

PUBLIC SERVICE AMENDMENT BILL

EXPOSURE DRAFT EXPLANATORY MATERIALS

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INTRODUCTION

This draft explanatory material accompanies an Exposure Draft of the Public Service Amendment Bill, which is proposed to amend the *Public Service Act 1999* (Cth).

The APS Reform Office invites interested parties to make written submissions on the Exposure Draft Public Service Amendment Bill and explanatory material by 31 May 2023.

How to have your say

Written submissions on the proposed changes are requested by 31 May 2023 through the [APS Reform website](#).

You may wish to provide us with feedback on whether you support the proposed elements and include any additional comments or suggestions to consider in finalising the Public Service Amendment Bill, or to inform the implementation subject to passage of legislation.

PUBLIC SERVICE AMENDMENT BILL

GENERAL OUTLINE

The Public Service Amendment Bill (the Bill) would amend the *Public Service Act 1999* (Cth) (the PS Act) to deliver enduring transformational change, and ensure the Australian Public Service (APS) is well placed to serve the Australian Government (the Government), the Parliament and the Australian public into the future.

The *Independent Review of the Australian Public Service* (the Thodey Review), delivered in 2019, outlined detailed recommendations for change and called for a public service that is trusted, future-fit, responsive and agile to meet the changing needs of government and the community with professionalism and integrity.

The Bill is a key element of the Government's APS Reform agenda, which builds on the findings of the Thodey Review and gives effect to a number of its recommendations.

The APS Reform agenda has four priority areas, to create an APS that:

1. embodies integrity in everything it does
2. puts people and business at the centre of policy and services
3. is a model employer
4. has the capability to do its job well.

To achieve this, the Bill proposes amendments to the PS Act that will: strengthen the APS' core purpose and values; build the capability and expertise of the APS; and support good governance, accountability and transparency.

Strengthening the core purpose and values of the APS

The APS is a complex organisation, made up of tens of thousands of people working across dozens of departments and agencies. To ensure the APS works as an integrated organisation – as one APS – the Thodey Review recommended strengthening the APS' purpose and values, and promoting a shared understanding of the APS and its role alongside the Executive and Parliament.

Amendments in the Bill deliver on this intent and support the Government's APS Reform priority to create an APS that acts with integrity in everything it does. Initiatives in this area will build public trust and strengthen standards of integrity in our federal government.

Specifically, the Bill proposes to:

- include a new APS Value of Stewardship, highlighting the important and enduring role that all public servants play in stewarding the APS, and serving Government, the Parliament, and the Australian public, now and into the future (see Item 2).
- add a requirement for Secretaries Board to cause a clear and inspiring APS purpose statement to be prepared, to create a unified vision of what the APS aspires to be and do (see Item 3).
- add a requirement for Agency Heads to uphold and promote the APS Purpose Statement (see Items 4 and 5).
- clarify the operation of section 19 of the PS Act to make explicit that Ministers must not direct Agency Heads on individual employment matters and thereby reinforce the apolitical role of the APS (see Item 6).

Building the capability and expertise of the APS

Talented, committed people are the foundation of the APS but the Thodey Review noted concerns that capability has eroded over time. To be future-fit, the APS needs to build the capability of its staff to create a skilled and confident workforce, and remain a robust and trusted institution that delivers modern policy and service solutions for decades to come.

In addition to investing in its own capability and expertise, the APS needs to work in genuine partnership with the public to solve problems and co-design the best solutions to improve the lives of the Australian community.

Amendments in the Bill embed an expectation that the APS continuously assesses its strengths and weaknesses, and takes action to uplift its capability over time, including by engaging with the Australian public. These changes deliver on the APS Reform priorities for an APS that has the capability to do its job well, and that puts people and business at the centre of policy and services. Specifically, the Bill proposes to:

- require regular, independent and transparent capability reviews (see Item 8).
- require the Secretaries Board to cause regular, evidence-based and public engagement driven long-term insights reports, developed through a process of public consultation (see Item 10).

Supporting good governance, accountability and transparency

The Thodey Review noted the importance for the APS of external scrutiny to measure performance, strengthen accountability and drive continuous improvement. Transparency can shine a light on the culture and make-up of the APS, and prompt changes to ensure it remains a great place to work, offering staff a quality employee experience in a dynamic workplace that sets the standard for diversity and inclusion. Best-practice governance arrangements should also ensure APS employees are empowered and supported in their roles.

