



Public Service Act 1999

Act No. 147 of 1999 as amended

This compilation was prepared on 1 January 2005
taking into account amendments up to Act No. 140 of 2003

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to provide for the establishment and management of the Australian Public Service, and for other purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Public Service Act 1999*.

Note: See also the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

2 Commencement [see Note 1]

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects of this Act

The main objects of this 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 4

4 This Act binds the Crown

This Act binds the Crown in right of the Commonwealth, but does not make the Crown liable to be prosecuted for an offence.

5 This Act extends to things outside Australia

- (1) This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).
- (2) This Act extends to all the Territories.

6 Engagement of employees in Department or Executive Agency

- (1) All persons engaged on behalf of the Commonwealth as employees to perform functions in a Department or Executive Agency must be engaged under this Act, or under the authority of another Act.
- (2) Subsection (1) does not apply to:
 - (a) persons engaged on an honorary basis; or
 - (b) persons engaged to perform services in the Australian Secret Intelligence Service.
- (3) This section does not, by implication, affect any power that an Agency Head might otherwise have to engage persons as independent contractors.

Part 2—Interpretation

7 Interpretation

In this Act, unless the contrary intention appears:

acting SES employee means a non-SES employee who is acting in a position usually occupied by an SES employee.

Agency means:

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

Agency Head means:

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

Agency Minister means:

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

APS means the Australian Public Service established by section 9.

APS employee means:

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

APS employment means employment as an APS employee.

APS Values means the values in section 10.

- (3) If an Agency Head receives any non-Commonwealth remuneration for performing duties as an Agency Head, then the Agency Minister may give a notice in writing to the Agency Head in relation to the whole, or a specified part, of the remuneration.
- (4) The amount notified by the Agency Minister:
 - (a) is taken to have been received by the Agency Head on behalf of the Commonwealth; and
 - (b) may be recovered by the Commonwealth from the Agency Head as a debt in a court of competent jurisdiction.
- (5) In this section:

non-Commonwealth remuneration means any remuneration from a person other than the Commonwealth.

32 Right of return for election candidates

- (1) This section applies to a person if:
 - (a) the person resigned as an APS employee in order to contest an election prescribed by the regulations; and
 - (b) the resignation took effect not earlier than 6 months before the closing date for nominations; and
 - (c) the person was a candidate in the election but failed to be elected.
- (2) The person is entitled to be again engaged as an APS employee, in accordance with the regulations and within the time limits prescribed by the regulations.

33 Review of actions

- (1) An APS employee is entitled to review, in accordance with the regulations, of any APS action that relates to his or her APS employment. However, an APS employee is not entitled to review under this section of APS action that consists of the termination of the employee's employment.
- (2) The regulations may prescribe exceptions to the entitlement.

Note: For example, the regulations might provide that there is not entitlement to review if the application for review is frivolous or vexatious.

Section 32

- (3) Without limiting subsection (1), regulations made for the purposes of that subsection may provide for the powers available to the Merit Protection Commissioner, or any other person or body, when conducting a review under the regulations.
- (4) Regulations for the purposes of subsection (1):
- (a) may provide for an initial review to be conducted within the responsible Agency; and
 - (b) may provide that applications for review of particular kinds of APS action are to be made directly to the Merit Protection Commissioner; and
 - (c) must provide for an application for review to be referred to the Merit Protection Commissioner if the applicant is not satisfied with the outcome of an initial review within the responsible Agency; and
 - (d) in the case of a review following an application or referral to the Merit Protection Commissioner, must provide for the review to be conducted by a person nominated by the Merit Protection Commissioner or by a 3 member committee constituted in accordance with the regulations.
- (5) A person or body that has conducted a review under this section may make recommendations in a report on the review but does not have power to make any binding decision as a result of the review, except as provided by the regulations.
- (6) If the Merit Protection Commissioner is not satisfied with the response to recommendations contained in a report on a review under this section, the Merit Protection Commissioner may, after consulting the Public Service Minister, give a report on the matter to the Agency Minister of the responsible Agency and to either or both of the following:
- (a) the Prime Minister;
 - (b) the Presiding Officers, for presentation to the Parliament.
- (7) In this section:

action includes a refusal or failure to act.

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

responsible Agency, in relation to APS action, means the Agency in which the person who did the action was at the time of the action.

Division 3—Heads of Mission

39 Heads of Mission

- (1) The appointment of a Head of Mission by the Governor-General cannot take effect unless the person is an APS employee or a person employed under the *Australian Trade Commission Act 1985*.
- (2) An Agency Head must comply with any direction in writing by the Agency Minister:
 - (a) directing the Agency Head to engage a particular person as an APS employee so that the person can become a Head of Mission; or
 - (b) directing the Agency Head to assign particular duties to an APS employee who has been appointed as a Head of Mission.

Part 5—The Public Service Commissioner

Division 1—Commissioner's functions etc.

40 Public Service Commissioner

- (1) There is to be a Public Service Commissioner.
- (2) The staff necessary to assist the Commissioner must be persons engaged under this Act.
- (3) For the purposes of this Act:
 - (a) the Commissioner and the APS employees assisting the Commissioner together constitute a Statutory Agency; and
 - (b) the Commissioner is the Head of that Statutory Agency.

41 Commissioner's functions

- (1) The Commissioner's functions include the following functions:
 - (a) to evaluate the extent to which Agencies incorporate and uphold the APS Values;
 - (b) to evaluate the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct;
 - (c) to inquire into reports made to the Commissioner (or to a person authorised by the Commissioner) as mentioned in section 16;
 - (d) to consider and report to the Public Service Minister on any matter relating to the APS (including such a matter referred to the Commissioner by the Public Service Minister);
 - (e) to promote the APS Values and the Code of Conduct;
 - (f) to inquire into alleged breaches of the Code of Conduct by Agency Heads and to report to the appropriate authority on the results of such enquiries (including, where relevant, recommendations for sanctions);
 - (g) to develop, promote, review and evaluate APS employment policies and practices;

Section 42

- (h) to facilitate continuous improvement in people management throughout the APS;
 - (i) to co-ordinate and support APS-wide training and career development opportunities in the APS;
 - (j) to contribute to, and foster, leadership in the APS;
 - (k) to provide advice and assistance on public service matters to Agencies on request;
 - (l) any function prescribed by the regulations.
- (2) A report by the Commissioner under subsection (1) may include recommendations.
- (3) For the purposes of paragraph (1)(f), the *appropriate authority* for a report about an Agency Head is:
- (a) the Prime Minister, if the Agency Head is a Secretary; or
 - (b) the Agency Minister, if the Agency Head is the Head of an Executive Agency; or
 - (c) the Presiding Officers, if the Agency Head is the Head of a Statutory Agency that is prescribed by the regulations for the purposes of this paragraph; or
 - (d) the Agency Minister, if the Agency Head is the Head of a Statutory Agency that is not prescribed by the regulations for the purposes of paragraph (c).

42 Commissioner's Directions

- (1) Commissioner's Directions cannot create offences or impose penalties.
- (2) Agency Heads and APS employees must comply with Commissioner's Directions.
- (3) Commissioner's Directions may be made by applying, adopting or incorporating any matter in Classification Rules as in force from time to time, or at a particular time.
- (4) Commissioner's directions are disallowable non-legislative instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*.