



# Public Service Commissioner's Directions 1999

as amended

made under subsection 11 (1), subsection 15 (4) and section 36 of the

*Public Service Act 1999*

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## Chapter 1 Preliminary

### 1.1 Name of Directions [see Note 1]

These Directions are the *Public Service Commissioner's Directions 1999*.

### 1.2 Commencement [see Note 1]

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

### 1.3 Definitions — the dictionary

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

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

#### **Main objects of the Act**

Section 3 of the Act provides that the main objects of the Act are:

- (a) to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public; and
- (b) to provide a legal framework for the effective and fair employment, management and leadership of APS employees; and
- (c) to define the powers, functions and responsibilities of Agency Heads, the Public Service Commissioner and the Merit Protection Commissioner; and
- (d) to establish rights and obligations of APS employees.

### Section 1.3

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#### **Outline of these Directions**

Chapters 2, 3 and 4 of these Directions make provision about the APS Values. Subsection 10 (1) of the Act sets out the APS Values. The Chapters are:

- Chapter 2 — APS Values
- Chapter 3 — Diversity in employment
- Chapter 4 — Merit in employment.

Chapter 5 makes provision about the basic procedural requirements that must be complied with by the procedures established by an Agency Head for determining whether an APS employee has breached the Code of Conduct.

Chapter 6 makes provision about SES employment.

#### **Background to these Directions**

Under subsection 11 (1) of the Act, the Commissioner must issue directions in writing in relation to each of the APS Values for the purpose of:

- (a) ensuring that the APS incorporates and upholds the APS Values; and
- (b) determining where necessary the scope or application of the APS Values.

The APS Values have effect subject to any restrictions in the directions.

Under paragraph 41 (1) (a) of the Act, the Commissioner must evaluate the extent to which Agencies incorporate and uphold the APS Values.

Under subsection 15 (4) of the Act, the Commissioner must issue directions in writing in relation to the procedures to be established by an Agency Head for determining whether an APS employee has breached the Code of Conduct.

**Clause 1.3**

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Under section 36 of the Act, the Commissioner must issue directions in writing about employment matters relating to SES employees, including engagement, promotion, redeployment, mobility and termination.

These Directions are generally in the form of directions to Agency Heads because, under the Act, Agency Heads must uphold and promote the APS Values (Act, s 12), and Agency Heads are given employment powers on behalf of the Commonwealth (Act, Part 4).

Agency Heads and APS employees must comply with the Commissioner's Directions (Act, s 42).

## Chapter 2      APS Values

### **Information about the APS Values**

The APS Values are set out in subsection 10 (1) of the Act.

The Act requires Agency Heads to uphold and promote the APS Values (Act, s 12), and requires APS employees to behave at all times in a way that upholds the APS Values (Act, subs 13 (11)).

The APS Values, and these Directions, describe standards and outcomes that can be supported in the same ways by all Agency Heads and APS employees.

The Values and Directions also relate to specific tasks, including:

- making employment decisions
- providing advice
- managing workplace relations
- administering a performance management system.

In these cases, it is likely that the APS Values will have to be upheld in different ways in different Agencies, and in ways that reflect the different levels of involvement that people have in the tasks. However, it is still possible for people who are not directly engaged on a task to uphold the Values to which the task relates.

These Directions have been prepared in the expectation that they will be read and applied in this spirit. As a minimum, it is expected that all Agency Heads and APS employees will:

- support the work of people who may be directly engaged on a task contemplated by the Values; and
- participate in the results of the task in the way intended by the people engaged in it.



## 2.1 Purpose of Chapter 2

The purpose of this Chapter is:

- (a) to ensure that Agency Heads and APS employees understand their responsibilities in relation to the APS Values; and
- (b) to set out the minimum requirements that an Agency Head must meet in upholding and promoting the APS Values and the minimum requirements that an APS employee must meet in upholding the APS Values.

## 2.2 The APS is apolitical, performing its functions in an impartial and professional manner (Act s 10 (1) (a))

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (a) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
  - (a) management and staffing decisions in the Agency are made on a basis that is independent from the political party system, political bias and political influence; and
  - (b) the same high standard of policy advice and implementation, and the same high quality professional support, is provided to the elected Government, irrespective of which political party is in power and irrespective of the Agency Head's political beliefs.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (a) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in the Agency, help to ensure that:
  - (a) management and staffing decisions in the Agency are made on a basis that is independent from the political party system, political bias and political influence; and
  - (b) the same high standard of policy advice and implementation, and the same high quality professional support, is provided to the elected Government, irrespective of which political party is in power and irrespective of the employee's political beliefs.

## 2.3 The APS is a public service in which employment decisions are based on merit (Act s 10 (1) (b))

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (b) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
  - (a) for an employment decision relating to the engagement or promotion of a person in the Agency:
    - (i) the aim and purpose of the selection process is determined in advance and information about the process is readily available to applicants; and
    - (ii) the selection process is transparent and applied fairly in relation to each eligible applicant; and

**Clause 2.4**

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- (iii) the matters mentioned in subsection 10 (2) of the Act are taken into account; and
- (b) for any other employment decision in the Agency — the decision is made on the basis of an assessment of a person's work-related qualities and the work-related qualities required for efficient and effective organisational performance.

*Note* In addition to the requirements set out in subcl (1), an Agency Head must also comply with the requirements set out in Ch 3 (which relates to diversity in employment), Ch 4 (which relates to merit in employment) and Ch 6 (which relates to SES employment).

- (2) In upholding the APS Value mentioned in paragraph 10 (1) (b) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in the Agency, help to ensure that:
  - (a) for an employment decision relating to the engagement or promotion of a person in the Agency:
    - (i) the aim and purpose of the selection process is determined in advance and information about the process is readily available to applicants; and
    - (ii) the selection process is transparent and applied fairly in relation to each eligible applicant; and
    - (iii) the matters mentioned in subsection 10 (2) of the Act are taken into account; and
  - (b) for any other employment decision in the Agency — the decision is made on the basis of an assessment of a person's work-related qualities and the work-related qualities required for efficient and effective organisational performance.

*Note* In addition to the requirements set out in subcl (2), an APS employee must also comply with the requirements set out in Ch 3 (which relates to diversity in employment), Ch 4 (which relates to merit in employment) and Ch 6 (which relates to SES employment).

## **2.4 The APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves (Act s 10 (1) (c))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (c) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
  - (a) all Commonwealth anti-discrimination laws are complied with; and
 

*Note* See, for example, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Human Rights and Equal Opportunity Act 1986*.
  - (b) engagement decisions in the Agency are made taking into account the diversity of the Australian community, the organisational and business goals of the Agency and the skills required to perform the relevant duties; and
  - (c) the diverse backgrounds of APS employees are effectively utilised, taking into account the organisational and business goals of the Agency and the skills required to perform the relevant duties; and

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**Clause 2.5**

- (d) APS employees are helped to balance their work, family and other caring responsibilities effectively.

*Note* In addition to the requirements set out in subcl (1), an Agency Head must also comply with the requirements set out in Ch 3 (which relates to diversity in employment) and Ch 4 (which relates to merit in employment).

- (2) In upholding the APS Value mentioned in paragraph 10 (1) (c) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in the Agency, help to ensure that:

- (a) all Commonwealth anti-discrimination laws are complied with; and

*Note* See, for example, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Human Rights and Equal Opportunity Act 1986*.

- (b) engagement decisions in the Agency are made taking into account the diversity of the Australian community, the organisational and business goals of the Agency and the skills required to perform the relevant duties; and
- (c) the diverse backgrounds of APS employees are effectively utilised, taking into account the organisational and business goals of the Agency and the skills required to perform the relevant duties; and
- (d) APS employees are helped to balance their work, family and other caring responsibilities effectively.

