



Express law fast track information for clients

11 February 2013

This Express Law replaces the version sent by email on 11 February 2013. It has been updated to make clear that the Merit Protection Commissioner's power to inquire into whether a former or current APS employee has breached the Code of Conduct is only exercisable if *all* of the listed elements are satisfied.

Amendments to the *Public Service Act 1999*

On 7 February 2013 Parliament passed the [Public Service Amendment Bill 2012](#), which will make a number of amendments to the *Public Service Act 1999*.

The Bill replaces the existing APS Values with new Values and Employment Principles. The Bill gives the Australian Public Service Commissioner extended functions in relation to the APS, including new powers of oversight and review. It also allows for the establishment of a framework for reviewing the performance of secretaries of departments, sets out their roles and responsibilities, and provides statutory recognition of the role and functions of the Secretaries Board. The Bill also amends the role of the Senior Executive Service and sets out APS-wide standards of leadership. Finally, the Bill makes a range of practical improvements to the Public Service Act to address a number of operational matters that have arisen since the last major changes in 1999.

The Bill will commence on a day to be fixed by proclamation or within 6 months of Royal Assent, whichever is earlier.

There will need to be some changes to the Public Service Regulations 1999 and the Public Service Commissioner's Directions 1999 as a result of the amendments made by the Bill. We expect details of amendments to these instruments to be published in due course.

New APS Values and Employment Principles

The Bill proposes to replace the existing 15 APS Values with 5 new Values and the Employment Principles (cll 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 largely capture the current APS Values that relate to employment and workplace relationships, and are as follows:

The APS is a career-based public service that:

- makes fair employment decisions with a fair system of review
- recognises that the usual basis for engagement is as an ongoing APS employee
- makes decisions relating to engagement and promotion that are based on merit (the Employment Principles also define 'merit' for this purpose)
- requires effective performance from each employee
- provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued
- provides workplaces that are free from discrimination, patronage and favouritism
- recognises the diversity of the Australian community and fosters diversity in the workplace.

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 Values and Employment Principles.

Code of Conduct

The Code of Conduct provisions have been amended so that the first 4 elements apply 'in connection with' APS employment, rather than 'in the course of' APS employment. The amended Code also requires APS employees to uphold the good reputation of their agency, as well as of the APS, at all times.

The Code of Conduct provisions have been amended so that they apply to former APS employees to a limited extent.

At the request of the Prime Minister or agency head, and where the APS Commissioner considers it appropriate to do so, the Commissioner has the power to inquire into whether a former or current APS employee has breached the Code of Conduct.

The Merit Protection Commissioner has the same powers of inquiry, but these are only exercisable:

- where requested by the agency head *and*
- the APS employee, or former employee, has agreed to the Merit Protection Commissioner undertaking the inquiry *and*
- the Merit Protection Commissioner considers it appropriate to do so.

There is no power for either Commissioner or an agency head to impose sanctions on former APS employees.

The Bill also provides that a person will be taken to have breached the Code of Conduct if the person is found to have done any of the following, in connection with their employment, before being engaged as an APS employee:

- 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
- otherwise failed to behave honestly and with integrity.

The Australian Public Service Commissioner

Expanded functions

The Public Service Commissioner will be known as the Australian Public Service Commissioner (the APS Commissioner). The Bill strengthens the role of the APS Commissioner as a central authority for APS development and reform, taking a leading part in ensuring that the APS has the organisational and workforce capability to meet future needs. The core functions of the APS Commissioner would be:

- strengthening the professionalism of the APS and facilitating 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 – 'systems reviews' and 'special reviews'.

These reviews, initiated at the Prime Minister's direction, would allow the APS Commissioner to review any matter relating to an agency, including, but not limited to, management and organisational systems, structures or processes in an agency and the functional relationships between 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).

Secretaries of departments

Role, responsibilities and performance review

The Bill provides a detailed outline of the role and responsibilities of secretaries of departments, particularly in relation to their stewardship of the APS, 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. The Bill provides that secretaries be appointed, and have their appointment terminated, by the Governor-General, rather than the Prime Minister, and requires Secretaries to be employed for a minimum term of 5 years.

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.

The Senior Executive Service

The Bill clarifies the roles of the Senior Executive Service (SES). In particular, the Bill would require the SES to provide APS-wide strategic leadership of the highest quality that contributes to an effective and cohesive APS.

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.

Text of the Bill is available at:

www.aph.gov.au

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