Amendments in the Bill address these objectives and deliver on the APS Reform priority to create an APS that is a model employer. Specifically, the Bill proposes to:

- require Agency Heads to put in place measures to enable decision-making to occur at the lowest appropriate classification (see Item 7).
- require Agencies to publish annual APS Employee Census results and respond to relevant findings through an action plan (see Item 12).

The Bill also contains a technical amendment to the PS Act (see Item 11) which is consequential to the making of the *Public Service Regulations 2023* (Cth), following the sun-setting of the *Public Service Regulations 1999* (Cth).

Details of these amendments are set out below in the notes on Schedule 1 to the Bill.

Background

The Thodey Review, delivered in 2019, was informed by engagement with more than 11,000 individuals and organisations and over 400 consultations. Building on the Thodey Review, the Bill has been developed through multiple streams of complementary consultation, including: public consultation on Stewardship as an APS Value; targeted consultation with Agencies, APS employee networks and representative groups on the proposed amendments; and public consultation currently underway (commenced 3 May 2023) on an overview of the key initiatives included in the Bill.

The supporting statement for the new APS Value of Stewardship was developed using the key themes that emerged from public consultation with APS employees and the Australian community. Over 1,500 responses were received through this consultation between 24 March and 28 April 2023. Stewardship as an APS Value resonated strongly, with APS employee respondents at every level being able to identify examples of the Value in practice.

Overwhelmingly, the responses to the public consultation focussed on stewardship representing the need of the APS to look ahead and considers the long-term interests of Australians. The responses also stressed the need for the APS to maintain the knowledge and capability to support its functions. The themes of 'Taking Care', 'Long-Term', 'Future Generations', 'Maintaining Knowledge' and 'Responsible Management' emerge clearly and strongly from the consultation.

List of abbreviations used

This explanatory material uses the following abbreviations and acronyms.

APS	Australian Public Service
PS Act	<i>Public Service Act 1999</i>
The Thodey Review	<i>The Independent Review of the APS</i>
The Prime Minister's Department	The Department of the Prime Minister and Cabinet
The Commissioner	The Australian Public Service Commissioner
SES	Senior Executive Service
APSC	Australian Public Service Commission
Commissioner's Directions	The Australian Public Service Commissioner's Directions

NOTES ON CLAUSES

Clause 1 – Short title

1. Upon enactment, the Bill will be known as the *Public Service Amendment Act 2023*.

Clause 2 – Commencement

2. This clause provides for the commencement of each provision in the Bill, as set out in the table.
3. The whole of the Bill will commence on a single day fixed by proclamation. If the provisions do not commence within six months beginning on the day the Act receives Royal Assent, the provisions will commence the day after the end of that 6 month period.
4. If the Bill is passed ahead of 1 January 2024, the intended commencement date is 1 January 2024.

Clause 3 – Schedules

5. This is a formal clause that enables an Act specified in a Schedule of the Bill to be amended in accordance with that Schedule.

SCHEDULE 1 – AMENDMENTS

Item 1

6. Existing section 7 'Interpretation' outlines the meaning of terms used in the PS Act, unless a contrary intention appears.
7. Item 1 would inset a new term that is relied on in other provisions throughout the Bill. This is necessary to support the transparent publication of materials as prescribed in new sections 10B, 44A, 44B, 64A and 78A.
8. Item 1 would provide that 'APS Purpose Statement' has the same meaning as described in new section 10B (inserted by Item 3) and 'State of the Service report' the same meaning as referred to in new section 78B (inserted by Item 12).

Item 2

9. This item inserts new subsection 10(6) at the end of section 10.

Section 10 – APS Values

10. Proposed subsection 10(6) would introduce a new APS Value of Stewardship alongside the existing APS Values, which APS employees must uphold at all times (subsection 11(a)), and Agency Heads must uphold and promote (subsection 12). The proposal responds to the objectives of recommendation 5 of the Thodey review which called for the core principles and APS Values to be strengthened, by reaffirming the important and enduring role that all APS employees play in serving successive Governments, the Parliament and the Australian public.

11. Currently section 10 sets out five existing APS Values: Committed to service; Ethical; Respectful; Accountable; and Impartial. Each headline Value is clarified in the section by a supporting statement. The APS Values are designed to:

- provide the philosophical underpinning for the APS;
- reflect public expectations of the relationship between public servants and the Government, the Parliament and the Australian community; and
- articulate the culture and operating ethos of the APS.