*Note* In addition to the requirements set out in subcl (2), an APS employee must also comply with the requirements set out in Ch 3 (which relates to diversity in employment) and Ch 4 (which relates to merit in employment).

## **2.5 The APS has the highest ethical standards (Act s 10 (1) (d))**

*Note* In addition to upholding and, if appropriate, promoting the APS Value mentioned in para 10 (1) (d) of the Act, Agency Heads and APS employees must also comply with the APS Code of Conduct and any other conduct requirement prescribed by the regulations — see s 13 and 14 of the Act.

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (d) of the Act, an Agency Head must at all times model and promote the highest standard of ethical behaviour, and must put in place measures in the Agency directed at ensuring that:

- (a) APS employees in the Agency are aware of:
- (i) the content of the Code of Conduct; and
  - (ii) any other conduct requirement prescribed for the purposes of subsection 13 (13) of the Act; and
  - (iii) any Agency-specific conduct requirement authorised by the Agency Head; and
  - (iv) the consequences of breaching the Code of Conduct or any other conduct requirement; and
  - (v) the procedures for dealing with a breach of the Code of Conduct or any other conduct requirement; and
- (b) managers are aware of the importance of modelling and promoting the highest standard of ethical behaviour; and

**Clause 2.6**

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- (c) procedures are in place for dealing with whistleblowing disclosures; and
  - (d) APS employees are aware of the procedures for dealing with whistleblowing disclosures, and are encouraged to make such disclosures in appropriate circumstances; and
- Note* See the *Public Service Regulations 1999* in relation to the procedures for dealing with whistleblowing disclosures.
- (e) allegations of misconduct are addressed in a fair, timely, systematic and effective way.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (d) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in the Agency:
- (a) model and promote the highest standard of ethical behaviour; and
  - (b) support the Agency Head in meeting the requirements mentioned in subclause (1).

**2.6 The APS is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public (Act s 10 (1) (e))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (e) of the Act, an Agency Head must take all reasonable steps to ensure that he or she:
- (a) understands the accountability framework within which he or she operates; and
  - (b) meets individual and Agency statutory and reporting obligations; and
  - (c) is able, within the accountability framework, to demonstrate clearly and appropriately to Ministers, to the Parliament and to other stakeholders that he or she has efficiently, effectively and ethically used the resources allocated to him or her.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (e) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in the Agency, take all reasonable steps to ensure that he or she:
- (a) understands the accountability framework within which he or she operates; and
  - (b) meets individual and Agency statutory and reporting obligations; and
  - (c) is able, within the accountability framework, to demonstrate clearly and appropriately to Ministers, to the Parliament and to other stakeholders that he or she has efficiently, effectively and ethically used the resources allocated to him or her.

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**2.7 The APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs (Act s 10 (1) (f))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (f) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
  - (a) advice provided to the Government:
    - (i) is frank, honest, comprehensive, accurate and timely; and
    - (ii) taking into account resource and time constraints, is based on a full understanding of all relevant issues and options, the Government's objectives and the environment in which it operates; and
  - (b) Government decisions are implemented professionally and with integrity, irrespective of the nature of any advice that may have been provided to the Government at an earlier time.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (f) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in the Agency, help to ensure that:
  - (a) advice provided to the Government:
    - (i) is frank, honest, comprehensive, accurate and timely; and
    - (ii) taking into account resource and time constraints, is based on a full understanding of all relevant issues and options, the Government's objectives and the environment in which it operates; and
  - (b) Government decisions are implemented professionally and with integrity, irrespective of the nature of any advice that may have been provided to the Government at an earlier time.

**2.8 The APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public (Act s 10 (1) (g))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (g) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
  - (a) information is provided to the Australian public about rights and entitlements, and the processes for gaining access to them; and
  - (b) within the overall framework of Government policy, the rights and entitlements of clients, and the resources of the Agency, appropriate account is taken of the particular interests and sensitivities of individual Agency clients, including their diversity and right to privacy; and
  - (c) services are delivered taking into account the principles set out in the following documents:
    - (i) the document entitled *Principles for Developing a Service Charter*, published by the Department of Industry, Science and Tourism in March 1997;

**Clause 2.9**

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- (ii) the document entitled *Charter of Public Service for a Culturally Diverse Society*, published by the Department of Immigration and Multicultural Affairs in June 1998.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (g) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency, help to ensure that:
- (a) information is provided to the Australian public about rights and entitlements, and the processes for gaining access to them; and
  - (b) within the overall framework of Government policy, the rights and entitlements of clients, and the resources of the Agency, appropriate account is taken of the particular interests and sensitivities of individual Agency clients, including their diversity and right to privacy; and
  - (c) services are delivered taking into account the principles set out in the following documents:
    - (i) the document entitled *Principles for Developing a Service Charter*, published by the Department of Industry, Science and Tourism in March 1997;
    - (ii) the document entitled *Charter of Public Service for a Culturally Diverse Society*, published by the Department of Immigration and Multicultural Affairs in June 1998.

**2.9 The APS has leadership of the highest quality (Act s 10 (1) (h))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (h) of the Act, an Agency Head must:
- (a) clearly articulate and communicate the strategic vision of the Agency to employees in the Agency; and
  - (b) be aware of, communicate, and take appropriate account of, whole of Government issues and concerns in developing and administering Agency policies and programs; and
  - (c) have regard to the document entitled *Senior Executive Leadership Capability Framework* issued by the Minister Assisting the Prime Minister for the Public Service on 19 May 1999; and
  - (d) put in place measures to ensure that there are systems in the Agency that give APS employees appropriate opportunities to develop and demonstrate leadership qualities.

*Note* In addition to the requirements set out in subcl (1), an Agency Head must also comply with the requirements set out in Ch 6 (which relates to SES employment).

- (2) In upholding the APS Value mentioned in paragraph 10 (1) (h) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency:
- (a) be aware of and support the strategic vision of the Agency; and
  - (b) have regard to the document entitled *Senior Executive Leadership Capability Framework* issued by the Minister Assisting the Prime Minister for the Public Service on 19 May 1999.

*Note* In addition to the requirements set out in subcl (2), an APS employee must also comply with the requirements set out in Ch 6 (which relates to SES employment).

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**2.10 The APS establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace (Act s 10 (1) (i))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (i) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
  - (a) APS employees are aware of Agency goals and responsibilities and the way in which their work contributes to the achievement of those goals and responsibilities; and
  - (b) APS employees have appropriate opportunities to contribute their views on issues affecting their workplace; and
  - (c) consultative arrangements and processes in the workplace appropriately recognise the decision-making responsibilities of management.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (i) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency:
  - (a) recognise, support and comply with any consultative arrangements in place in the Agency; and
  - (b) respect the decision-making responsibilities of management in the Agency.

**2.11 The APS provides a fair, flexible, safe and rewarding workplace (Act s 10 (1) (j))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (j) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
  - (a) employment and workplace arrangements take appropriate account of APS employees who are seeking to balance individual needs and the achievement of organisational goals; and
  - (b) the Agency complies with Commonwealth occupational, health and safety legislation.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (j) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency, help to ensure that:
  - (a) employment and workplace arrangements take appropriate account of APS employees who are seeking to balance individual needs and the achievement of organisational goals; and
  - (b) the Agency complies with Commonwealth occupational, health and safety legislation.

