merit Protection Commissioner's functions—inquiries into public interest disclosures that relate to alleged breaches of the Code of Conduct (Act s50(1)(a))

(1) For paragraph 50(1)(a) of the Act, this regulation relates to the function of the Merit Protection Commissioner to inquire into a public interest disclosure (the ***disclosure***), to the extent that the disclosure relates to one or more alleged breaches of the Code of Conduct.

Inquiry into disclosure

(2) The Merit Protection Commissioner may inquire into the disclosure if the Merit Protection Commissioner is satisfied that it would be inappropriate for the discloser to make the disclosure to an Agency Head.

(3) The Merit Protection Commissioner may inquire into the disclosure if the discloser:
  (a) has made the disclosure to an Agency Head; and
  (b) is not satisfied with the outcome that followed the disclosure.

Decision to decline to inquire

(4) The Merit Protection Commissioner may decide to decline to inquire into the disclosure, or to decline to inquire further, if the Merit Protection Commissioner concludes that conducting or continuing the inquiry would not be justified in all the circumstances.

Examples: The circumstances that exist in a particular case may include some or all of the following:
  (a) the disclosure has been, or is being, considered by the Australian Public Service Commissioner;
  (b) the disclosure would be dealt with more appropriately by another means;
  (c) the disclosure is vexatious, frivolous, misconceived, or lacking in substance;
  (d) the discloser has provided insufficient detail;
  (e) the disclosure does not to any extent concern serious disclosable conduct;

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(f) it would not be practical to inquire, or inquire further, because the discloser has not consented to the use or disclosure of identifying information about the discloser.

Process of inquiry

(5) If the Merit Protection Commissioner inquires into the disclosure, the Merit Protection Commissioner must:

(a) consider, having regard to all the circumstances, whether to give a person about whom the disclosure has been made an opportunity to be heard in relation to the disclosure; and

(b) take reasonable steps to report the outcome of the inquiry to the discloser and the relevant Agency Head.

Note: Inquiring into public interest disclosures is a function of the Merit Protection Commissioner. Section 72B of the Act deals with circumstances in which the Merit Protection Commissioner may make a record of, disclose or otherwise use certain information for the purposes of, or in connection with, the performance of his or her functions.

If the Merit Protection Commissioner gives a person about whom a disclosure has been made an opportunity to be heard in relation to the disclosure, the Merit Protection Commissioner may give the person information identifying the discloser to the extent the Merit Protection Commissioner considers appropriate in the circumstances.

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Division 7.2—Complaints of former employees

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.

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Division 7.3—Review of determination of breach of Code of Conduct by former APS employee

7.2A Entitlement to review

(1) A former APS employee who was not an SES employee at the time the employee's employment ceased (the ***affected former employee***) is entitled to review of a determination by an Agency Head, made after the affected former employee's employment ceased, that the affected former employee has breached the Code of Conduct (including by engaging in conduct referred to in subsection 15(2A) of the Act).

(2) The affected former employee is not, or ceases to be, entitled to review of the determination mentioned in subregulation (1) if:

(a) the affected former employee has applied to have the determination reviewed by a Court or Tribunal and the determination may be reviewed by that Court or Tribunal; or

(b) the Merit Protection Commissioner considers that the determination should not be reviewable for any of the following reasons:

(i) the affected former employee has previously applied for review of the determination under this Division;

(ii) the affected former employee has applied, or could apply, to have the determination reviewed by an external review body and review by the review body would be more appropriate than review under this Division;

(iii) review, or further review, of the determination is not otherwise justified in all the circumstances.

Note 1: Examples of review bodies are:

(a) the Commonwealth Ombudsman; and

(b) the Australian Information Commissioner; and

(c) the Australian Human Rights Commission.

Note 2: Review may not be justified because the affected former employee does not respond to a request under regulation 7.2F for further information about why the review is sought.

(3) The affected former employee is not, or ceases to be, entitled to review of the determination mentioned in subregulation (1) if an application for review of the determination is not made within 60 days of the determination that the affected former employee has breached the Code of Conduct.

(4) However, an affected former employee is entitled to review of the determination if the Merit Protection Commissioner considers that there are exceptional circumstances explaining the failure to make an application within the period mentioned in subregulation (3).

Example: The affected former employee could demonstrate that the affected former employee did not receive notification of the determination.

(5) The affected former employee:

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(a) is also entitled to review as mentioned in regulation 7.2; and
(b) is not entitled to any other review.

7.2B Application for review

(1) An affected former employee mentioned in regulation 7.2A may apply, in writing, to the Merit Protection Commissioner for review of the determination.

(2) The application must state briefly:
(a) why the review is sought; and
(b) if a particular outcome is sought—the outcome sought.

