



Public Service Amendment Regulation 2013 (No. 1)

No. 35, 2013 as amended

made under the

Public Service Act 1999

Compilation start date: 1 July 2013

Includes amendments up to: SLI No. 110, 2013

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About this compilation

The compiled instrument

This is a compilation of the *Public Service Amendment Regulation 2013 (No. 1)* as amended and in force on 1 July 2013. It includes any amendment affecting the compiled instrument to that date.

This compilation was prepared on 1 July 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled instrument is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled instrument is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provision ceasing to have effect

If a provision of the compiled instrument has expired or otherwise ceased to have effect in accordance with a provision of the instrument, details of the provision are set out in the endnotes.

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1 **1 Name of regulation**

2 This regulation is the *Public Service Amendment Regulation 2013*
3 (*No. 1*).

4 **2 Commencement**

5 This regulation commences on the commencement of Schedules 1
6 to 4 to the *Public Service Amendment Act 2013*.

7 **3 Authority**

8 This regulation is made under the *Public Service Act 1999*.

9 **4 Schedule(s)**

10 Each instrument that is specified in a Schedule to this instrument is
11 amended or repealed as set out in the applicable items in the
12 Schedule concerned, and any other item in a Schedule to this
13 instrument has effect according to its terms.

Schedule 1—Amendments

Public Service Regulations 1999

1 Regulation 2.2

Repeal the regulation, substitute:

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
 - (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
 - (v) an appointment as a member of the Migration Review Tribunal; or

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- (vi) an appointment as a member of the Refugee Review Tribunal; or
 - (vii) an appointment as a member of the National Native Title Tribunal; or
 - (viii) an appointment as a member of the Social Security Appeals Tribunal; 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 subsection 14(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.

2 Division 2.2

Repeal the Division, substitute:

Division 2.2—Whistleblower reports

2.4 Basic requirements for procedures for Agency Heads dealing with whistleblower reports

- (1) For subsection 16(3) of the Act, this regulation prescribes basic requirements for procedures for dealing with a whistleblower report made to an Agency Head or a person authorised for the purposes of section 16 of the Act by the Agency Head.
- (2) The procedures must require the Agency Head or authorised person to:
 - (a) accept the whistleblower report; and
 - (b) give information to the whistleblower about the protections available under subsection 16(1) of the Act.
- (3) The procedures must require the Agency Head to commence an inquiry into the whistleblower report unless the Agency Head reasonably believes that there are circumstances in which to decline to conduct an inquiry.

Note: For the circumstances in which an Agency Head can decline to conduct an inquiry, see subregulation 2.7(2).

- (4) The procedures must require the Agency Head to:
 - (a) complete an inquiry into the whistleblower report unless the Agency Head reasonably believes that there are circumstances in which to discontinue the inquiry; and
 - (b) report the outcome of the inquiry to the whistleblower; and
 - (c) ensure that the outcome of the inquiry is dealt with as soon as practicable.

Note: For the circumstances in which an Agency Head can discontinue an inquiry, see subregulation 2.7(2).

- (5) The procedures must require the Agency Head to consider, having regard to all the circumstances, whether to give the person about whom the whistleblower report has been made an opportunity to be heard in relation to the report.
- (6) The procedures must require the Agency Head to advise the whistleblower if the Agency Head:

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- (a) decides to decline to conduct an inquiry into the whistleblower report; or
 - (b) commences an inquiry into the whistleblower report, and then decides that there are circumstances in which the inquiry should be discontinued.

Note: For the circumstances in which an Agency Head can decline to conduct, or discontinue, an inquiry, see subregulation 2.7(2).