**Clause 2.12**

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**2.12 The APS focuses on achieving results and managing performance (Act s 10 (1) (k))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (k) of the Act, an Agency Head must, in addition to having regard to any statutory accountability and reporting responsibilities, put in place measures in the Agency directed at ensuring that:
  - (a) the Agency has at all times the organisational capacity, flexibility and responsiveness necessary to achieve the outcomes expected by the Government or any other authority to which the Agency is accountable; and
  - (b) the Agency has at all times a culture of achievement, planning time and priorities to deliver on intended results; and
  - (c) the Agency's reporting arrangements provide an account of the effectiveness of the Agency's outputs during the reporting period; and
  - (d) the Agency is able to demonstrate that it has directed its resource priorities toward the achievement of the outcomes expected by the Government or any other authority to which the Agency is accountable; and
  - (e) the Agency establishes a fair and open performance management system that:
    - (i) covers all APS employees; and
    - (ii) guides salary movement and is linked to Agency organisational and business goals and the maintenance of the APS Values; and
    - (iii) provides each APS employee with a clear statement of performance expectations and an opportunity to comment on those expectations; and
  - (f) the Agency conducts its performance management system in accordance with the objectives mentioned in paragraph (e).
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (k) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency:
  - (a) help to ensure that:
    - (i) the Agency has at all times the organisational capacity, flexibility and responsiveness necessary to achieve the outcomes expected by the Government; and
    - (ii) the Agency has at all times a culture of achievement, planning time and priorities to deliver on intended results; and
    - (iii) the Agency's reporting arrangements provide an account of the effectiveness of the Agency's outputs during the reporting period; and
    - (iv) the Agency is able to demonstrate that it has directed its resource priorities toward the achievement of the outcomes expected by the Government; and
  - (b) facilitate a fair and open performance management system in the Agency that:
    - (i) covers all APS employees; and



- (ii) guides salary movement and is linked to Agency organisational and business goals and the maintenance of the APS Values; and
  - (iii) provides each APS employee with a clear statement of performance expectations and an opportunity to comment on those expectations; and
- (c) participate in the Agency's performance management system in accordance with the objectives mentioned in paragraph (b).

### **2.13 The APS promotes equity in employment (Act s 10 (1) (l))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (l) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
- (a) employment decisions in the Agency are made in a transparent, equitable and procedurally fair way and that appropriate confidentiality in relation to employment decisions is maintained; and
  - (b) measures are taken to eliminate any employment-related disadvantages in the Agency on the basis of:
    - (i) being an Aboriginal or a Torres Strait Islander within the meaning of the *Racial Discrimination Act 1975*; or
    - (ii) gender; or
    - (iii) race or ethnicity; or
    - (iv) physical or mental disability.

*Note* In addition to the requirements set out in subcl (1), an Agency Head must also comply with the requirements set out in Ch 3 (which relates to diversity in employment) and Ch 4 (which relates to merit in employment).

- (2) In upholding the APS Value mentioned in paragraph 10 (1) (l) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency, help to ensure that:
- (a) employment decisions in the Agency are made in a transparent, equitable and procedurally fair way and that appropriate confidentiality in relation to employment decisions is maintained; and
  - (b) measures are taken to eliminate any employment-related disadvantages in the Agency on the basis of:
    - (i) being an Aboriginal or a Torres Strait Islander within the meaning of the *Racial Discrimination Act 1975*; or
    - (ii) gender; or
    - (iii) race or ethnicity; or
    - (iv) physical or mental disability.

*Note* In addition to the requirements set out in subcl (2), an APS employee must also comply with the requirements set out in Ch 3 (which relates to diversity in employment) and Ch 4 (which relates to merit in employment).

**Clause 2.14**

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**2.14 The APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment (Act s 10 (1) (m))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (m) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that, taking into account Agency goals, resources and skills requirements, opportunities for employment in the Agency are brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for them.

*Note* In addition to the requirements set out in subcl (1), an Agency Head must also comply with the requirements set out in Ch 3 (which relates to diversity in employment) and Ch 4 (which relates to merit in employment).

- (2) In upholding the APS Value mentioned in paragraph 10 (1) (m) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency, help to ensure that, taking into account Agency goals, resources and skills requirements, opportunities for employment in the Agency are brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for them.

*Note* In addition to the requirements set out in subcl (2), an APS employee must also comply with the requirements set out in Ch 3 (which relates to diversity in employment) and Ch 4 (which relates to merit in employment).

**2.15 The APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government (Act s 10 (1) (n))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (n) of the Act, an Agency Head must:
- (a) practise and encourage consultation, communication and the sharing of knowledge between Agencies as an important element in maintaining effective and cohesive government; and
  - (b) promote an understanding, among APS employees, of the core public interest ethos of the APS, including the ethos embodied in the APS Values and the Code of Conduct; and
  - (c) encourage a feeling of common membership of a significant institution; and
  - (d) put in place measures to ensure that:
    - (i) the Agency is staffed on a basis that sustains core knowledge, expertise, and standards of professionalism and behaviour; and
    - (ii) legislative and Agency requirements in relation to the use of the different categories of APS employment are upheld.
- (2) The Agency Head must uphold and promote the APS Value mentioned in paragraph 10 (1) (n) of the Act:
- (a) for the Agency Head's Agency; and
  - (b) when working with other Agency Heads as the collective leadership of the APS.

**Clause 2.16**

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- (3) In upholding the APS Value mentioned in paragraph 10 (1) (n) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency:
- (a) support and encourage consultation, communication and the sharing of knowledge between Agencies as an important element in maintaining effective and cohesive government; and
  - (b) help to ensure that:
    - (i) the Agency is staffed on a basis that sustains core knowledge, expertise, and standards of professionalism and behaviour; and
    - (ii) legislative and Agency requirements in relation to the use of the different categories of APS employment are upheld.

**2.16 The APS provides a fair system of review of decisions taken in respect of APS employees (Act s 10 (1) (o))**

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (o) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
- (a) the Agency has, or has access to, a system for the review of employment decisions that is available to all eligible employees in the Agency; and
  - (b) the system complies with the Act and the Regulations in relation to rights of access to employment decisions, and processes for review of employment decisions, including the requirements of procedural fairness.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (o) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency, help to ensure that:
- (a) the Agency has, or has access to, a system for the review of employment decisions that is available to all eligible employees in the Agency; and
  - (b) the system complies with the Act and the Regulations in relation to rights of access to employment decisions, and processes for review of employment decisions, including the requirements of procedural fairness.

## Chapter 3 Diversity in employment

### 3.1 Purpose of Chapter 3

The main purpose of this Chapter is to make arrangements, in addition to the requirements set out in clauses 2.4 and 2.13, to provide for an APS that is free from discrimination and that recognises and utilises the diversity of the Australian community it serves.

### 3.2 Exercise of employer powers generally

- (1) An Agency Head must put in place measures to:
  - (a) help prevent all forms of discrimination, whether direct or indirect, consistently with Commonwealth law; and
  - (b) recognise the positive advantages of, and help make best use of, the diversity available in the workplace and the Australian community.
- (2) An Agency Head must assist employees to balance their work, family and other caring responsibilities effectively by encouraging the development of mutually beneficial work practices in the Agency.

*Note* Employment decisions must comply with the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, the *Human Rights and Equal Opportunity Act 1986*, the *Workplace Relations Act 1996*, and other laws.

### 3.3 Measures for workplace diversity programs

*Note* Section 18 of the Act requires an Agency Head to establish a workplace diversity program to assist in giving effect to the APS Values.