7.2C Notice that action not reviewable

If an application for review of a determination is made, and the determination is not reviewable under paragraph 7.2A(2)(b) and subregulation 7.2A(3), the Merit Protection Commissioner must tell the affected former employee, in writing:
(a) that the determination is not reviewable; and
(b) the reasons why the determination is not reviewable.

7.2D Conduct of review

If the Merit Protection Commissioner considers that the affected former employee is entitled to review under this division, the Merit Protection Commissioner:
(a) must review the determination; and
(b) may, subject to the minimum requirements mentioned in regulation 7.2E, conduct the review in any manner the Merit Protection Commissioner thinks fit; and
(c) must make a recommendation to the Agency Head, in writing, about the determination; and
(d) must tell the Agency Head, in writing, the reasons for the recommendation; and
(e) must tell the affected former employee, in writing, of the recommendation and reasons given to the Agency Head.

7.2DA Action by Agency Head

(1) If an Agency Head receives a recommendation under regulation 7.2D, the Agency Head must, as soon as possible:
(a) consider the recommendation; and
(b) make a decision about the recommendation.

(2) The Agency Head may:
(a) confirm the relevant determination; or
(b) vary the determination; or
(c) set the determination aside and substitute a new determination.

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(3) If the Agency Head acts in accordance with the recommendation, the Agency Head is not required to seek the view of the affected former employee before acting on the recommendation.

Note: The views of the affected former employee have already been sought by the Merit Protection Commissioner during the review in accordance with the principles of procedural fairness.

(4) Subregulation (2) does not limit the employer powers of the Agency Head in relation to the determination or the affected former employee.

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

(5) If, after the recommendation:
(a) the Agency Head considers making a finding of a breach of the Code of Conduct; and
(b) the Agency Head had not made the finding before the recommendation was made; and
(c) the finding was not mentioned in the recommendation;
the Agency Head must comply with the procedures established under subsection 15(3) of the Act before deciding whether to make the finding.

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

7.2E 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 the Merit Protection Commissioner 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.

7.2F Requirement to provide information or documents

(1) The Merit Protection Commissioner may, by written notice given to an Agency Head or APS employee, require the Agency Head or APS employee to give the Merit Protection Commissioner stated information or documents relevant to the review.

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(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.

7.2G Making application does not operate as stay

Making an application for review of a determination under this Division does not operate to stay the determination.

7.2H Offence

(1) A person commits an offence if the person obstructs the Merit Protection Commissioner in carrying out his or her functions under this Division.

Penalty: 10 penalty units.

(2) Strict liability applies to the physical element of this offence that the functions being carried out by the Merit Protection Commissioner were functions under this Division.

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Division 7.4—Review of actions of statutory office holders

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.

(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.

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Division 7.5—Miscellaneous

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.

(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 Prescribed entrusted person

For the definition of ***prescribed entrusted person*** in subsection 72B(1) of the Act, a member of a committee established or appointed by the Merit Protection Commissioner under these Regulations is prescribed.

7.7 Protected information

For paragraph (c) of the definition of ***protected information*** in subsection 72B(1) of the Act, information that was obtained by an entrusted person in connection

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with the performance of functions or duties, or the exercise of powers, under regulation 7.3 is prescribed.

7.8 Compellability of entrusted persons to give evidence

For paragraph 72B(7)(d) of the Act, information that was obtained by an entrusted person in connection with the performance of functions or duties, or the exercise of powers, under regulation 7.3 is prescribed.

7.9 Giving information or producing documents

For paragraph 72D(2)(b) of the Act, regulation 7.3 is prescribed.

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Division 7.6—Basic requirements for procedures for determining alleged breach of Code of Conduct by APS employee or former APS employee

7.10 Basic requirements for procedures for determining breach of Code of Conduct by an APS employee or a former APS employee

(1) For paragraph 50A(2)(a) of the Act, this regulation prescribes basic requirements that the Merit Protection Commissioner's written procedures must comply with.

(2) The procedures must require that the Merit Protection Commissioner not make a determination in relation to an alleged breach of the Code of Conduct by an APS employee or a former APS employee unless:

(a) the Merit Protection Commissioner has taken reasonable steps to tell the APS employee or the former APS employee the details of the suspected breach (including any variation of those details); and

(b) the Merit Protection Commissioner has taken reasonable steps to tell the APS employee the sanctions that may be imposed on the APS employee under subsection 15(1) of the Act; and

(c) the APS employee or the former APS employee has been given a reasonable opportunity to make a statement in relation to the alleged breach.

(3) The procedures must require that the process for determining whether an APS employee or a former APS employee has breached the Code of Conduct be carried out as quickly and with as little formality as a proper consideration of the matter allows.

