

EXPOSURE DRAFT

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Public Service Amendment Bill 2023

No. , 2023

(Prime Minister and Cabinet)

A Bill for an Act to amend the *Public Service Act 1999*, and for other purposes

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1 **A Bill for an Act to amend the *Public Service Act***
2 ***1999*, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Public Service Amendment Act 2023*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.

11

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 3 Schedules

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1 **Schedule 1—Amendments**
2

3 ***Public Service Act 1999***

4 **1 Section 7**

5 Insert:

6 *Agency website* means a website maintained by an Agency.

7 *APS Purpose Statement* has the meaning given by
8 subsection 10B(1).

9 *State of the Service report* means a report referred to in
10 subsection 44(1).

11 **2 At the end of section 10**

12 Add:

13 *Stewardship*

14 (6) The APS builds its capability and institutional knowledge, and
15 supports the public interest now and into the future, by
16 understanding the long-term impacts of what it does.

17 **3 After section 10A**

18 Insert:

19 **10B APS Purpose Statement**

20 (1) The Secretaries Board must cause a written statement that sets out
21 the purpose of the APS (the *APS Purpose Statement*) to be
22 prepared.

23 (2) The Secretaries Board may cause the APS Purpose Statement to be
24 varied.

25 (3) The APS Purpose Statement must not be inconsistent with the APS
26 Values or the APS Employment Principles.

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Schedule 1 Amendments

1

Consultation

2

(4) The preparation or variation of the APS Purpose Statement must make provision for consultation with:

3

4

(a) the Australian Public Service; and

5

(b) the public.

6

(5) Subsection (4) does not apply to a variation if the variation is of a minor nature.

7

8

Publication

9
10

(6) The APS Purpose Statement is to be published on an Agency website.

11

Review

12
13

(7) The Secretaries Board must cause the APS Purpose Statement to be reviewed at least once every 5 years.

14
15

(8) A review under subsection (7) must make provision for consultation with:

16

(a) the Australian Public Service; and

17

(b) the public.

18

Other matters

19
20

(9) The Secretaries Board must be satisfied that any consultation undertaken in accordance with subsection (4) or (8) is appropriate.

21

(10) The APS Purpose Statement is not a legislative instrument.

22
23

(11) A variation of the APS Purpose Statement is not a legislative instrument.

24
25
26

(12) This section does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to this section or another provision of this Act.

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Amendments Schedule 1

1 **4 Section 12 (heading)**

2 Omit “**APS Values and APS Employment Principles**”, substitute “**the**
3 **APS Values, the APS Employment Principles and the APS Purpose**
4 **Statement**”.

5 **5 Section 12**

6 Omit “the APS Values and APS Employment Principles”, substitute
7 “the APS Values, the APS Employment Principles and the APS Purpose
8 Statement”.

9 **6 Section 19**

10 Omit “An Agency Head is not subject to direction by any Minister”,
11 substitute “A Minister must not direct an Agency Head”.

12 **7 At the end of Part 3**

13 Add:

14 **19A Agency Heads to implement measures to create a work**
15 **environment that enables decisions to be made by APS**
16 **employees at lowest appropriate classification**

17 (1) The Agency Head of an Agency must implement measures that
18 create a work environment within the Agency that enables
19 decisions to be made by APS employees with classifications that
20 the Agency Head considers are the lowest appropriate for those
21 decisions.

22 (2) For the purposes of subsection (1), an Agency Head must have
23 regard to:

24 (a) the work level standards for classifications (if any) that are
25 referred to in the Classification Rules; and

26 (b) any other matter the Agency Head considers relevant.

27 (3) A failure to comply with subsection (1) does not affect the validity
28 of a decision.

29 **8 At the end of Division 1 of Part 5**

30 Add:

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Schedule 1 Amendments

1 **44A Capability reviews**

2 *Capability review of Agencies other than the Australian Public*
3 *Service Commission*

4 (1) The Commissioner may, at any time, cause a capability review of
5 an Agency (other than the Australian Public Service Commission)
6 to be undertaken under this subsection.

7 (2) However, the Commissioner must cause a capability review of
8 each Department, Services Australia and the Australian Taxation
9 Office to be undertaken under subsection (1) at least once every:

10 (a) 5 years; or

11 (b) if the Commissioner determines, in writing, another number
12 of years in relation to the Agency—that other number of
13 years.

14 *Capability review of Australian Public Service Commission*

15 (3) The Secretary of the Prime Minister's Department must cause a
16 capability review of the Australian Public Service Commission to
17 be undertaken under this subsection at least once every:

18 (a) 5 years; or

19 (b) if the Secretary determines, in writing, another number of
20 years—that other number of years.

21 *Capability review requirements*

22 (4) If a person causes a capability review of an Agency to be
23 undertaken under subsection (1) or (3), the person must:

24 (a) notify the Agency Head of the Agency, in writing, of the
25 review; and

26 (b) appoint one or more persons, in writing, to undertake the
27 review; and

28 (c) ensure that the person or persons who undertake the review
29 give a written report of the review to:

30 (i) the person who caused the review to be undertaken; and

31 (ii) the Agency Head of the Agency; and

32 (d) ensure that the report is published on an Agency website.

