



Express law fast track information for clients

1 March 2012

This Express Law replaces the version sent earlier today which incorrectly referred to the APS Commissioner instead of the Merit Protection Commissioner in 2 places when discussing the proposed amendments around the Merit Protection Commissioner's powers of inquiry. This version also incorporates the titles of the proposed new APS Values.

Proposed new oversight, review and conduct provisions for the Australian Public Service

On 1 March 2012, the Government introduced the [Public Service Amendment Bill 2012](#) into the House of Representatives to amend the *Public Service Act 1999*.

The Bill proposes to give the Public Service Commissioner extended functions in relation to the APS, including new powers of oversight and review. It allows for the establishment of a framework for reviewing the performance of secretaries of departments and would provide statutory recognition of the role and functions of the Secretaries Board. The Bill also proposes to replace the existing APS Values, with new Values and Employment Principles, and reorganise employment categories in the APS into two types: ongoing and temporary.

The Australian Public Service Commissioner

Expanded functions

The Public Service Commissioner would be known as the Australian Public Service Commissioner (the APS Commissioner). The core functions of the APS Commissioner would be:

- strengthening the professionalism of the APS and facilitate continuous improvement in workforce management in the APS
- upholding high standards of integrity and conduct in the APS
- monitoring, reviewing and reporting on APS capabilities within and between Agencies to promote high standards of accountability, effectiveness and performance.

New powers of review

The APS Commissioner would have 2 new powers of review – a *systems* review and a *special* review.

The Prime Minister would be given a power to direct the APS Commissioner to conduct a *systems* review of any matter relating to an agency, including its management, organisational systems, structures or processes, and the functional relationships between 2 or more agencies.

The Prime Minister would also have a power to direct the APS Commissioner to conduct a *special* review of any matter relating to an agency or the functional relationships between 2 or more agencies.

Special Commissioners

The Bill provides for the appointment by the Governor-General of Special Commissioners to assist the APS Commissioner in conducting all or part of a systems review or special review. This power would be exercisable on the recommendation of the Prime Minister (following consultation with the APS Commissioner).

Protection of information

The Bill establishes limits on the disclosure of information obtained by the APS Commissioner or Merit Protection Commissioner, their delegates, Special Commissioners or others assisting those officers in the exercise of certain powers. The Bill also limits the use of material that a person has disclosed to the APS Commissioner or Merit Protection Commissioner as evidence against that person in certain proceedings.

Regulations can be made to authorise the use or disclosure of personal information in specific circumstances or to impose restrictions on the collection, storage, access, further use or further disclosure of personal information that has been used or disclosed.

Immunity from suit

The Bill gives the APS Commissioner or Merit Protection Commissioner, their delegates, Special Commissioners or others assisting those officers legal immunity for anything done, or omitted to be done, in good faith by them in the performance or purported performance of certain functions or duties.

Secretaries of departments

Role, responsibilities and performance review

The Bill provides a detailed outline of the role and responsibilities of secretaries of departments and requires an annual review of their performance . The Secretary of the Department of the Prime Minister and Cabinet and the APS Commissioner would establish a framework for carrying out the reviews.

Secretaries Board

The Bill also provides statutory recognition of the Secretaries Board, made up of the Secretary of the Department of the Prime Minister and Cabinet as Chair, the secretary of each other department, the APS Commissioner and other persons that the Secretary of the Department of the Prime Minister and Cabinet nominates.

The Secretaries Board will have responsibility for the stewardship of the APS, develop and implement strategies to improve the APS, identify strategic priorities for the APS and consider issues that affect the APS.

New APS Values and Employment Principles

The Bill proposes to replace the existing 15 APS Values with 5 new Values and the Employment Principles (c11 10 and 10A). The 5 new APS Values are as follows:

- **Committed to Service** - The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.
- **Ethical** - The APS demonstrates leadership, is trustworthy and acts with integrity in all that it does.
- **Respectful** - The APS respects all people, including their rights and their heritage.
- **Accountable** - The APS is open and accountable to the Australian community under the law and within the framework of ministerial responsibility.
- **Impartial** - The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

The new Employment Principles provide for, among other things, a fair and flexible APS that makes its engagement and promotion decisions based on merit. The Employment Principles define 'merit' for this purpose.

Agency heads and APS employees will be required to uphold the new APS Values and Employment Principles. Agency heads and SES employees will also be required to promote the APS Values and Employment Principles.

Code of Conduct

The Code of Conduct provisions would be amended so that they apply to former APS employees to a limited extent. Statutory office holders would also be bound by the Code of Conduct, subject to any limits provided by regulation.

Agency heads would be required to establish procedures for determining whether a former APS employee has breached the Code of Conduct.

The APS Commissioner would have the power to inquire into whether a former or current APS employee has breached the Code of Conduct. The new powers of inquiry could be undertaken at the request of the Prime Minister or agency head, and where the Commissioner considers it appropriate to do so.

The Merit Protection Commissioner would have the same powers of inquiry. These powers would only be exercisable at the request of an agency head and where the Merit Protection Commissioner considers it appropriate. The Merit Protection Commissioner must also have the agreement of the APS employee, or former employee, to conduct the inquiry.

There would be no power to impose sanctions on former APS employees.

The Bill also provides that a person will have been taken to have breached the Code of Conduct if, in connection with the person's engagement as an APS employee, they are found to have:

- knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth
- wilfully failed to disclose to another APS employee, or to a person acting on behalf of the Commonwealth, information that the person knew, or ought reasonably to have known, was relevant, or
- otherwise failed to behave honestly and with integrity.

Changes to APS employment categories

The Bill provides for only 2 categories of APS employees – ongoing and ‘temporary’. The ‘temporary’ category of employment would cover all employment for specified terms and tasks as well as irregular and intermittent employment.

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