(4) The procedures must require that reasonable steps be taken to ensure that any person authorised under the Merit Protection Commissioner's written procedures to determine whether an APS employee or a former APS employee has breached the Code of Conduct is, and appears to be, independent and unbiased.

(5) The procedures must require that a written record be prepared stating whether it has been determined that the APS employee or the former APS employee has breached the Code of Conduct.

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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 terms and 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.

Note: Subregulations (3) and (4) deal with the variation of other terms and conditions of employment, such as leave, allowances (including allowances that may normally be paid in an employee's fortnightly pay), travel and other expenses, bonuses etc.

(2A) The annual salary worked out under subregulation (2) ceases to apply when the salary of the APS employee is increased by an employment arrangement.

(3) Before or after the move, the other terms and 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 terms and conditions of employment are to be the same as those that applied to the APS employee immediately before the move; and

(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 term or condition of employment applicable to the employee under:

(a) a fair work instrument; or

(b) a transitional instrument; or

(c) a transitional minimum wage instrument; or

(d) the National Employment Standards.

(4) However, if:

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(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 terms and 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 terms and 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 terms and 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

(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 terms and 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 term or condition of employment applicable to the employee under:

(a) a fair work instrument; or

(b) a transitional instrument; or

(c) a transitional minimum wage instrument; or

(d) the National Employment Standards.

(3) However, if:

(a) a determination mentioned in paragraph (2)(b) applies to the APS employee; and

(b) an employment arrangement:

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(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 terms and conditions of employment under the employment arrangement apply to the APS employee.

8.3 Prescribed circumstances in relation to employment in former Agency (Act s 72)

For subsection 72(5A) of the Act, each of the following is a circumstance in relation to an APS employee's employment in a former Agency before the employee moved to a new Agency:

(a) the employee's engagement in the former Agency is subject to a condition imposed by the Agency Head of that Agency under subsection 22(6) of the Act;

(b) the employee's employment in the former Agency is subject to a condition imposed by the Agency Head of that Agency under section 20 of the Act;

(c) an inquiry into an alleged breach of the Code of Conduct is taking place;

(d) a sanction is imposed in relation to an inquiry into an alleged breach of the Code of Conduct (including a sanction that may have ongoing effect);

Examples:

(a) a reduction in classification which has not yet taken effect; and

(b) periodic deductions from salary.

(e) the employee is suspended from duties under regulation 3.10 in relation to a suspected breach of the Code of Conduct;

(f) a process (however described) is taking place relating to any of the following:

(i) performance management (including the non-performance of duties);

(ii) the management of excess staff;

(iii) the assessment of physical or mental fitness for duty;

(iv) the loss, or lack, of an essential qualification.

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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.

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.

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Regulation 8A.4

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

(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

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(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:

(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

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

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Regulation 8A.7

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.

(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%.

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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

(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.

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Part 9—Miscellaneous

9.2 Use and disclosure of personal information (Act s 72E)

(1) For paragraph 72E(a) of the Act, an Agency Head may use personal information in the possession, or under the control, of the Agency Head, if the use is necessary for, or relevant to, the performance or exercise of the employer powers of the Agency Head.

(2) For paragraph 72E(a) of the Act, an Agency Head may disclose personal information in the possession, or under the control, of the Agency Head if the disclosure is necessary for, or relevant to:

(a) the performance or exercise of the employer powers of the Agency Head or another Agency Head; or

(b) the exercise of a power or performance of a function of the Australian Public Service Commissioner; or

(c) the exercise of a power or performance of a function of the Merit Protection Commissioner; or

(d) the performance of a function of an ISAC.

(3) For paragraph 72E(a) of the Act, the Merit Protection Commissioner may disclose personal information in the possession, or under the control, of the Merit Protection Commissioner if:

(a) the information was obtained by the Merit Protection Commissioner during the course of a PRC or review of action; and

(b) the disclosure is necessary for, or relevant to, an Agency Head's consideration of alleged misconduct by an APS employee.

(4) For paragraph 72E(a) of the Act, the Australian Public Service Commissioner may use personal information in the possession, or under the control, of the Australian Public Service Commissioner if:

(a) the information was obtained as part of the Australian Public Service Commissioner's review or inquiry functions; and

(b) the use is necessary for, or relevant to, an inquiry relating to the Code of Conduct conducted by the Australian Public Service Commissioner.

(5) For paragraph 72E(a) of the Act, the Australian Public Service Commissioner may disclose personal information in the possession, or under the control, of the Australian Public Service Commissioner if:

(a) the information was obtained as part of the Australian Public Service Commissioner's review or inquiry functions; and

(b) the disclosure is necessary for, or relevant to, an Agency Head's consideration of alleged misconduct by an APS employee.

(6) Use or disclosure under this regulation must be consistent with any guidelines issued by the Australian Public Service Commissioner after consultation with the Australian Information Commissioner performing the privacy functions.