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- 1 (5) The Agency Head of an Agency must cooperate with a capability
2 review of the Agency under subsection (1) or (3).
- 3 (6) A report of a capability review under subsection (1) or (3):
4 (a) must include one or more findings; and
5 (b) may include one or more recommendations.
- 6 (7) If one person is appointed under paragraph (4)(b) to undertake a
7 capability review, the person must not be:
8 (a) an APS employee; or
9 (b) an Agency Head.
- 10 (8) If more than one person is appointed under paragraph (4)(b) to
11 undertake a capability review, at least one of the persons must not
12 be:
13 (a) an APS employee; or
14 (b) an Agency Head.

15 *Determinations of longer or shorter review periods*

- 16 (9) A person must not make a determination under paragraph (2)(b) or
17 (3)(b) unless satisfied that there are exceptional circumstances.
- 18 (10) A determination made under paragraph (2)(b) or (3)(b) is not a
19 legislative instrument.

20 *Exception to requirement to publish*

- 21 (11) Despite paragraph (4)(d), a person who causes a capability review
22 into an Agency to be undertaken under subsection (1) or (3) and
23 receives a written report of the review may:
24 (a) remove material from the report; or
25 (b) decide not to publish the report;
26 if publishing the material or the report (as the case may be) would,
27 or could reasonably be expected to, damage:
28 (c) the security of the Commonwealth; or
29 (d) the defence of the Commonwealth; or
30 (e) the international relations of the Commonwealth.

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Schedule 1 Amendments

1 *Other capability reviews*

2 (12) This section does not prevent the Agency Head of an Agency from
3 conducting a capability review otherwise than under subsection (1)
4 or (3).

5 **44B Action plans**

6 (1) If:

7 (a) a capability review of an Agency is undertaken under
8 subsection 44A(1) or (3); and

9 (b) a written report of the review is given to the Agency Head of
10 the Agency under subparagraph 44A(4)(c)(ii);

11 then the Agency Head must, within 90 days after the report is
12 given to the Agency Head:

13 (c) prepare a written action plan that includes the Agency Head's
14 response to the findings included in the report; and

15 (d) publish the action plan on an Agency website.

16 (2) However, the person who caused the capability review into the
17 Agency to be undertaken may, by writing:

18 (a) authorise the Agency Head to remove specified material from
19 the action plan; or

20 (b) exempt the Agency Head from publishing the action plan;
21 if publishing the material or the action plan (as the case may be)
22 would, or could reasonably be expected to, damage:

23 (c) the security of the Commonwealth; or

24 (d) the defence of the Commonwealth; or

25 (e) the international relations of the Commonwealth.

26 **9 At the end of subsection 64(3)**

27 Add:

28 ; (f) such other functions as are conferred on the Secretaries
29 Board by this Act.

30 **10 At the end of Part 8**

31 Add:

1 **64A Long-term insights reports**

- 2 (1) The Secretaries Board may cause long-term insights reports to be
3 prepared in relation to one or more matters of public policy.
- 4 (2) The purpose of a long-term insights report is to make available:
5 (a) information about medium-term and long-term trends, risks,
6 and opportunities that affect or may affect Australia or
7 Australian society; and
8 (b) information and impartial analysis relating to those trends,
9 risks and opportunities.
- 10 (3) The preparation of a long-term insights report must make provision
11 for public consultation.
- 12 (4) As soon as practicable after it has been completed, a long-term
13 insights report must be published, in the manner and form the
14 Secretaries Board considers appropriate:
15 (a) on an Agency website; and
16 (b) if the Secretaries Board considers appropriate—elsewhere.
- 17 (5) An Agency may assist in the preparation of a long-term insights
18 report.
- 19 (6) The Secretaries Board must cause at least one long-term insights
20 report to be prepared each financial year.

21 **11 At the end of subsection 78(8)**

- 22 Add:
23 ; or (c) a member of the Australian Defence Force.

24 **12 After section 78A**

- 25 Insert:

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Schedule 1 Amendments

1 **78B Australian Public Service Employee Census—results and action**
2 **plans**

3 *Scope*

- 4 (1) This section applies if a survey known as an Australian Public
5 Service Employee Census is conducted in a financial year.

6 *Preparation of action plan*

- 7 (2) The Agency Head of an Agency must:
8 (a) prepare an action plan that sets out the Agency Head's
9 response to the census results, so far as those results relate to
10 the Agency; and
11 (b) do so as soon as practicable after those results are made
12 known to the Agency Head.

13 *Publication of census results and action plan*

- 14 (3) The Agency Head must:
15 (a) publish:
16 (i) the census results, so far as those results relate to the
17 Agency; and
18 (ii) the action plan prepared by the Agency Head under
19 subsection (2); and
20 (b) do so as soon as practicable after the first day on which a
21 copy of the State of the Service report for the financial year is
22 laid before a House of the Parliament.

23 *Exemptions*

- 24 (4) The Commissioner may, by writing, exempt an Agency Head from
25 publishing, under subsection (3), either or both of the following:
26 (a) census results;
27 (b) an action plan.

28 *Authorisation of removal of material*

- 29 (5) The Commissioner may, by writing, authorise an Agency Head to
30 remove specified material from either or both of the following:
-

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- 1 (a) census results;
2 (b) an action plan;
3 required to be published by the Agency Head under subsection (3).

4 *Protection of individual privacy*

- 5 (6) An Agency Head must remove any material that is likely to enable
6 the identification of an individual from:
7 (a) census results; or
8 (b) an action plan;
9 required to be published by the Agency Head under subsection (3).

10 *Exemptions and authorisations are not legislative instruments*

- 11 (7) An exemption under subsection (4) is not a legislative instrument.
12 (8) An authorisation under subsection (5) is not a legislative
13 instrument.