2.5 Basic requirements for Australian Public Service Commissioner dealing with whistleblower reports

- (1) For paragraph 16(5)(b) of the Act, this regulation prescribes basic procedural requirements that the Australian Public Service Commissioner must comply with in dealing with a whistleblower report.
- (2) The Australian Public Service Commissioner must accept the whistleblower report if:
 - (a) the Australian Public Service Commissioner considers that it would be inappropriate for the whistleblower to make the whistleblower report to the relevant Agency Head; or
 - (b) the whistleblower has made a whistleblower report to the relevant Agency Head and is not satisfied with:
 - (i) the Agency Head's decision to decline to conduct an inquiry into the whistleblower report; or
 - (ii) the Agency Head's decision to discontinue an inquiry into the whistleblower report; or
 - (iii) the outcome of the Agency Head's inquiry into the whistleblower report.
- (3) The Australian Public Service Commissioner must commence an inquiry into the whistleblower report unless the Australian Public Service Commissioner reasonably believes that there are circumstances in which to decline to conduct an inquiry.

Note: For the circumstances in which the Australian Public Service Commissioner can decline to conduct an inquiry, see subregulations 2.7(2) and (3).

- (4) The Australian Public Service Commissioner must:
 - (a) complete an inquiry into the whistleblower report unless the Australian Public Service Commissioner reasonably believes

that there are circumstances in which to discontinue the inquiry; and

- (b) report the outcome of the inquiry to the whistleblower and the relevant Agency Head.

Note: For the circumstances in which the Australian Public Service Commissioner can discontinue an inquiry, see subregulations 2.7(2) and (3).

- (5) The Australian Public Service Commissioner must consider, having regard to all the circumstances, whether to give the person about whom the whistleblower report has been made an opportunity to be heard in relation to the report.

2.6 Basic requirements for Merit Protection Commissioner dealing with whistleblower reports

- (1) For paragraph 16(5)(b) of the Act, this regulation prescribes basic procedural requirements that the Merit Protection Commissioner must comply with in dealing with a whistleblower report.
- (2) The Merit Protection Commissioner must accept the whistleblower report if:
 - (a) the Merit Protection Commissioner considers that it would be inappropriate for the whistleblower to make the whistleblower report to the relevant Agency Head; or
 - (b) the whistleblower has made a whistleblower report to the relevant Agency Head and is not satisfied with:
 - (i) the Agency Head's decision to decline to conduct an inquiry into the whistleblower report; or
 - (ii) the Agency Head's decision to discontinue an inquiry into the whistleblower report; or
 - (iii) the outcome of the Agency Head's inquiry into the whistleblower report.
- (3) The Merit Protection Commissioner must commence an inquiry into the whistleblower report unless the Merit Protection Commissioner reasonably believes that there are circumstances in which to decline to conduct an inquiry.

Note: For the circumstances in which the Merit Protection Commissioner can decline to conduct an inquiry, see subregulations 2.7(2) and (4).

- (4) The Merit Protection Commissioner must:
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- (a) complete an inquiry into the whistleblower report unless the Merit Protection Commissioner reasonably believes that there are circumstances in which to discontinue the inquiry; and
 - (b) report the outcome of the inquiry to the whistleblower and the relevant Agency Head.

Note: For the circumstances in which the Merit Protection Commissioner can discontinue an inquiry, see subregulations 2.7(2) and (4).

- (5) The Merit Protection Commissioner must consider, having regard to all the circumstances, whether to give the person about whom the whistleblower report has been made an opportunity to be heard in relation to the report.

2.7 Circumstances in which Agency Head, Australian Public Service Commissioner or Merit Protection Commissioner may decline to conduct, or may discontinue, an inquiry

- (1) For subsection 16(6) of the Act, this regulation prescribes circumstances in which an Agency Head, the Australian Public Service Commissioner or the Merit Protection Commissioner may:
 - (a) decline to conduct an inquiry into a whistleblower report; or
 - (b) discontinue an inquiry into a whistleblower report.
- (2) A circumstance is that the Agency Head, the Australian Public Service Commissioner or the Merit Protection Commissioner reasonably believes that:
 - (a) the whistleblower report would be dealt with more appropriately by different means; or
Example: When other action is being undertaken under the Act or another Commonwealth law.
 - (b) the whistleblower report is vexatious, frivolous, misconceived or lacking in substance; or
 - (c) insufficient detail has been provided; or
 - (d) undertaking the inquiry would not otherwise be justified in all the circumstances.
- (3) A circumstance for the Australian Public Service Commissioner is that the whistleblower report:
 - (a) has not already been considered by the relevant Agency Head; or