12. Each headline Value is clarified in the section by a supporting statement. The scope and application of the APS Values may also be determined where necessary in Directions issued by the Commissioner under section 11 of the PS Act. The *Australian Public Service Commissioner's Directions 2022* set out these details for the existing APS Values.

13. Proposed new subsection 10(6) provides that the Stewardship Value means 'the APS builds capability and institutional knowledge, and supports the public interest now and into the future by understanding the long-term impacts of what it does.'

14. Proposed subsection 10(6) complements the stewardship duties of Secretaries (subsection 57(c)), Secretaries Board (subsection 64(3)(a)); and the APS Commissioner (subsection 41(2)(g)), by supporting APS employees to understand their role and individual contributions in stewarding the public service.

Item 3

15. This item introduces a new section 10B, after section 10A.

Section 10B – APS Purpose Statement

16. Proposed section 10B describes the APS Purpose Statement. The proposal would implement Recommendation 6 of the Thodey Review to develop and embed an inspiring purpose and vision to unite the APS in serving the nation. The Thodey Review reflected that Agency-specific purpose statements are used to good effect, but may also potentially contribute to an APS that delivers Agency-specific, rather than whole-of-service outcomes.

17. This proposal will require the Secretaries Board to oversee the development of a unifying purpose statement for the APS which will resonate with all public servants and makes it clear what the APS aspires to. A shared and unifying purpose will provide a foundation for coherent leadership, service alignment and shared execution across the APS.
18. Proposed subsection 10B(3) provides that the APS Purpose Statement must be consistent with the APS Values (section 10) and the APS Employment Principles (section 10A), which set out statements about the essential character and philosophy of the APS, defining what the APS is, and how it should operate.
19. Proposed subsection 10B(7) will ensure the APS Purpose Statement is contemporary and responsive to the changing views and expectations of government and the community, with the APS Purpose Statement reviewed at least once every 5 years.
20. Proposed subsections 10B(4) and 10B(8) provide that the Secretaries Board must be satisfied that appropriate consultation has occurred with the APS and the public before creating (10B(4)), or reviewing (10B(8)) the APS Purpose Statement. The provision for consultation accounts for the need for the diverse views and expectations of the public and the APS to inform the design of a meaningful and unifying APS Purpose Statement. This will help ensure the Purpose Statement develops a genuinely unified and collaborative culture across the different functions, responsibilities and teams that comprise the APS.
21. The consultation requirement at 10B(4) does not apply to a variation of the Purpose Statement if the variation is of a minor nature (10B(5)), for example, to remedy an error or a defect, or for technical corrections such as typographical errors.
22. Proposed subsection 10B(6) provides that the APS Purpose Statement must be published on an Agency website, for example the Department of the Prime Minister and Cabinet website, or the Australian Public Service Commission website. This will ensure transparency and drive accountability for the APS to deliver on that purpose, building public trust in government.
23. Proposed subsections 10B(10) and (11) identify that the APS Purpose Statement and its variations are not legislative instruments. This reflects that the APS Purpose Statement is an aspirational statement and while it is enduring, requires flexibility to remain contemporary and adapt to change over time.
24. Proposed subsection 10B(12) clarifies that this section does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* (Cth) namely to make, repeal, rescind, revoke, amend or vary an instrument provided for in other sections of the PS Act.
25. Agency Heads will also be required to uphold and promote an APS Purpose Statement (items 3 to 4 refer), as a critical step in driving a unified sense of service.

Items 4 and 5

Section 12 Agency Heads must promote the APS Values, the APS Employment Principles and the APS Purpose Statement

26. Items 4 and 5 would remove the words ‘APS Values and APS Employment Principles’ and replace them with ‘the APS Values, the APS Employment Principles and the APS Purpose Statement’ in both the title and heading of section 12 of the PS Act.

27. This ensures an Agency Head is required to uphold and promote the APS Purpose Statement to drive a unified sense of service, in addition to the APS Values and Employment Principles, and reflects the APS Purpose Statement as defined in proposed section 10B.

Item 6

Section 19 Limitation on Ministerial directions to Agency Head

28. This item removes the words ‘An Agency Head is not subject to direction by any Minister’ and replaces them with ‘A Minister must not direct an Agency Head’.

29. Currently section 19 provides that an Agency Head is not subject to directions by Ministers in relation to individual APS staffing decisions, such as engagement of individual APS employees (subsection 22) and termination of employment of individual APS employees (subsection 29).