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

- (a) the corporate, business and human resource plans of the Agency demonstrate that the Agency values the diverse backgrounds of its employees and values, and is able to access and make use of, the diverse skills and experience of its employees; and
- (b) workplace structures, systems and procedures assist employees in balancing their work, family and other caring responsibilities effectively; and
- (c) engagement decisions in the Agency are made taking into account the diversity of the Australian community, as well as the organisational and business goals of the Agency and the skills required to perform the relevant duties; and
- (d) equity in employment, as required by paragraphs 2.13 (1) (b) and (2) (b), is promoted and upheld.

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**3.4 Copy of workplace diversity program to be given to Commissioner**

- (1) As soon as practicable after establishing a workplace diversity program for an Agency, the Agency Head must give a copy of the program to the Commissioner.
- (2) If the Agency Head revises the workplace diversity program in any way, the Agency Head must, as soon as practicable after revising the program, give a copy of the revised program to the Commissioner.

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

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

*Note* This requirement is in addition to the Agency Head's duty under subs 44 (3) of the Act to give the Commissioner whatever information the Commissioner requires to prepare the annual report required under s 44 of the Act.

**3.6 Review of workplace diversity program**

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

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

## Chapter 4 Merit in employment

### 4.1 Purpose of Chapter 4

- (1) This Chapter sets out the minimum requirements that an Agency Head must meet in upholding and promoting the APS Values mentioned in paragraph 10 (1) (b) of the Act (including the matters mentioned in subsection 10 (2) of the Act) and paragraph 10 (1) (m) of the Act.

#### **Note on merit**

Subsection 10 (2) of the Act provides that, for the purposes of the APS Value in paragraph 10 (1) (b) of the Act, a decision relating to engagement or promotion is based on merit if:

- (a) an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process; and
- (b) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
- (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
- (d) the assessment is the primary consideration in making the decision.

*Examples of work-related qualities that may be taken into account in making an assessment*

1. Skills and abilities
2. Qualifications, training and competencies
3. Standard of work performance
4. Capacity to produce outcomes from effective performance at the level required
5. Relevant personal qualities
6. Demonstrated potential for further development
7. Ability to contribute to team performance.

- (2) The minimum requirements relate to:
- (a) the engagement and promotion of persons as APS employees; and
  - (b) the selection of APS employees for temporary assignment of duties at a higher classification.
- (3) This Chapter does not apply to the engagement of a person as an APS employee:
- (a) in the circumstances mentioned in subsection 32 (1) of the Act; or
  - (b) under paragraph 72 (1) (c) or (d) of the Act; or
  - (c) in any of the circumstances mentioned in Schedule 1.

*Note* Regulation 3.12 of the *Public Service Regulations 1999* provides for certain decisions relating to the engagement and promotion of APS employees to be notified in the *Gazette*.

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## 4.2 Engagement of ongoing APS employees

- (1) An Agency Head must put in place measures to ensure that if:
  - (a) a person is to be engaged as an ongoing APS employee at a training classification or an APS Group 1 classification; or
  - (b) an ongoing APS employee (other than an employee whose current classification is a training classification) is to be assigned duties at a training classification:

the opportunity to apply for the relevant employment, or similar employment in the Agency, was open to all eligible members of the community, whether or not they were APS employees.
- (2) An Agency Head must put in place measures to ensure that, subject to considerations of cost and operational efficiency, if a person is to be engaged as an ongoing APS employee (other than as an employee mentioned in paragraph (1) (a)), the opportunity to apply for the relevant employment, or similar employment in the Agency, was open to all eligible members of the community, whether or not they were APS employees.
- (3) Subject to subclauses (4), (4B) and (4C):
  - (a) an opportunity mentioned in subclause (1) or (2) must have been notified in the *Gazette*:
    - (i) during the period of 12 months before the decision to engage the person is made; and
    - (ii) as open to all eligible members of the community, whether or not they were APS employees; and
  - (b) if the opportunity was also advertised externally, as open to all eligible members of the community, whether or not they were APS employees, it must have been advertised before, or not later than 4 weeks after, the opportunity was notified in the *Gazette*.
- (4) If, because of considerations of cost or operational efficiency, an Agency Head decides not to provide an opportunity mentioned in subclause (2) to all eligible members of the community, as a minimum, the opportunity must have been notified in the *Gazette*:
  - (a) during the period of 12 months before the decision to engage the person is made; and
  - (b) as open to all APS employees.
- (4A) However subclause (4B) applies if:
  - (a) an opportunity mentioned in subclause (4) was notified in the *Gazette*:
    - (i) during the period of 12 months before the decision to engage the person is made; and
    - (ii) as open to all APS employees; and
  - (b) after the notification, the Agency Head decided to provide the opportunity to all eligible members of the community, whether or not they were APS employees; and
  - (c) the opportunity was advertised externally as open to all eligible members of the community, whether or not they were APS employees.

**Clause 4.2A**

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- (4B) The opportunity must have been advertised not later than 4 weeks after the opportunity was notified in the *Gazette*.
- (4C) If:
- (a) an Agency Head proposes to engage an ongoing Parliamentary Service employee as an ongoing APS employee; and
  - (b) the engagement would be at a comparable classification to the person's classification as an ongoing Parliamentary Service employee immediately before the engagement (as identified in accordance with the Regulations);
- it is not necessary for the relevant employment opportunity to be notified in the *Gazette*.
- (5) For subclauses (4) and (4A), **APS employee** includes a person who, at the time the opportunity for employment is notified in the *Gazette*, is a person mentioned in Schedule 2.
- (6) Despite subclauses (1), (2), (3), (4) and (4A), the Agency Head is not taken to have breached this clause only because the Agency Head has put in place measures that:
- (a) are consistent with Commonwealth law; and
  - (b) identify an opportunity for employment as open to:
    - (i) an Aboriginal or a Torres Strait Islander within the meaning of the *Racial Discrimination Act 1975*; or
    - (ii) a person with an intellectual disability; and
  - (c) allow the engagement, as an APS employee, of a person of that kind.
- (7) This clause does not prevent the engagement of a non-ongoing APS employee as an ongoing APS employee in the circumstances described in clause 4.2A.

**4.2A Engagement of non-ongoing APS employee as ongoing employee in exceptional circumstances**

- (1) Despite clause 4.2, the Commissioner may authorise an Agency Head to engage a non-ongoing APS employee as an ongoing APS employee in accordance with this clause.
- (2) An Agency Head may, in writing, ask the Commissioner to authorise the engagement by the Agency Head of a non-ongoing APS employee as an ongoing APS employee without making the opportunity to apply for the relevant employment open to other eligible members of the community, if the Agency Head is satisfied:
- (a) on the basis of the relationship between the person's work-related qualities and the work-related qualities genuinely required for the duties of the relevant employment, that the person is suitable for the duties; and
  - (b) that the duties of the relevant employment are more appropriately undertaken by an ongoing APS employee.



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**Clause 4.3**

- (3) The Commissioner may authorise the engagement if:
  - (a) the engagement as an ongoing APS employee is at the person's former classification (or equivalent) as a non-ongoing APS employee; and
  - (b) the Commissioner is satisfied that the APS Values mentioned in paragraphs 10 (1) (b) and (m) of the Act were complied with in relation to:
    - (i) the engagement of the non-ongoing APS employee as a non-ongoing APS employee; and
    - (ii) any extension of the engagement of the non-ongoing APS employee as a non-ongoing APS employee; and
  - (c) the Commissioner is satisfied that exceptional circumstances exist to justify the engagement.
- (4) If the Commissioner authorises the engagement, the Agency Head may engage the non-ongoing APS employee as an ongoing APS employee.