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

(7) Use or disclosure of personal information under this regulation is authorised for the purposes of Australian Privacy Principle 6.2(b) under the *Privacy Act 1988*.

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.

(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.

9.4 Payments in special circumstances (Act s 73)

For subsection 73(4) of the Act, the maximum amount in relation to a payment to a person under subsection 73(2) of the Act is $250,000.

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Regulation 9.4

Note: Under subsection 73(4) of the Act, a payment cannot be authorised if it would involve, or be likely to involve, a total amount exceeding the amount prescribed by the regulations.

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Part 10—Transitional arrangements

Division 10.1—Amendments made by Public Service Amendment Regulation 2013 (No. 1)

10.1 Definitions for Division 10.1

In this Division:

commencement day means the day on which Schedules 1 to 4 to the *Public Service Amendment Act 2013* commence.

Note: The date is 1 July 2013.

new Public Service Regulations means the *Public Service Regulations 1999* as in force on and after the commencement day.

old Code of Conduct means the Code of Conduct in the old Public Service Act (including any regulations in force for subsection 13(13) of the old Public Service Act).

old Public Service Act means the *Public Service Act 1999* as in force immediately before the commencement day.

old Public Service Regulations means the *Public Service Regulations 1999* as in force immediately before the commencement day.

10.2 Inquiry in progress into alleged breach of Code of Conduct by Merit Protection Commissioner

(1) This regulation applies if, before the commencement day, the Public Service Commissioner:

(a) had begun an inquiry into an alleged breach of the Code of Conduct by the Merit Protection Commissioner in accordance with regulation 6.1 of the old Public Service Regulations, but had not reported on the results of the inquiry; or

(b) had decided to conduct an inquiry into an alleged breach of the Code of Conduct by the Merit Protection Commissioner for paragraph 41(1)(l) of the old Public Service Act, but had not begun the inquiry.

(2) The old Public Service Regulations continue to apply on and after the commencement day in relation to the inquiry.

10.3 Allegation of breach of Code of Conduct by Merit Protection Commissioner before commencement day

(1) This regulation applies if, before the commencement day:

(a) an allegation had been made of a breach of the Code of Conduct by the Merit Protection Commissioner; and

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(b) the Public Service Commissioner had not decided whether to conduct an inquiry into the alleged breach.

(2) This regulation also applies if:
(a) on or after the commencement day, an allegation is made of a breach of the Code of Conduct by the Merit Protection Commissioner; and
(b) the breach is alleged to have occurred before the commencement day.

(3) The new Public Service Regulations apply in relation to the alleged breach as if:
(a) a reference to the Code of Conduct in those provisions were a reference to the old Code of Conduct; and
(b) the application of the Code of Conduct to the Merit Protection Commissioner were the same as it was before the commencement day.

10.4 Misconduct under the *Public Service Act 1922*

(1) This regulation applies if, immediately before 5 December 1999:
(a) an employee or officer under the *Public Service Act 1922* had been charged with misconduct in accordance with Subdivision C, D or E of Division 6 of Part III of the *Public Service Act 1922*; and
(b) immediately before the commencement day, the charge had not been finally determined.

(2) The *Public Service Act 1922*, and Divisions 1, 2 and 3 of Part 1A, Part IX and Part X of the *Public Service Regulations 1935*, continue to apply in relation to the charge of misconduct.

(3) For paragraph (1)(b), a charge is finally determined if a decision, direction (including a disciplinary direction), finding or recommendation that has been made, or an action that has been taken, under the *Public Service Act 1922* or the *Merit Protection (Australian Government Employees) Act 1984*, in respect of the charge:
(a) is not, or is no longer, subject to any form of appeal or review under either of those Acts; or
(b) was subject to some form of appeal or review under either of those Acts, but the period within which the appeal or review could be instituted has ended without an appeal or review having been instituted.

Note: This regulation has the same effect as regulation 2.19 of the *Public Employment (Consequential and Transitional) Regulations 1999*.

10.5 Continued application of the *Merit Protection (Australian Government Employees) Act 1984* for certain purposes

(1) The *Merit Protection (Australian Government Employees) Act 1984* is taken to continue in force to allow for the determination of any appeals or reviews, under Division 6 of Part III of the *Public Service Act 1922*, in relation to disciplinary matters to which Subdivision C, D or E of Division 6 of Part III of the *Public Service Act 1922* continues to apply.

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(2) The *Merit Protection (Australian Government Employees) Regulations* are taken to continue in force to the extent necessary for the continued operation of the *Merit Protection (Australian Government Employees) Act 1984* under subregulation (1).