30. The purpose of this amendment is to reaffirm the apolitical role of the APS by making it explicit that Ministers cannot direct Agency Heads on employment matters. Creating clear limits on Ministerial involvement in APS employment matters is critical to ensuring integrity in the exercise of Agency Head powers. This amendment is intended to ensure that if, for example, an Agency Head selects a candidate for engagement following a merit based process, a Minister must not direct that Agency Head to engage another individual in place of the preferred candidate.

31. For clarity, section 19 includes both APS employees as defined in section 7, and SES employees as defined in section 34 of the PS Act.

Item 7

32. This item inserts new subsection 19A at the end of Part 3.

Section 19A Agency Heads to create a work environment that enables decisions to be made by APS employees with the lowest appropriate classification

33. Proposed new section 19A introduces a requirement on Agency Heads to implement measures that create a work environment that enables decision-making to be undertaken at the lowest appropriate classification. The proposal responds to recommendation 32 of the Thodey Review which called for the APS to adopt best-practice ways of working and improving decision-making, by ensuring Agency Heads empower APS employees to make decisions appropriate to their classification. The Thodey Review noted a growing tendency for decisions involving risk to be escalated to the top of the hierarchy. This proposal seeks to ensure that decision-making is not raised to a higher level than necessary, improving

decision-making processes to reduce duplication of work, empower staff, and foster professional development.

34. Proposed subsection 19A(1) outlines that an Agency Head must implement measures that enable decisions to be made by APS employees with classifications that the Agency Head considers are the lowest appropriate for those decisions. An Agency Head would have the discretion to consider what constitutes the lowest appropriate classification, taking into consideration the work level standards for classifications (proposed subsection 19A(2)(a)) and any other matter the Agency Head considers relevant (proposed subsection 19A(2)(b)), such as the Agency's unique operating context, or the capability of the APS employee. Consideration of the work level standards (as established by the *Public Service Classification Rules 2020*) in determining what is appropriate, ensures decision-making is not inappropriately conferred in a way that is inconsistent with the duties and capabilities expected of that classification.

35. Proposed subsection 19A(3) notes that a failure to comply with this section does not affect the validity of a decision.

36. For clarity this section is not intended to override decision making powers expressly conferred, or delegated by other Commonwealth Acts as appropriate delegations. For example, where a Commonwealth Act expressly provides that a Secretary may only delegate a specified decision making power to a very senior decision maker, this section will not impact the level at which that decision making can occur. Similarly, this section is not intended to override Accountable Authority Instructions issued under section 20A of the *Public Governance, Performance and Accountability Act 2013* (Cth) (the PGPA Act). However, Accountable Authorities (as defined in section 12(2) of the PGPA Act) may consider the lowest appropriate classification for decisions when making Accountable Authority Instructions.

Item 8

37. This item introduces new section 44A at the end of Division 1 of Part 5.

Section 44A Capability reviews and 44B Action Plans

38. Proposed section 44A introduces a requirement for regular, independent and transparent capability reviews. The proposal responds to recommendation 2a of the Thodey Review which called for regular, future-focused capability reviews to build organisational capacity and accountability, by establishing the power for the Commissioner to cause a capability review (proposed subsection 44A(1)). Capability reviews will be independent, forward-looking and assess an agency's ability to meet future objectives and challenges, establishing a requirement for Agencies to prepare and publish action plans responding to findings.

39. Proposed subsection 44A(2) enables the Commissioner to cause a capability review of each Department, Services Australia and the Australian Taxation Office at least every 5 years. Exceptional circumstances may impact on the ability for a review to be commenced, or findings finalised. Subsections 44A(2)(b) and 44A(3)(b) enable the person who causes a review the option to determine another appropriate timeframe, which may be shorter or longer than the 5 year period established by subsections 44A(2)(a) and 44A(3)(a). Proposed subsection 44A(9), ensures this only occurs in exceptional circumstances, for example, if a

national emergency such as a global pandemic, or a natural disaster significantly impacts an Agency's ability to participate in a capability review.

40. Proposed subsection 44A(3) which enables the Secretary of the Department of the Prime Minister and Cabinet (the Prime Minister's Department) to cause a review of the Australian Public Service Commission. This ensures transparency, independence and accountability of capability reviews where the Australian Public Service Commission is the subject of the review.