### **4.3 Engagement of APS employees for a specified term or for the duration of a specified task**

- (1) An Agency Head must put in place measures to ensure that, if a person is to be engaged as an APS employee for a specified term of more than 12 months, or for the duration of a specified task that is reasonably estimated to take more than 12 months, the opportunity to apply for the relevant employment, or similar employment in the Agency, was open to all eligible members of the community, whether or not they were APS employees.
- (2) The opportunity must have been notified in the *Gazette*:
  - (a) during the period of 12 months before the decision to engage the person is made; and
  - (b) as open to all eligible members of the community, whether or not they were APS employees.
- (2A) In addition, if the opportunity was also advertised externally, as open to all eligible members of the community, whether or not they were APS employees, it must have been advertised before, or not later than 4 weeks after, the opportunity was notified in the *Gazette*.
- (3) Despite subclauses (1), (2) and (2A), the Agency Head is not taken to have breached this clause only because the Agency Head has put in place measures that:
  - (a) are consistent with Commonwealth law; and
  - (b) identify an opportunity for employment as open to:
    - (i) an Aboriginal or a Torres Strait Islander within the meaning of the *Racial Discrimination Act 1975*; or
    - (ii) a person with an intellectual disability; and
  - (c) allow the engagement, as an APS employee, of a person of that kind.

**Clause 4.4**

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**4.4 Redundancy benefit**

- (1) Subject to subclause (2), each of the following payments is a *redundancy benefit*:
  - (a) a severance payment, or similar payment, made to an employee on cessation of the employee's employment in an Agency or with a non-APS Commonwealth employer;
  - (b) a payment made to an employee as a result of the shortening of a retention period;
  - (c) a payment made to an SES employee under section 37 of the Act.
- (2) Each of the following payments is not a *redundancy benefit*:
  - (a) a payment made:
    - (i) to a person who was engaged as an APS employee for a specified term or for the duration of a specified task; and
    - (ii) as compensation for the early cessation of the person's employment;
  - (b) a payment made:
    - (i) to a person who was engaged by a non-APS Commonwealth authority, under a contract of employment, for a specified term or for the duration of a specified task; and
    - (ii) as compensation for the early cessation of the person's employment;
  - (c) a payment made to a person if:
    - (i) the person was engaged overseas to perform duties overseas as an employee under section 74 of the Act; and
    - (ii) the person's employment ceased otherwise than at the initiative of the employer.

**4.4A Restrictions on engagement of redundancy benefit recipients as APS employees or locally engaged employees**

- (1) In this clause, a person is a *redundancy benefit recipient* if:
  - (a) the person has received a redundancy benefit from an Agency or a non-APS Commonwealth employer; and
  - (b) less than 12 months has passed since the person's employment ceased.
- (2) An Agency Head may engage a redundancy benefit recipient as an APS employee, or under section 74 of the Act to perform duties overseas as an employee only if:
  - (a) the Agency Head considers that the engagement is essential for the Agency's operations, having regard to the nature of the duties to be performed and the skills, experience or qualifications of the person; and
  - (b) for the engagement of the person as mentioned in subclause (3) — the Agency Head obtains the Commissioner's approval before engaging the person; and

**Clause 4.6**

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- (c) for the engagement of the person as mentioned in subclause (4) — the Agency Head consults the Commissioner before engaging the person; and
  - (d) for the engagement of a redundancy benefit recipient as a non-ongoing APS employee, the engagement is for:
    - (i) a specified term in the circumstances mentioned in item 6 or 7 of the table in subregulation 3.5 (2) of the Regulations; or
    - (ii) duties that are irregular or intermittent.
- (3) For paragraph (2) (b), the engagement is:
- (a) as an ongoing APS employee; or
  - (b) as a non-ongoing SES employee.
- (4) For paragraph (2) (c), the engagement is:
- (a) as a non-ongoing APS employee (other than a non-ongoing SES employee):
    - (i) for a specified term in the circumstances mentioned in item 1, 2, 3, 4, 5 or 8 of the table in subregulation 3.5 (2) of the Regulations; or
    - (ii) for the duration of a specified task in the circumstances mentioned in subregulation 3.5 (3) of the Regulations; or
    - (iii) for a specified term, or for the duration of a specified task, in the circumstances mentioned in subregulation 3.5 (4), (5) or (6) of the Regulations; or
  - (b) engagement overseas to perform duties overseas as an employee under section 74 of the Act.

#### **4.5 Extension of engagement of APS employee engaged for a specified term**

- (1) This clause applies if an APS employee is engaged for a specified term of 12 months or less.
- (2) An Agency Head must put in place measures to ensure that if the employee's engagement is to be extended so that the total period of engagement is more than 12 months:
  - (a) the opportunity to apply for the initial employment had been notified in the *Gazette* as open to all eligible members of the community, whether or not they were APS employees; or
  - (b) the opportunity to apply for the extended period of the engagement was notified in the *Gazette* as open to all eligible members of the community, whether or not they were APS employees.

#### **4.6 What is a promotion**

- (1) The assignment to an ongoing APS employee (other than a trainee) of duties at a higher classification than the employee's current classification is a ***promotion*** unless:
  - (a) the assignment is temporary; or

**Clause 4.6A**

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- (b) the assignment of duties at the current classification was temporary and, immediately before that assignment, the employee had been assigned duties at the higher classification; or
  - (c) the employee's current classification is included in a broadband and, as a result of being assigned duties at the higher classification, the employee is allocated a higher classification in that broadband.
- (2) The assignment (except on a temporary basis) to a trainee of duties at a classification that is in a higher classification group than an operational classification that relates to the employee's training classification is a ***promotion***.
  - (3) The allocation to a trainee, who has successfully completed a course of training, of an operational classification that relates to the trainee's training classification is not a ***promotion***.

*Note* See rule 9 of the Classification Rules in relation to the allocation of an operational classification to an employee who is engaged at a training classification.

- (4) This clause applies whether or not the assignment of duties is part of a movement to another Agency.
- (5) In this clause:  
***trainee*** means an ongoing APS employee whose classification is a training classification.

**4.6A Promotion of ongoing APS employees**

- (1) An Agency Head must put in place measures to ensure that, subject to considerations of costs and operational efficiency, if an ongoing APS employee is to be promoted in the Agency, the opportunity to apply for the relevant employment, or similar employment in the Agency, was open to all eligible members of the community, whether or not they were APS employees.
- (2) Subject to subclauses (3) and (4):
  - (a) the opportunity must have been notified in the *Gazette*:
    - (i) during the period of 12 months before the decision to promote the person is made; and
    - (ii) as open to all eligible members of the community, whether or not they were APS employees; and
  - (b) if the opportunity was also advertised externally, as open to all eligible members of the community, whether or not they were APS employees, it must have been advertised before, or not later than 4 weeks after, the opportunity was notified in the *Gazette*.
- (3) If, because of considerations of cost or operational efficiency, an Agency Head decides not to provide the opportunity to all eligible members of the community, as a minimum, the opportunity must have been notified in the *Gazette*:
  - (a) during the period of 12 months before the decision to promote the person is made; and

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- (b) as open to all APS employees.
- (4) However, subclause (5) applies if:
    - (a) the opportunity mentioned in subclause (3) was notified in the *Gazette*:
      - (i) during the period of 12 months before the decision to promote the person is made; and
      - (ii) as open to all APS employees; and
    - (b) after the notification, the Agency Head decided to provide the opportunity to all eligible members of the community, whether or not they were APS employees; and
    - (c) the opportunity was advertised externally as open to all eligible members of the community, whether or not they were APS employees.
  - (5) The opportunity must have been advertised not later than 4 weeks after the opportunity was notified in the *Gazette*.
  - (6) For subclauses (3) and (4), **APS employee** includes a person who, at the time the opportunity for employment is notified in the *Gazette*, is a person mentioned in Schedule 2.
  - (7) Despite subclauses (1), (2), (3), (4) and (5), the Agency Head is not taken to have breached this clause only because the Agency Head has put in place measures that:
    - (a) are consistent with Commonwealth law; and
    - (b) identify an opportunity for promotion as open to:
      - (i) an Aboriginal or a Torres Strait Islander within the meaning of the *Racial Discrimination Act 1975*; or
      - (ii) a person with an intellectual disability; and
    - (c) allow the promotion, as an APS employee, of a person of that kind.