(3) However, the functions of the Merit Protection and Review Agency under the *Merit Protection (Australian Government Employees) Act 1984*, as continued in force, are taken to be functions performed by:

(a) the Merit Protection Commissioner appointed, or taken to be appointed, under the old Public Service Act; or

(b) a delegate of the Merit Protection Commissioner.

Note: This regulation has the same effect as regulations 4.2 and 4.4 of the *Public Employment (Consequential and Transitional) Regulations 1999*.

10.6 No further appeal or review on or after commencement day

No application for review or appeal under the *Public Service Act 1922* or the *Merit Protection (Australian Government Employees) Act 1984* may be made on or after the commencement day.

10.7 Determinations of special terms or conditions of employment

(1) This regulation applies if a determination of special terms or conditions of employment under subsection 81B(5) or 81C(3) of the *Public Service Act 1922* was in force immediately before the commencement day.

(2) The determination continues in force.

(3) The relevant subsection of the *Public Service Act 1922* mentioned in subregulation (1) continues in force in relation to the determination.

Note: This regulation has the same effect as regulation 2.31 of the *Public Employment (Consequential and Transitional) Regulations 1999* except that it extends the operation of the determinations beyond the commencement day.

10.8 Review of matters relating to Code of Conduct as in force before commencement day

If item 22, 23 or 24 of Schedule 4 to the *Public Service Amendment Act 2013* has applied in relation to conduct by an Agency Head relating to the Code of Conduct, the Merit Protection Commissioner must:

(a) review a determination made by the Agency Head that the APS employee in the Agency has breached the Code of Conduct under the same requirements as the relevant item applied in relation to the Agency Head; and

(b) review the sanction (if any) imposed on the APS employee under the same requirements as the relevant item applied in relation to the Agency Head.

Note: Item 22 of Schedule 4 to the *Public Service Amendment Act 2013* relates to an investigation, begun before the commencement time, to determine whether an APS employee in the Agency had breached the Code of Conduct. Item 23 relates to a

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finding, before the commencement time, that an APS employee in the Agency had breached the Code of Conduct, with no sanction having been imposed. Item 24 relates to an allegation, before the commencement time, that an APS employee in an Agency had breached the Code of Conduct.

10.9 Review of action lodged before commencement day

(1) Subregulation (2) applies if:
  (a) before the commencement day, an APS employee applied for review of APS action; and
  (b) the application was not made in accordance with subregulation 5.24(2); and
  (c) the review had not been completed in accordance with that Division before the commencement day.

Note: The application may have been made to an Agency Head or the Merit Protection Commissioner. Also, the application may have been referred to the Merit Protection Commissioner by the Agency Head.

(2) The old Public Service Regulations continue to apply, on and after the commencement day, in relation to the review.

(3) Subregulation (4) applies if:
  (a) before the commencement day, an APS employee applied for review of APS action; and
  (b) the application was not made in accordance with subregulation 5.24(2); and
  (c) on or after the commencement day, the Merit Protection Commissioner proposes to review the reviewable action.

(4) The old Public Service Regulations continue to apply, on and after the commencement day, in relation to the review by the Merit Protection Commissioner.

10.10 Conduct of ISAC and recommendation by ISAC

(1) Subregulation (2) applies if:
  (a) before the commencement day, an ISAC was established; and
  (b) immediately before the commencement day:
    (i) the ISAC was still in existence and had not made a recommendation; or
    (ii) a recommendation by the ISAC, made within 12 months after the date of notification of the employment opportunity, was in force.

(2) The new Public Service Regulations apply, on and after the commencement day, in relation to the ISAC and the recommendation.

(3) However, if:
  (a) the employment opportunity was advertised or notified on the basis that the old Public Service Regulations would apply on and after the commencement day; or

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(b) official information provided in relation to the advertisement or notification of the employment opportunity stated that the old Public Service Regulations would apply on and after the commencement day;

the old Public Service Regulations continue to apply, on and after the commencement day, in relation to the ISAC and the recommendation.

Example: Official information provided in relation to the advertisement or notification of the employment opportunity would include a statement in an application pack or information provided by a contact person identified in the advertisement or notification.

10.11 Review of promotion notified before commencement day

(1) Subregulation (2) applies if before the commencement day, a promotion was notified in accordance with the old Public Service Regulations.

(2) The old Public Service Regulations continue to apply, on and after the commencement day, in relation to:

(a) the promotion; and

(b) any entitlement to have access to a statement given as part of a review of the promotion.

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Division 10.2—Amendments made by the Public Service Amendment (Miscellaneous Measures) Regulations 2018

10.12 Application—members of the Fair Work Commission

Paragraph 2.2(2)(c), as amended by Schedule 1 to the *Public Service Amendment (Miscellaneous Measures) Regulations 2018*, applies in relation to a person who is a member of the Fair Work Commission on or after the day that Schedule commences.