41. Capability Reviews are intended to be conducted in partnership with Agencies and draw on evidence from a range of sources, including engagement with agency staff and management and external stakeholders. Proposed subsection 44A(4) provides that the Commissioner, or the Secretary of the Department of the Prime Minister and Cabinet (the Prime Minister's Department) must notify the Agency Head in writing of the intention to undertake a capability review to be undertaken. This will support an Agency Head to make appropriate plans to enable a capability review and meet requirements to cooperate with a capability review (proposed subsection 44A(5)).

42. Proposed subsection 44A(6) will ensure that a capability review report includes one or more findings, which for example, highlights organisational strengths and development areas in the context of the Agency's anticipated future operating environment. This will help build a self-sustaining culture of improvement in the APS.

43. Independence and transparency are core principles of capability reviews and corresponding action plans. This drives accountability, and builds confidence in the integrity of capability review findings. A number of subsections seek to embed the independence and transparency of capability review findings, reports, and action plans including:

- Proposed subsection 44A(4)(c) which ensures the reviewer(s) provides a copy of the written report to the Agency Head and the person who caused the review.
- Proposed subsections 44A(4)(d) and 44B(1)(d) which ensure that the report and action plan are published publicly on an Agency website.
- Proposed subsection 44B(1)(c) which ensures that an Agency Head prepares an action plan responding to the findings of a capability review report to raise organisational capability.
- Proposed subsection 44A(4)(b) which ensures one or more reviewers may be appointed to lead the capability review. This may include, for example be an individual reviewer, or a panel of reviewers. Flexibility in determining the number of reviewers, supports the person causing a review to take operational matters into consideration, for example the size of the Agency that is the subject of the review.
- Proposed subsection 44A(7) which ensures that at least one reviewer is not currently an APS employee, or Agency Head. Additional reviewer(s) are not precluded from being engaged if they are APS employees, or an Agency Head. This ensures transparency, independence and accountability.

44. Proposed subsections 44A(9) and 44B(2) authorises the Commissioner or Secretary of the Department of the Prime Minister and Cabinet (the Prime Minister's Department) to

determine that a section of, or the full report will not be published as it would, or could reasonably be expected to damage the Commonwealth's security, defence or international relations.

45. Proposed subsection 44A(10) provides that this new section does not prevent an Agency Head from conducting other capability reviews. For example, an Agency could still undertake an internal capability review focused on a particular delivery area prior to the next formal capability review.

Item 9

46. This item inserts new subsection (f) at the end of subsection 64(3).

Section 64 Secretaries Board

47. Proposed subsection 64(3)(f) inserts as a function of Secretaries Board 'such other functions as are conferred on the Secretaries Board by this Act.' This amendment supports additional functions as considered in this Bill to be established as functions of the Secretaries Board. See for example item 2 as it relates to an APS Purpose Statement.

Item 10

48. This item inserts new section 64A at the end of Part 8.

Section 64A Long-term insights reports

49. The purpose of new section 64A is to establish a requirement for Secretaries Board to cause regular, evidence-based and public engagement driven long-term insights reports, developed through a process of public consultation. The Thodey Review calls for the APS to strike a better balance between short-term responsiveness and investing in the deep expertise required to grapple with long-term, strategic policy challenges. The reports will also build the capability of the APS as a whole to consider cross-cutting issues in a linked up way.

50. Proposed subsection 64A(1) gives the Secretaries Board the power to cause long-term insights reports to be prepared in relation to one or more matters of public policy. The Thodey Review found that the APS needs to strike a better balance between short-term responsiveness and investing in the deep expertise required to grapple with long-term, strategic challenges, as well as genuinely consulting with the public on issues affecting Australia and its society. The purpose of the reports (proposed subsection 64A(2)) is to make available information about medium-term and long-term trends, risks, and opportunities that affect or may affect Australia or Australian society; and information and impartial analysis relating to those trends, risks and opportunities. It is intended that the analysis undertaken be impartial, apolitical and be based in evidence.

51. Proposed subsection 64A(3) requires that provision for public consultation be made in the preparation of a long-term insights report. This reflects that long term insights reports will bring together experts from the public service and include consultation with the Australian community, academia, industry and the not-for-profit sector on specific longer-term challenges to collate evidence and insights on an issue and support impartial policy analysis.