#### 4.7 Temporary assignment of duties to APS employees

An Agency Head must put in place measures to ensure that an APS employee is not assigned to perform duties for a temporary period at a higher classification than the employee's classification unless the following matters have been considered:

- (a) the efficiency of the employee;
- (b) the relative importance to the Agency of the duties to be performed at the higher classification and the other duties to be performed in the Agency;
- (c) the length of the period in which the employee is to perform duties at the higher classification;
- (d) the expected cost of the employee performing duties at the higher classification;
- (e) the need for APS employees to be given the opportunity to gain experience in performing duties at a higher classification.

*Note* The usual basis for engagement of a person in an Agency is as an ongoing APS employee — see subs 22 (3) of the Act. See also the APS Value mentioned in para 10 (1) (n) of the Act: 'the APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government'.

## **Chapter 5            Basic requirements for procedures for determining breaches of the Code of Conduct**

### **5.1            Purpose of Chapter 5**

The purpose of this Chapter is to set out the basic procedural requirements that must be complied with by the procedures established by an Agency Head under subsection 15 (3) of the Act for determining whether an APS employee in the Agency has breached the Code of Conduct.

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

### **5.2            Information to be given to employee before determination is made**

Before any determination is made in relation to a suspected breach of the Code of Conduct by an APS employee, the employee must:

- (a) be informed of:
  - (i) the details of the suspected breach of the Code of Conduct (including any variation of those details); and
  - (ii) the sanctions that may be imposed on the employee under subsection 15 (1) of the Act (including any limitations on that power contained in regulations made for the purposes of subsection 15 (2) of the Act); and
- (b) be given reasonable opportunity to make a statement in relation to the suspected breach.

### **5.3            Determination process to be informal**

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

### **5.4            Person making determination to be independent and unbiased**

An Agency Head must take reasonable steps to ensure that the person who determines whether an APS employee has breached the Code of Conduct is, and appears to be, independent and unbiased.

### **5.5            Record of determination**

After a determination in relation to a suspected breach of the Code of Conduct by an APS employee is made, a written record stating whether the

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**Clause 5.6**

employee has been found to have breached the Code of Conduct must be prepared.

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

## **5.6 Appropriate procedures if basis of APS employee's engagement in an Agency changes or employee moves to a different Agency**

- (1) This clause applies if:
- (a) an APS employee in an Agency is suspected of having breached the Code of Conduct; and
  - (b) before any determination is made in relation to the suspected breach:
    - (i) the basis of the employee's engagement in the Agency changes; or
    - (ii) the employee moves to a different Agency.

*Note* Examples of a change in the basis of an APS employee's engagement in an Agency are as follows:

- (a) a change from engagement for a specified term, or for the duration of a specified task, to engagement as an ongoing APS employee;
  - (b) a change from engagement for duties that are irregular or intermittent to engagement as an ongoing APS employee.
- (2) A determination (if any) in relation to the suspected breach must be made:
- (a) if the basis of the employee's engagement in the Agency has changed — in accordance with the procedures applicable to the basis of the employee's engagement in the Agency at the time the process for determining whether the employee has breached the Code of Conduct is commenced; and
  - (b) if the employee has moved to a different Agency — in accordance with the procedures applicable in the Agency to which the employee has moved at the time the process for determining whether the employee has breached the Code of Conduct is commenced.

## Chapter 6 Senior Executive Service employment

### 6.1 SES employment matters — general

- (1) An Agency Head must exercise his or her employer powers in relation to the SES in a way that seeks to maintain and develop the leadership role and capabilities of the SES.
- (2) An Agency Head must put in place measures:
  - (a) to ensure that SES employees are effectively deployed in the Agency; and
  - (b) to monitor the skills required at the SES level in the Agency.

### 6.2 Minimum requirements in relation to decisions made about SES employees

- (1) This clause applies to any of the following decisions made by an Agency Head:
  - (a) promoting or engaging a person as an SES employee;
  - (b) in relation to the mobility of an SES employee;
  - (c) redeploying an SES employee with the employee's agreement;
  - (d) assigning an SES employee to duties at a lower classification (whether or not in the SES) without the employee's agreement;
  - (da) assigning (except on a temporary basis) an SES employee whose classification is a specialist classification to duties at the corresponding non-specialist classification;
  - (db) assigning (except on a temporary basis) an employee who is not an SES employee to duties at an SES classification in the same classification group as the employee's current classification;
  - (e) giving a notice to an SES employee under section 37 of the Act;
  - (f) terminating the employment of an SES employee under section 29 of the Act.
- (2) The Agency Head must ensure that the decision meets the minimum requirements.

*Note* Clauses 6.3 to 6.8 set out the minimum requirements.

### 6.3 Minimum requirements — promotion and engagement

- (1) A decision promoting or engaging a person as an SES employee meets the minimum requirements if:
  - (a) the requirements of Chapter 4 are satisfied in relation to the promotion or engagement; and
  - (b) unless the Commissioner decides otherwise, the opportunity to apply for the relevant employment, or similar employment, in the Agency has been advertised externally:



**Clause 6.6**

- (i) during the period of 12 months before the decision to promote or engage the person is made; and
  - (ii) as open to all eligible members of the community; and
  - (c) a representative of the Commissioner is a full participant in the selection process; and
  - (d) the representative certified that the selection process complied with the Act and these Directions; and
  - (e) the Commissioner has endorsed the representative's certification of the process.
- (2) A decision engaging a person as an SES employee also meets the minimum requirements if:
- (a) the engagement is for a specified term; and
  - (b) in the case of a person who is an ongoing APS employee:
    - (i) the person has resigned, or is to resign, from APS employment for the sole purpose of taking up the engagement; and
    - (ii) the person is to perform duties at the same classification as the person's current classification.

*Note* Under r 3.12 of the *Public Service Regulations 1999*, a decision promoting or engaging an SES employee must be notified in the *Gazette*.

#### **6.4 Minimum requirements — mobility**

A decision in relation to the mobility of an SES employee, either in an Agency or to another Agency, meets the minimum requirements if:

- (a) in the case of an employee who is to be moved in the Agency:
  - (i) the Agency Head has consulted with the employee about possible options for mobility; and
  - (ii) the Agency Head informs the Commissioner of the movement; and
- (b) in the case of an employee who is to be moved to another Agency:
  - (i) the Agency Head of the Agency from which the employee is to be moved has been consulted about, and agrees to, the movement; and
  - (ii) the Agency Head informs the Commissioner of the movement.

#### **6.5 Minimum requirements — redeployment**

A decision redeploying an SES employee with the employee's agreement meets the minimum requirements if the employee has been given information about available options for reassignment, including assignment to duties at a lower classification.