- (b) is being, or has already been, considered by the Merit Protection Commissioner.
- (4) A circumstance for the Merit Protection Commissioner is that the whistleblower report:
 - (a) has not already been considered by the relevant Agency Head; or
 - (b) is being, or has already been, considered by the Australian Public Service Commissioner.

3 Subregulations 3.1(2) and (3)

Repeal the subregulations (not including the notes), substitute:

- (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.

4 Subregulation 3.2(1)

Repeal the subregulation (not including the note), substitute:

- (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

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

5 Subregulation 3.2(2)

Repeal the subregulation, substitute:

- (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.

6 Subregulation 3.3(2)

Repeal the subregulation, substitute:

- (2) The approval of a scheme must be published in the *Public Service Gazette* within 14 days after the day the scheme is approved.

7 Regulation 3.4 (note)

Omit "Subsection 22(3)", substitute "Paragraph 10A(1)(b)".

8 Regulations 3.5 and 3.6

Repeal the regulations, substitute:

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

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

9 Regulations 3.8 to 3.9B and 3.11 to 3.12A

Repeal the regulations.

10 Division 3.2

Repeal the Division.

11 After subregulation 4.5(1)

Insert:

- (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.

12 Subregulation 4.5(3)

Omit “ISAC”, substitute “ISAC, or an Agency Head appointed under subregulation 4.7(1B) to act on behalf of an ISAC,”.

13 After subregulation 4.7(1)

Insert:

- (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).

14 Subregulation 4.10(2)

Repeal the subregulation, substitute:

- (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.

15 Subregulation 4.11(1)

After “recommendation”, insert “of a candidate”.

16 Subregulation 4.11(2)

Repeal the subregulation, substitute:

- (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.

17 Subregulation 4.12(1)

Omit “must not obstruct”, substitute “commits an offence if the person obstructs”.

18 Paragraph 5.5(c)

After “Values”, insert “and the APS Employment Principles”.

19 Regulation 5.8 (note)

Repeal the note, substitute:

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

20 Sub-subparagraph 5.9(1)(b)(i)(A)

Omit “*Gazette* or in the electronic APS Employment *Gazette*”, substitute “Public Service *Gazette*”.

21 Subparagraph 5.9(1)(b)(ii)

Omit “*Gazette* or in the electronic APS Employment *Gazette*”, substitute “Public Service *Gazette*”.

22 Sub-subparagraph 5.9(1A)(b)(i)(A)

Omit “*Gazette* or in the electronic APS Employment *Gazette*”, substitute “Public Service *Gazette*”.

23 Subparagraph 5.9(1A)(b)(ii)

Omit “*Gazette* or in the electronic APS Employment *Gazette*”, substitute “Public Service *Gazette*”.

24 Subregulation 5.9(2)

Omit “Division 3.1”, substitute “Chapter 2 of the Commissioner’s Directions”.

25 At the end of regulation 5.12

Add:

(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).

26 Subregulation 5.20(1) (note)

Omit “Regulation 3.8”, substitute “Chapter 2 of the Commissioner’s Directions”.

27 Subregulation 5.20(4) (note 1)

Omit “Regulation 3.8”, substitute “Chapter 2 of the Commissioner’s Directions”.

28 Subregulation 5.20(4) (note 2)

Omit “Regulation 3.8A”, substitute “Chapter 2 of the Commissioner’s Directions”.

29 Subregulation 5.21(1)

Omit “must not obstruct”, substitute “commits an offence if the person obstructs”.

30 Division 5.3 (heading)

Repeal the heading, substitute:

Division 5.3—Application by APS employees for review of other actions**31 Regulation 5.22**

Repeal the regulation, substitute:

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.