52. Proposed subsection 64A(4) requires a long-term insights report to be published on an Agency website in the manner and form the Secretaries Board considers appropriate. This supports publication in different mediums, for example a formal written report, complemented by a series of informative videos. Subsections 64A(4)(a)-(b) provide that this can be on an Agency website or elsewhere if the Secretaries Board considers it appropriate. Publication of a long-term insights report on an Agency website intends to ensure the information contained within a report is made available to members of the public, driving transparency and reflecting the community-based engagement which will drive the preparation of a report.

53. Proposed subsection 64A(5) provides that an Agency may assist in the preparation of a long-term insights report. This will support the development of internal research capabilities within Agencies, and build trust in Agencies to provide rigorous analysis and insights about future trends, opportunities and risks.

54. Proposed subsection 64A(6) provides that Secretaries Board must cause at least one long-term insights report to be prepared each financial year, to ensure this is an enduring function that supports the APS to look to the future as stewards of the service and public interest.

Item 11

55. This item adds a new subsection 78(8)(c) at the end of subsection 78(8).

Section 78 Delegations

56. The PS Act provides that an Agency Head cannot delegate powers or functions to an outsider without prior written consent from the Commissioner. This proposed amendment will exclude Australian Defence Force members from the meaning of outsider and eliminate unnecessary administration to delegate powers and functions to ADF members. This item will also bring the Public Service Act in line with updates made to the *Public Service Regulations 2023* (Cth).

Item 12

57. This item introduces new section 78B after section 78A.

78B Australian Public Service Employee Census – results and action plans

58. The purpose of new section 78B is to establish a requirement for agencies to publish aggregate APS Employee Census results, along with the preparation and publication of an action plan responding to those results. This proposal responds to recommendation 2b of the Thodey review, by fostering a culture of transparency and accountability for continuous improvement within Agencies. It will also seek to improve the APS's position as a model employer that listens to and addresses the thoughts, concerns, and ideas of its employees.

59. The APS Employee Census is an annual survey which is used to collect information about the attitudes and opinions of APS employees. It is an opportunity for APS employees to share their experiences working in the APS. Many Agencies already publish their results on the Australian Public Service Commission website.

60. Proposed subsection 78B(1) ensures that Agencies are only required to publish APS Employee Census Results and action plans in the event that the APS Employee Census is conducted during the financial year. This provides safeguards for Agencies should an APS Employee Census not be conducted, or in the event it is delayed in exceptional circumstances, such as a pandemic or national disaster.

61. Proposed subsection 78B(2) establishes a requirement for Agency Heads to prepare an action plan as soon as practicable after receiving Agency APS Employee Census results. An action plan must set out the Agency's response to those results so far as they relate to the Agency. This means that results published should be aggregate Agency level results, as compared to results at a more granular organisational level, thereby providing safeguards for individual privacy. Ensuring an action plan is prepared as soon as practicable following receipt of results provides for some flexibility in timing, taking into consideration the particular Agency's circumstances. For example, an Agency may consult with staff in the preparation of an action plan, the time required for which may vary depending on the size of the Agency.

62. Proposed subsection 78B(3) requires an Agency Head to publish aggregate APS Employee Census results, so far as those relate to the Agency, along with the action plan that has been prepared. The State of the Service report is informed by the results of the APS Employee Census, as well as other information sources. Given this, the public release of the APS Employee Census results will follow publication of the State of the Service report (proposed subsection 78B(3)(b)) so as to not pre-empt the tabling of the State of the Service report in Parliament. The timing of this section draws on subsection 44(3) of the PS Act which provides that the State of the Service report must be 'laid before each House of the Parliament by 30 November after the financial year to which the report relates.'

63. Proposed subsection 78B(4) provides that the Commissioner may, by writing, exempt an Agency Head from publishing the census results and or the action plan. For example, the Commissioner could exempt a small Agency from publishing the census results and/or action plan where the results across the report or plan could reasonably identify an individual, or their views. Another example may be a security agency where sensitive information about the operations could be exploited against the national interests if published. Similarly, proposed subsection 78B(5) provides that the Commissioner may authorise an Agency Head to remove specified material from the APS Employee Census results and/or an action plan prior to publishing. For example, where a security Agency chooses to publish its census results and action plan, it can seek to remove specified material such as employee characteristics.

64. Proposed subsection 78B(6) provides that an Agency Head must remove any material that is likely to enable the identification of an individual from census results and/or from action plans. This section provides clear protection for a person's right to privacy.

65. Proposed subsection 78B(7) and (8) provide that an exemption to publish census results and an action plan, or an authorisation to remove specified material under new section 78B(4) is not a legislative instrument.