#### **6.6 Minimum requirements — involuntary assignment at lower classification**

- (1) A decision assigning an SES employee to duties at a lower classification without the employee's agreement meets the minimum requirements if an assessment has been made, having due regard to procedural fairness, that

**Clause 6.6A**

the assignment is justified on the basis of one or more of the circumstances set out in subsection 23 (4) of the Act.

**Note about reduction of an employee's classification**

Subsection 23 (4) of the Act provides that an Agency Head cannot reduce the classification of an APS employee without the employee's consent, except in the following circumstances:

- (a) as a sanction under section 15 of the Act;
- (b) in accordance with Commissioner's Directions made under section 36 of the Act;
- (c) on the ground that the employee is excess to the requirements of the Agency at the higher classification;
- (d) on the ground that the employee lacks, or has lost, an essential qualification for performing duties at the higher classification;
- (e) on the ground of non-performance, or unsatisfactory performance, of duties at the higher classification;
- (f) on the ground that the employee is unable to perform duties at the higher classification because of physical or mental incapacity;
- (g) in other circumstances prescribed by the Regulations.

- (2) A decision assigning an SES employee to duties at a lower classification without the employee's agreement also meets the minimum requirements if:
  - (a) the employee is to be assigned because of a change in the Agency's operational needs; and
  - (b) reasonable steps have been taken to identify duties in the Agency, at the employee's current classification, to which the employee could be assigned; and
  - (c) an assessment has been made, having due regard to procedural fairness, that the employee is not suitable for assignment to any duties identified; and
  - (d) the Commissioner agrees to the assignment of duties.

*Note* Under r 3.12 of the *Public Service Regulations 1999*, a decision assigning an SES employee to duties at a lower classification without the employee's agreement must be notified in the *Gazette*.

**6.6A Minimum requirements — assignment from specialist SES classification to corresponding non-specialist SES classification**

- (1) A decision assigning (except on a temporary basis) an SES employee whose classification is a specialist classification to duties at the corresponding non-specialist classification (whether or not the decision is part of a move to another Agency) meets the minimum requirements if:
  - (a) in the case of an employee who is assigned the duties as a result of a competitive selection process — the requirements set out in subclause 6.3 (1) are met; and

- (b) in any other case:
- (i) the Agency Head of the Agency in which the employee is to perform the duties is satisfied, on the basis of a formal assessment of the employee conducted by the Agency Head, that the employee has the necessary work-related qualities to perform the duties; and
  - (ii) the formal assessment has been conducted with the participation of the Commissioner's representative; and
  - (iii) the representative has certified that the formal assessment was conducted in accordance with the Act and these Directions; and
  - (iv) the Agency Head has informed the Commissioner of the assignment, the results of the formal assessment of the employee and the certification; and
  - (v) the Commissioner agrees to the assignment of duties.

- (2) In this clause:

*Commissioner's representative* means a person who is nominated by the Commissioner to participate in the conduct of the formal assessment.

#### **6.6B Minimum requirements — assignment from non-SES classification to SES classification**

- (1) A decision assigning (except on a temporary basis) an employee who is not an SES employee to duties at an SES classification in the same classification group as the employee's current classification (whether or not the decision is part of a move to another Agency) meets the minimum requirements if:
- (a) in the case of an employee who is assigned the duties as a result of a competitive selection process — the requirements set out in subclause 6.3 (1) are met; and
  - (b) in any other case:
    - (i) the Agency Head of the Agency in which the employee is to perform the duties is satisfied, on the basis of a formal assessment of the employee conducted by the Agency Head, that the employee has the necessary work-related qualities to perform the duties; and
    - (ii) the formal assessment has been conducted with the participation of the Commissioner's representative; and
    - (iii) the representative has certified that the formal assessment was conducted in accordance with the Act and these Directions; and
    - (iv) the Agency Head has informed the Commissioner of the assignment, the results of the formal assessment of the employee and the certification; and
    - (v) the Commissioner agrees to the assignment of duties.

- (2) In this clause:

*Commissioner's representative* means a person who is nominated by the Commissioner to participate in the conduct of the formal assessment.

**Clause 6.7**

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**6.7 Minimum requirements — retirement**

A decision to give a notice to an SES employee under section 37 of the Act meets the minimum requirements if:

- (a) the employee was engaged as an ongoing SES employee; and
- (b) the employee has been given information about available options for reassignment, including assignment to duties at a lower classification; and
- (c) the employee has been given access to independent financial advice and career counselling; and
- (d) the Commissioner has agreed to the amount to be paid to the employee if the employee retires within the period specified in the notice.

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

*Note 2* Under r 3.12 of the *Public Service Regulations 1999*, the retirement of an SES employee within the period specified in a notice given under s 37 of the Act must be notified in the *Gazette*.

**6.8 Minimum requirements — termination of employment**

A decision terminating the employment of an SES employee under section 29 of the Act meets the minimum requirements if:

- (a) an assessment has been made, having due regard to procedural fairness, that the termination is justified on the basis of one or more of the grounds mentioned in subsection 29 (3) of the Act; and
- (b) the employee has been given full information about other employment in the Agency that the Agency Head, having regard to the assessment, considered could be made available to the employee.

*Note 1* A notice terminating the employment of an APS employee under s 29 of the Act must be in writing and must specify the ground or grounds that are relied on for the termination.

*Note 2* Under s 38 of the Act, an Agency Head cannot terminate the employment of an SES employee unless the Commissioner has issued a certificate stating that the requirements of the Commissioner's Directions have been satisfied in respect of the proposed termination and that the Commissioner is of the opinion that the termination is in the public interest.

*Note 3* Under r 3.12 of the *Public Service Regulations 1999*, a decision terminating the employment of an SES employee under s 29 of the Act must be notified in the *Gazette*.

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## Chapter 7      Delegation

### 7.1A      Delegation by the Commissioner

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

### 7.1      Delegation by Agency Head

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

**Clause 7.1**

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

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## Schedule 1      **Circumstances in which Chapter 4 does not apply**

(subclause 4.1 (3))

1. The following circumstances exist in relation to the person:
  - (a) the person has previously been an employee of the Agency; and
  - (b) the person is receiving an invalidity pension from the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme; and
  - (c) the CSS Board or PSS Board has decided that the person is fit to return to work; and
  - (d) the engagement is at the person's former classification (or equivalent) or a lower classification.
2. The following circumstances exist in relation to the person:
  - (a) the person has previously been an employee of the Agency; and
  - (b) following an investigation of the circumstances of the ending of the person's employment, the Agency Head decides that the person's previous employment should not have ended; and
  - (c) the engagement is at the person's former classification or a lower classification.
3. The Australian Industrial Relations Commission has recommended the reinstatement of the person, or made an order for the reinstatement of the person, as an APS employee.
4. The Human Rights and Equal Opportunity Commission has recommended the reinstatement of the person as an APS employee.
5. The Federal Court of Australia has ordered the reinstatement of the person as an APS employee.
6. An application by the person for relief in relation to termination of employment is settled and the parties have agreed to the reinstatement of the person as an APS employee.
7. The person has applied for re-engagement under prescribed conditions in accordance with regulation 3.17 of the *Public Employment (Consequential and Transitional) Regulations 1999*.