10.13 Application—recommendation in relation to determination of breach of Code of Conduct by former APS employee

Regulation 7.2DA, as inserted by Schedule 1 to the *Public Service Amendment (Miscellaneous Measures) Regulations 2018*, applies in relation to a recommendation under regulation 7.2D received by an Agency Head on or after the day that Schedule commences, resulting from a review of a determination under Division 7.3 that began before, on or after that day.

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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 Australian Public Service Commissioner under section 11, 11A or 15 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.

4A. A determination made by the Merit Protection Commissioner under section 50A of the Act.

5. Action taken, or not taken, under section 72 of the Act.

6. Action arising under any of the following Acts:
   (a) the *Australian Security Intelligence Organisation Act 1979*;
   (b) the *Safety, Rehabilitation and Compensation Act 1988*;
   (c) the *Superannuation Act 1976*;
   (d) the *Superannuation Act 1990*;
   (e) the *Superannuation Act 2005*.

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 relating to the determination of the duties of an APS employee, 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

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(d) the assignment to an employee of duties that the employee could not reasonably be expected to perform.

11. Action relating to a decision by an Agency Head, under Chapter 2 of the Commissioner's Directions, not to include the name of an employee in the Public Service *Gazette*.

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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.

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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

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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.

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

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

APS Employment Principles means the principles in subsection 10A(1) of the Act.

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

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

award has the same meaning as in Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments Act) 2009*.

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

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

Classification Rules means the Public Service Classification Rules as in force at the commencement of Schedules 1 to 4 to the *Public Service Amendment Act 2013.*

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

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

****Commissioner's Directions*** means directions issued by the Australian Public Service Commissioner under section 11, 11A or 15 [of the Act].

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

discloser has the same meaning as in the *Public Interest Disclosure Act 2013*.

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

employment means APS employment.

employment arrangement means any of the following:

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

external review body does not include a Court or Tribunal.

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

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.

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

member of the Fair Work Commission has the same meaning as FWC Member in section 12 of the *Fair Work Act 2009*.

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

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

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

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

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

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

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

promotion, for an ongoing APS employee, has the meaning given in Chapter 2 of the Commissioner's Directions.

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

public interest disclosure has the same meaning as in the *Public Interest Disclosure Act 2013*.

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

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

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.

* ***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].

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****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.

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

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

Tribunal means a Tribunal constituted under an enactment.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
300, 1999	4 Dec 1999	5 Dec 1999 (r 1.2)	
359, 2000	20 Dec 2000	20 Dec 2000	—
328, 2001	13 Dec 2001	15 Dec 2001	—
214, 2002	12 Sept 2002	12 Sept 2002	—
264, 2002	6 Nov 2002	1 Dec 2002	—
317, 2003	11 Dec 2003	11 Dec 2003	—
364, 2003	23 Dec 2003	23 Dec 2003	—
133, 2004	18 June 2004	18 June 2004	—
396, 2004	23 Dec 2004	23 Dec 2004 Note: disallowed by the Senate on 16 June 2005	—
50, 2006	17 Mar 2006 (F2006L00820)	27 Mar 2006 (r 2)	—
as amended by			
119, 2006	4 June 2006 (F2006L01673)	5 June 2006	—
183, 2006	14 July 2006 (F2006L02346)	15 July 2006	—
215, 2007	23 July 2007 (F2007L02267)	8 Aug 2007	—
72, 2008	2 May 2008 (F2008L01099)	3 May 2008	—
185, 2009	3 Aug 2009 (F2009L02973)	5 Aug 2009	—
182, 2010	5 July 2010 (F2010L01807)	2 Aug 2010	—
270, 2010	28 Oct 2010 (F2010L02818)	1 Nov 2010	—
141, 2011	3 Aug 2011 (F2011L01594)	4 Aug 2011	—
35, 2013	14 Mar 2013 (F2013L0460)	1 July 2013 (s 2)	—
as amended by			
110, 2013	14 June 2013 (F2013L01002)	15 June 2013	—
276, 2013	16 Dec 2013 (F2013L02121)	Sch 1: 17 Dec 2013 (s 2(1) item 2) Sch 2: 15 Jan 2014 (s 2(1) item 3) Sch 3: 12 Mar 2014 (s 2(1) item 4)	—
90, 2015	19 June 2015 (F2015L00854)	Sch 2 (item 183): 1 July 2015 (s 2(1) item 2)	—
95, 2015	26 June 2015 (F2015L00953)	Sch 1 (item 11): 1 July 2015 (s 2(1) item 1)	—