32 Subregulation 5.23(3)

Omit “or committee that”, substitute “who”.

33 Paragraph 5.23(3)(a)

Repeal the paragraph, substitute:

- (a) the application by the affected employee for review of the action is misconceived or lacking in substance;

34 At the end of regulation 5.23

Add:

- (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 an affected employee’s 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

Actions that are not, or cease to be, reviewable		
Item	Action	Circumstance
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 employee of the Agency Head's decision under subregulation 5.27(5); and (b) the affected employee is dissatisfied with the decision	The application is not made within 60 days of the affected employee being told of the Agency Head's 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.

35 Regulation 5.23A

Repeal the regulation.

36 Regulation 5.26

Omit “subregulation 5.23(3)”, substitute “subregulations 5.23(3) and (4)”.

37 Subregulation 5.27(1)

Repeal the subregulation, substitute:

- (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.

38 Subregulations 5.28(2), (3), (4) and (5)

Repeal the subregulations, substitute:

- (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.

39 Regulation 5.31

Repeal the regulation, substitute:

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:

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- (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.

40 After subregulation 5.32(2)

Insert:

- (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.

41 Subregulation 5.33(2)

Omit “a person or committee conducting a review under regulation 5.28 or 5.31”, substitute “the Merit Protection Commissioner”.

42 Regulation 5.34

Repeal the regulation.

43 Subregulation 5.35(1)

Omit “A person or committee carrying out a review under this Division”, substitute “The Merit Protection Commissioner”.

44 Subregulation 5.37(1)

Omit “must not obstruct a person or committee conducting a review in carrying out its”, substitute “commits an offence if the person obstructs a person conducting a review in carrying out his or her”.

45 Subregulation 5.37(2)

Omit “or committee”.

46 Part 6 (heading)

Repeal the heading, substitute:

**Part 6—The Australian Public Service
Commissioner**

47 Part 6 (note to heading)

Repeal the note, substitute:

- Note: Other functions of the Australian Public Service Commissioner are set out in the following regulations:
- (a) regulations 2.5 and 2.7—whistleblower reports;
 - (b) regulation 3.5—engagement of non-SES employees;
 - (c) regulation 9.2—use and disclosure of personal information.

48 Regulation 6.1

Omit “For the purposes of paragraph 41(1)(l) of the Act, the Commissioner must:”, substitute “For paragraph 41(2)(p) of the Act, the Australian Public Service Commissioner may:”.

49 After regulation 6.1

Insert:

**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).

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- (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.
- (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
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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.

50 Regulation 6.2 (heading)

Repeal the heading, substitute:

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

51 Regulation 6.2

Omit "paragraph 41(3)(c)", substitute "paragraph 41A(2)(c)".

52 Regulations 6.3 and 6.4

Repeal the regulations, substitute:

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.

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- (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
 - (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.

53 Before regulation 7.1

Insert:

Division 7.1—Prescribed functions**54 Subregulation 7.1(2)**

Repeal the subregulation (including the note), substitute:

- (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.

Note: Functions of the Merit Protection Commissioner in relation to whistleblower reports are set out in regulations 2.6 and 2.7.

55 Before regulation 7.2

Insert:

Division 7.2—Complaints of former employees**56 After regulation 7.2**

Insert:

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.

7.2E 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.
- (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.

57 Before regulation 7.3

Insert:

Division 7.4—Review of actions of statutory office holders**58 Before regulation 7.4**

Insert:

Division 7.5—Miscellaneous**59 Regulations 7.6 and 7.7**

Repeal the regulations, substitute:

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 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.

60 Before Part 8

Insert:

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.

61 Subregulation 8.1(1)

Omit “remuneration and other conditions”, substitute “terms and conditions”.

62 After subregulation 8.1(2)

Insert:

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.

63 Subregulation 8.1(3)

Omit “other conditions”, substitute “other terms and conditions”.