## Schedule 2      Persons included as APS employees

(subclauses 4.2 (5) and 4.6A (6))

1. A person who:
  - (a) immediately before the commencement of the *Public Service Act 1999*, was a person to whom Division 2, 3 or 4 of Part IV of the *Public Service Act 1922* applied; and
  - (b) at the time the opportunity for employment is notified in the *Gazette*, is performing duties in the organisation in which the person was performing duties immediately before the commencement of the *Public Service Act 1999*.
2. An employee of the Australian Parliamentary Service.
3. A staff member of the Australian Trade Commission.
4. A staff member of the Albury-Wodonga Development Corporation.
5. An officer of the Australian Security Intelligence Organization.
6. An officer of the Australian Secret Intelligence Service.
7. An officer of the ACT Public Service.
8. A former officer of the APS who resigned on or after 2 August 1990, if:
  - (a) the resignation was for child rearing purposes and the person resigned after taking at least 12 weeks' maternity or parental leave; and
  - (b) the resignation took place within 2 years of the date of birth of the child for which the period of maternity or parental leave was granted; and
  - (c) the opportunity for employment was notified in the *Gazette* within 6 years from the date of birth of the child for which the maternity or parental leave was granted.
9. A former officer of the APS who:
  - (a) on 1 April 1987, was on leave without pay to work in the Northern Territory Public Service (*NTPS*); and
  - (b) resigned before 1 April 1988 to continue employment in the *NTPS*; and
  - (c) has continued to be employed by the *NTPS*.
10. A former officer of the APS who:
  - (a) accepted an offer of employment by a State Government or the Northern Territory Government; and
  - (b) resigned from the APS in accordance with the agreement between the Commonwealth and the Public Sector Union on staffing issues arising from the Commonwealth-State Disability Agreement; and
  - (c) has continued to be employed by the relevant State Government or the Northern Territory Government.



11. A former officer of the APS who, following the transfer of Repatriation General Hospitals at Hobart, Concord, Heidelberg and Daw Park:
- (a) accepted an offer of employment by the State Government of Tasmania, New South Wales, Victoria or South Australia; and
  - (b) resigned from the APS in accordance with subsection 15 (2) and section 17 of the *Repatriation Institutions (Transfer) Act 1992*; and
  - (c) has continued to be employed by the State Government from which the offer of employment was accepted.

## Dictionary

(clause 1.3)

*Note* Words and expressions defined in the *Public Service Act 1999* are indicated by an asterisk (\*) (see subcl 1.3 (2)). Minor changes from the Act are indicated by square brackets ([ ]).

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

**\*Agency** means:

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

**\*Agency Head** means:

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

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

**\*APS employee** means:

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

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

**APS Group 1 classification** means any of the classifications mentioned in column 2 of Group 1 of Schedule 1 to the Classification Rules.

**\*APS Values** means the values in subsection 10 (1) [of the Act].

**broadband** has the meaning given in subrule 7 (4) of the Classification Rules.

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

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

**\*Classification Rules** means the *Public Service Classification Rules 2000* made under section 23 of the Act, as in force from time to time.

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

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

**corresponding non-specialist classification**, in relation to a specialist classification, means:

- (a) for the specialist classification Senior Executive (Specialist) Band 1 — Senior Executive Band 1; and
- (b) for the specialist classification Senior Executive (Specialist) Band 2 — Senior Executive Band 2; and
- (c) for the specialist classification Senior Executive (Specialist) Band 3 — Senior Executive Band 3.

**employee** means an APS employee.

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**employment** means APS employment.

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

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

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

**merit** see subsection 10 (2) of the Act and the note after subclause 4.1 (1).

**non-APS Commonwealth employer** includes:

- (a) the Australian Defence Force; and
- (b) any other non-APS Commonwealth employer, whether or not the employer is established under an Act; and
- (c) any other employer (including a company) in which the Commonwealth has a controlling interest.

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

**operational classification**, in relation to a training classification, means a classification mentioned in column 3 of Schedule 2 to the Classification Rules that relates to that training classification.

**promotion**, for an ongoing APS employee, has the meaning given by clause 4.6.

**redundancy benefit** see clause 4.4.

**Regulations** means the *Public Service Regulations 1999*.

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

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

*Note* See r 6 of the Classification Rules in relation to the classification of SES employees.

**similar employment**, in relation to an opportunity for employment notified in the *Gazette*, means employment that comprises similar duties, is at the same classification, and is to be performed in a similar location, as the employment notified in the *Gazette*.

**specialist classification**, for an SES employee, means any of the following classifications:

- (a) Senior Executive (Specialist) Band 1;
- (b) Senior Executive (Specialist) Band 2;
- (c) Senior Executive (Specialist) Band 3.

**training classification** means a classification mentioned in column 2 of Schedule 2 to the Classification Rules.

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

**Table of Instruments****Notes to the *Public Service Commissioner's Directions 1999*****Note 1**

The *Public Service Commissioner's Directions 1999* (in force under subsection 11 (1), subsection 15 (4) and section 36 of the *Public Service Act 1999*) as shown in this compilation is amended as indicated in the Tables below.

**Table of Instruments**

<b>Title</b>	<b>Date of notification in Gazette</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
<i>Public Service Commissioner's Directions 1999</i>	5 Dec 1999 (see <i>Gazette</i> 1999, No. S585)	5 Dec 1999 (see c. 1.2)	
<i>Public Service Commissioner's Amendment Directions 2000 (No. 1)</i>	21 Dec 2000 (see <i>Gazette</i> 2000, No. S647)	21 Dec 2000	—
<i>Public Service Commissioner's Amendment Directions 2002 (No. 1)</i>	18 June 2002 (see <i>Gazette</i> 2002, No. S199)	18 June 2002	—
<i>Public Service Commissioner's Amendment Directions 2003 (No. 1)</i>	18 Mar 2003 (see <i>Gazette</i> 2003, No. S80)	18 Mar 2003	—
<i>Public Service Commissioner's Amendment Directions 2003 (No. 2)</i>	15 Sept 2003 (see <i>Gazette</i> 2003, No. S349)	15 Sept 2003	—
<i>Public Service Commissioner's Amendment Directions 2003 (No. 3)</i>	23 Dec 2003 (see <i>Gazette</i> 2003, No. S507)	23 Dec 2003	—
<i>Public Service Commissioner's Amendment Directions 2004 (No. 1)</i>	17 June 2004 (see <i>Gazette</i> 2004, No. PS24)	8 June 2004	—

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

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

<b>Provision affected</b>	<b>How affected</b>
<b>Chapter 2</b>	
C. 2.12 .....	am. 2000 No. 1
<b>Chapter 4</b>	
C. 4.1 .....	am. 2004 No. 1
Note to c. 4.1 (3) .....	rs. 2000 No. 1
C. 4.2 .....	am. 2000 No. 1; 2003 Nos. 1 and 3
C. 4.2A .....	ad. 2003 No. 1
Note to c. 4.2A (4) .....	rep. 2004 No. 1
C. 4.3 .....	am. 2000 No. 1
C. 4.4 .....	rs. 2002 No. 1
C. 4.4A .....	ad. 2002 No. 1 rs. 2003 No. 2
C. 4.4B .....	ad. 2002 No. 1 rep. 2003 No. 2
C. 4.5 .....	am. 2000 No. 1
C. 4.6 .....	rs. 2000 No. 1
C. 4.6A .....	ad. 2000 No. 1
<b>Chapter 6</b>	
C. 6.2 .....	am. 2000 No. 1
C. 6.6 .....	am. 2000 No. 1
C. 6.6A .....	ad. 2000 No. 1
C. 6.6B .....	ad. 2000 No. 1
<b>Chapter 7</b>	
C. 7.1A .....	ad. 2000 No. 1
Heading to c. 7.1 .....	rs. 2000 No. 1
<b>Schedule 1</b>	
Schedule 1 .....	am. 2000 No. 1
<b>Schedule 2</b>	
Heading to Schedule 2 .....	rs. 2000 No. 1
Dictionary .....	am. 2000 No. 1; 2002 No. 1; 2004 No. 1