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Public Service Amendment (Miscellaneous Measures) Regulations 2018	10 Dec 2018 (F2018L01722)	11 Dec 2018 (s 2(1) item 1)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
r 1.2	rep LA s 48D
Part 2	
Division 2.1	
r 2.1	rs No 396, 2004 (disallowed); No 183, 2006
r 2.2	rs No 35, 2013
	am No 95, 2015; F2018L01722
Div. 2.2 of Part 2	rs. No. 35, 2013
	rep No 276, 2013
r. 2.4	rs. No. 35, 2013
	rep No 276, 2013
r. 2.5	rs. No. 35, 2013
	rep No 276, 2013
r. 2.6	rs. No. 35, 2013
	rep No 276, 2013
r. 2.7	rs. No. 35, 2013
	rep No 276, 2013
Part 3	
Division 3.1	
r. 3.1	am. No. 35, 2013
r. 3.2	am. No. 35, 2013
r. 3.3	am. 2007 No. 215; No. 35, 2013
Note to r. 3.4	am. No. 35, 2013
r. 3.5	am. 2003 No. 364
	rs. No. 35, 2013
r. 3.6	am. 2003 No. 364
	rep. No. 35, 2013
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
	rep. No. 35, 2013
Note to r. 3.8(7)	am. 2007 No. 215
	rep. No. 35, 2013
Note 2 to r. 3.8(7)	rep. 2007 No. 215
r. 3.8A	ad. 2003 No. 364

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Endnote 4—Amendment history

Provision affected	How affected
	am. 2007 No. 215
	rep. No. 35, 2013
Note 1 to r. 3.8A(3)	am. 2007 No. 215
	rep. No. 35, 2013
r. 3.9	rs. 2002 No. 264
	am. 2004 No. 133
	rep. No. 35, 2013
r. 3.9A	ad. 2002 No. 264
	am. 2004 No. 133
	rep. No. 35, 2013
r. 3.9B	ad. 2002 No. 264
	rep. No. 35, 2013
r. 3.11	am. 2006 No. 50; 2008 No. 72; 2011 No. 141
	rep. No. 35, 2013
Note to r. 3.11	am. 2011 No. 141
	rep. No. 35, 2013
Heading to r. 3.12	rs. 2007 No. 215
	rep. No. 35, 2013
r. 3.12	am. 2000 No. 359; 2003 No. 364; 2004 No. 133; 2007 No. 215
	rep. No. 35, 2013
r. 3.12A	ad. 2000 No. 359
	rs. 2007 No. 215
	rep. No. 35, 2013
Div. 3.2 of Part 3	rep. No. 35, 2013
r. 3.13	am. 2011 No. 141
	rep. No. 35, 2013
r. 3.14	am. 2004 No. 133; 2011 No. 141
	rep. No. 35, 2013
r. 3.15	am. 2004 No. 133; 2006 No. 50; 2008 No. 72; 2011 No. 141
	rep. No. 35, 2013
Part 4	
r. 4.5	am. No. 35, 2013
r. 4.7	am. No. 35, 2013
r. 4.10	am. 2007 No. 215; No. 35, 2013
r. 4.11	am. 2007 No. 215; No. 35, 2013
r. 4.12	am. 2001 No. 328; No. 35, 2013
Part 5	
Division 5.1	
r. 5.2	rs. 2003 No. 364
r. 5.3	rs. 2003 No. 364

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Endnote 4—Amendment history

Provision affected	How affected
r. 5.5	am. 2004 No. 133; No. 35, 2013
Division 5.2	
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
Note to r. 5.8	rs. No. 35, 2013
r. 5.9	am. 2003 No. 364; 2007 No. 215; No. 35, 2013
r. 5.10	am. 2000 No. 359; 2003 No. 364
r. 5.12	am. 2000 No. 359; 2003 No. 364; No. 35, 2013
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; No. 35, 2013
Note 2 to r. 5.20(1)	rep. 2007 No. 215
Note 1 to r. 5.20(4)	am. No. 35, 2013
Note 2 to r. 5.20(4)	am. No. 35, 2013
r. 5.21	am. 2001 No. 328; No. 35, 2013
Division 5.3	
Heading to Div. 5.3	rs. No. 35, 2013
Subdivision 5.3.1	
r. 5.22	rs. No. 35, 2013
r 5.23	am No 185, 2009; No 182, 2010; No 270, 2010; No 35, 2013; F2018L01722
r. 5.23A	ad. 2010 No. 182
	rep. No. 35, 2013
Subdivision 5.3.2	
r. 5.26	am. No. 35, 2013
r. 5.27	am. No. 35, 2013
r. 5.28	am. No. 35, 2013
Subdivision 5.3.3	
r. 5.31	rs. No. 35, 2013
Subdivision 5.3.4	
r. 5.32	am No 35 and 276, 2013
Subdivision 5.3.5	
r. 5.33	am. No. 35, 2013
r. 5.34	rep. No. 35, 2013
r. 5.35	am. No. 35, 2013
r. 5.37	am. 2001 No. 328; No. 35, 2013