64 Paragraph 8.1(3)(b)

Omit “the conditions”, substitute “the terms and conditions”.

65 Subregulation 8.1(3) (note)

Omit “a condition”, substitute “a term or condition”.

66 Subregulation 8.1(4)

Omit “the conditions”, substitute “the terms and conditions”.

67 Subregulations 8.2(1) and (2)

Omit each mention of “remuneration and other conditions”, substitute “terms and conditions”.

68 Subregulation 8.2(2) (note)

Omit “a condition”, substitute “a term or condition”.

69 Subregulation 8.2(3)

Omit “conditions”, substitute “terms and conditions”.

70 At the end of Part 8

Add:

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.

71 Regulation 9.2

Repeal the regulation, substitute:

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
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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.

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

- (7) Use of personal information under this regulation is an authorised use for paragraph 1(c) of Information Privacy Principle 10 set out in section 14 of the *Privacy Act 1988*.
- (8) Disclosure of personal information under this regulation is an authorised disclosure for paragraph 1(d) of Information Privacy Principle 11 set out in section 14 of the *Privacy Act 1988*.

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

72 At the end of Part 9

Add:

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.

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.

73 After Part 9

Insert:

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.
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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
 - (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.
- (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 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
 - (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.

74 Item 3 of Schedule 1

Omit “Public Service Commissioner under section 11, 15 or 36”, substitute “Australian Public Service Commissioner under section 11, 11A or 15”.

75 After item 4 of Schedule 1

Insert:

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

76 Item 6 of Schedule 1

Repeal the item, substitute:

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*.

77 Item 10 of Schedule 1

Omit “that determines, under section 25 of the Act, duties of an APS employee, or the place or places where they are to be performed,”, substitute “relating to the determination of the duties of an APS employee,”.

78 At the end of Schedule 1

Add:

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*.

79 Dictionary

Insert:

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

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

80 Dictionary (definition of *Classification Rules*)

Repeal the definition, substitute:

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*.

81 Dictionary (definition of *Commissioner)

Repeal the definition, substitute:

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

82 Dictionary (definition of Commissioner's Directions)

Repeal the definition, substitute:

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

83 Dictionary (definition of electronic APS Employment Gazette)

Repeal the definition.

84 Dictionary (definition of employer powers)

Repeal the definition, substitute:

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

85 Dictionary (definitions of post-move Agency, post-move Agency Head, pre-move Agency, pre-move Agency Head and prohibited content)

Repeal the definitions.

86 Dictionary (definition of promotion)

Repeal the definition, substitute:

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

87 Dictionary

Insert:

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

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

**88 Dictionary (definitions of *Public Service Commissioner*,
senior official* and *unlawful term*)

Repeal the definitions.

89 Dictionary

Insert:

whistleblower, means an APS employee who reports breaches (or alleged breaches) of the Code of Conduct as described in subsection 16(1) of the Act.

whistleblower report, means a report made by a person under subsection 16(1) of the Act.

90 Dictionary (definition of *workplace agreement*)

Repeal the definition.

Endnotes

Endnote 1—Legislation history

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Public Service Amendment Regulation 2013 (No. 1)*.

Number and year	Gazettal or FRLI registration date	Commencement date	Application, saving and transitional provisions
35, 2013	14 Mar 2013 (<i>see</i> F2013L00460)	<i>See</i> s. 2	
110, 2013	14 June 2013 (<i>see</i> F2013L01002)	15 June 2013 (<i>see</i> s. 2)	—

Endnote 2—Amendment history

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Public Service Amendment Regulation 2013 (No. 1)*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
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Schedule 1

Item 52.....	am. No. 110, 2013
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Item 73.....	am. No. 110, 2013
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Endnotes

Endnote 3—Uncommenced amendments [none]

Endnote 3—Uncommenced amendments [none]

There are no uncommenced amendments.

Endnote 4—Misdescribed amendments [none]

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There are no misdescribed amendments.