

AM GORMAN - s 22 – U.S CIVIL SERVICE DISCUSSION

Assistant Minister to the Minister for the Public Service we recommend you:

1. Note the briefing on s 22 .

Noted / Please Discuss

PATRICK GORMAN

Date:

Comments:

KEY POINTS

- 1. The APSC has prepared some high level briefing points to support s 22 . These points cover the governance of the Australian Public Service, the requirements for Agency Heads, Code of Conduct for Ministers, and integrity more broadly.
- 2. The briefing incorporates contextual information about the Australian Government’s position around the incoming US Administration, to inform your decision about whether to proceed.

Risks and Sensitivities

s 33(a)(iii)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Consultation

APSC GROUPS – Integrity, Performance & Employment Policy Branch, International Branch
 DEPARTMENTS – DFAT, PM&C

s 22
 Executive Officer to A/g APS Commissioner
 17 December 2024

Policy Officer: s 22
 Phone no: s 47F

Circulation (*Dr Banerjee* A/g Commissioner; *J Talbot* FAC Workforce Reform and Diversity; *K Barber* AC Integrity, Performance & Employment Policy; s 22 ED International team

APS Commissioner; Commissioner’s Executive Officer, s 22

AMO Chief of Staff; s 22 ; Adviser, s 22

MO Chief of Staff; Senior APS Adviser, s 22

BRIEFING POINTS

Code of Conduct for Ministers

- The *Code of Conduct for Ministers* sets the ethical standards for Ministers, including that they must: act with integrity; observe fairness; be accountable accept the principle of ministerial responsibility and act in the public interest
- Ministers are held to the highest standards of disclosure.
 - They must disclose any possible, perceived or actual conflicts of interest
 - They must disclose all of their personal interests, pecuniary and otherwise
 - They must be aware of the interests of the family
- The Prime Minister can take action against any Minister who contravenes the Code.

Agency governance

- Australia's key regulatory and integrity agencies are generally in primary legislation made by parliament.
- Agency Heads have a legislated mandate to fulfil their functions
- To protect Agency Heads from undue influence and pressure:
 - Governments and Ministers are limited to directing Agency Heads in accordance with the terms of the legislation
 - Governments and Ministers typically can only terminate the appointment of an Agency Head in limited circumstances

Secretaries of Commonwealth departments of state: appointments and conduct

Appointments

- Under the *Public Service Act 1999* (PS Act), the Governor-General is responsible for appointing the secretary of a Commonwealth department of state on the recommendation of the Prime Minister.
 - Prior to making a recommendation to the Governor-General, the Secretary of the Prime Minister's Department is required to provide a report to the Prime Minister regarding the appointment of a secretary (other than to the Prime Minister's Department). Consultation with the Australian Public Service Commissioner (the Commissioner) and the relevant federal minister is required in the preparation of the report.
- The Government is committed to ensuring secretary appointments are based on merit and such processes have occurred for the appointment of five secretaries since 2023. In addition, a merit-based selection process occurred for the current Commissioner.
- Secretaries are full-time federal public servants, with their roles and responsibilities specified in the PS Act. Appointments are generally for a period of 5 years.

Conduct and Impartiality

- The PS Act established an APS that is committed to impartiality, ensuring that federal public servants provide frank, honest, and evidence-based advice to the government of the day, irrespective of political affiliations.
- To support this, the PS Act provides that all public servants, including secretaries, are bound by the APS Code of Conduct, which includes upholding legislated APS Values.
- There are six APS Values – one of which requires public servants to be impartial (*The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.*)
- Under the PS Act, the Australian Public Service Commissioner has the power to inquire into and determine whether a secretary or former secretary has breached the APS Code of Conduct. The Commissioner can recommend sanctions to the Prime Minister for any breaches of the APS Code of Conduct.

US Civil Service

- s 33(a)(iii)

Constitutional differences

- In Australia, a key constitutional principle is ‘responsible government’ which requires that members of the Government must be members of the parliament. Because a party or coalition of parties must keep the support of the majority of members in the House, the government is accountable – responsible – to the Australian Parliament and people. **s 33(a)(iii)**

National Anti-Corruption Commission

- In July 2023, the Australian Government established the National Anti-Corruption Commission (‘NACC’), as an independent Commonwealth agency responsible for detecting, investigating and reporting on serious or systemic corrupt conduct in the Commonwealth public sector.

Integrity

- The Government has a clear agenda to strengthen integrity across the Australian public sector. It is vital that the APS is a leader in integrity, always looking for ways to improve processes and culture.
- The APS Integrity Taskforce (the Taskforce) was established by the Secretaries Board in February 2023. On 17 November 2023, the Secretaries Board published the APS Integrity Taskforce report ‘Louder than words: an APS Integrity Action Plan’, which made 15 recommendations across three key action areas of culture, systems and accountability.
- The Taskforce was asked to provide advice on ensuring the APS is focused on delivering a pro-integrity culture at all levels of the service and to bring together information about initiatives underway across agencies, consider how they intersect, and identify gaps and opportunities to deliver system wide integrity improvements. Work to implement the Taskforce’s recommendations is underway.

Integrity of APS agency heads

The framework of the *Public Service Act 1999* includes provisions that support the integrity of Australian Public Service agency heads.

- **Section 12** of the Act provides that agency heads must uphold and promote the APS Values (at section 10) and APS Employment Principles (section 10A).
- **Section 14** provides that agency heads are bound by the Code of Conduct (at section 13) in the same way as APS employees.
- **Section 19** sets limits on Ministerial directions to agency heads, and provides that a Minister must not direct an agency head in relation to the exercise of powers under section 15 or Division 1 or 2 of Part 4 in relation to particular individuals—i.e. in relation to managing employee conduct, and recruitment and selection processes.
- Section 57 sets out the roles and responsibilities of Secretaries, which include:
 - to manage the affairs of the Department efficiently, effectively, economically and ethically;
 - to implement measures directed at ensuring that the Department complies with the law;
 - to manage the affairs of the Department in a way that is not inconsistent with the policies of the Commonwealth and the interests of the APS as a whole;
 - to assist the Agency Minister to fulfil the Agency Minister’s accountability obligations to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of the Department.
- Section 61A requires an annual review of the performance of each Secretary to be carried out in accordance with a framework established by the Secretary of the Prime Minister’s Department and the Australian Public Service Commissioner.
- Section 66 sets out the responsibilities of heads of Executive Agencies, and provides that these agency heads are accountable to the government, the Parliament and the public in the same way as a Secretary.