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Endnote 4—Amendment history

Provision affected	How affected
Part 6	
Heading to Part 6	rs. No. 35, 2013
Note to hdg of Pt 6	rs No 35 and 276, 2013
r. 6.1	am. No. 35, 2013
r. 6.1A	ad. No. 35, 2013
r 6.1B	ad No 276, 2013
Heading to r. 6.2	rs. No. 35, 2013
r. 6.2	am. No. 35, 2013; No 90, 2015
r. 6.3	am. 2001 No. 328
	rs. No. 35, 2013
r. 6.4	rs. No. 35, 2013
r. 6.5	ad. No. 35, 2013
r. 6.7	ad. No. 35, 2013
r. 6.8	ad. No. 35, 2013
r. 6.9	ad. No. 35, 2013
Part 7	
Division 7.1	
Heading to Div. 7.1 of Part 7	ad. No. 35, 2013
r. 7.1	am. No. 35, 2013
Note to r 7.1(3)	rep No 276, 2013
r 7.1A	ad No 276, 2013
Division 7.2	
Heading to Div. 7.2 of Part 7	ad. No. 35, 2013
Division 7.3	
Div. 7.3 of Part 7	ad. No. 35, 2013
r. 7.2A	ad. No. 35, 2013
r. 7.2B	ad. No. 35, 2013
r. 7.2C	ad. No. 35, 2013
r. 7.2D	ad. No. 35, 2013
r 7.2DA	ad F2018L01722
r. 7.2E	ad. No. 35, 2013
r. 7.2F	ad. No. 35, 2013
r. 7.2G	ad. No. 35, 2013
r. 7.2H	ad. No. 35, 2013
Division 7.4	
Heading to Div. 7.4 of Part 7	ad. No. 35, 2013
Division 7.5	
Heading to Div. 7.5 of Part 7	ad. No. 35, 2013
r. 7.6	am. 2000 No. 359; 2001 No. 328
	rs. No. 35, 2013

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Endnote 4—Amendment history

Provision affected	How affected
r. 7.7	rs. No. 35, 2013
r. 7.8	ad. No. 35, 2013
r. 7.9	ad. No. 35, 2013
Division 7.6	
Div. 7.6 of Part 7	ad. No. 35, 2013
r. 7.10	ad. No. 35, 2013
Part 8	
r. 8.1	am. 2006 No. 50 (as am. by 2006 No. 119); 2008 No. 72; No. 35, 2013
Note to r. 8.1(2)	ad. No. 35, 2013
Note to r. 8.1(3)	am. 2006 No. 50 (as am. by 2006 No. 119); 2008 No. 72
	rs. 2011 No. 141
	am. No. 35, 2013
r. 8.2	am. 2006 No. 50 (as am. by 2006 No. 119); 2008 No. 72; No. 35, 2013
Note to r. 8.2(2)	am. 2006 No. 50 (as am. by 2006 No. 119); 2008 No. 72
	rs. 2011 No. 141
	am. No. 35, 2013
r. 8.3	ad. No. 35, 2013
Part 8A	
Part 8A	ad. 2002 No. 214
r. 8A.1	ad. 2002 No. 214
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
Part 9	
r. 9.1	rep. 2002 No. 214
r. 9.2	am. 2010 No. 270
	rs. No. 35, 2013
	am No 276, 2013
Note to r. 9.2(3)	ad. 2010 No. 270
r. 9.4	ad. No. 35, 2013

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Endnote 4—Amendment history

Provision affected	How affected
Part 10	
Part 10	ad. No. 35, 2013
Division 10.1	
r. 10.1	ad. No. 35, 2013
r. 10.3	ad. No. 35, 2013
r. 10.4	ad. No. 35, 2013
r. 10.5	ad. No. 35, 2013
r. 10.6	ad. No. 35, 2013
r. 10.7	ad. No. 35, 2013
r. 10.8	ad. No. 35, 2013
r. 10.9	ad. No. 35, 2013
r. 10.10	ad. No. 35, 2013
r. 10.11	ad. No. 35, 2013
Division 10.2	
Division 10.2	ad F2018L01722
r 10.12	ad F2018L01722
r 10.13	ad F2018L01722
Schedule 1	
Schedule 1	am. No. 35, 2013 (as am. by No. 110, 2013)
Schedule 2	
Schedule 2	ad. 2003 No. 364
Dictionary	
Dictionary	am No 264, 2002; No 364, 2003; No 133, 2004; No 50, 2006; No 215, 2007; No 72, 2008; No 141, 2011; No 35, 2013; No 276, 2013; F2018L01722

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