|  |
| --- |
| APSC_stacked.jpg |

**HR Operations Training Program**

**HR Legislation and References**

**eGuide**

© Commonwealth of Australia

All material produced by the Australian Public Service Commission constitutes Commonwealth copyright administered by the Commission. The Commission reserves the right to set out the terms and conditions for the use of such material.

Apart from any use as permitted under the *Copyright Act 1968* and those explicitly granted below, all other rights are reserved.

Unless otherwise noted, all material in this publication, except the Commission logo or badge, the Commonwealth Coat of Arms, and any material protected by a trade mark, is licensed under a Creative Commons BY Attribution 3.0 Australia licence.



This training resource is current as at April 2013.

Comments and suggestions for continuous improvement of this program are encouraged and should be submitted via email to HRTraining@apsc.gov.au.

Contents

[Introduction 5](#_Toc353888344)

[Overview of this guide 5](#_Toc353888345)

[What are primary and secondary reference sources? 5](#_Toc353888346)

[Primary References 7](#_Toc353888347)

[Public Service Act 1999 7](#_Toc353888348)

[Public Service Regulations 1999 7](#_Toc353888349)

[Public Service Amendment Bill 2012 7](#_Toc353888350)

[Public Service Classification Rules 2000 7](#_Toc353888351)

[Public Service Commissioner and Prime Minister’s Public Directions 1999 7](#_Toc353888352)

[Parliamentary Service Act 1999 7](#_Toc353888353)

[Australian Public Service Award 1998 8](#_Toc353888354)

[Fair Work Act 2009 8](#_Toc353888355)

[The Australian Public Service Bargaining Framework 8](#_Toc353888356)

[Hierarchy Framework 10](#_Toc353888357)

[Maternity Leave (Commonwealth Employees) Act 1973 and Regulations 12](#_Toc353888358)

[Paid Parental Leave Act 2010 12](#_Toc353888359)

[Long Service Leave (Commonwealth Employees) Act 1976 and Regulations 12](#_Toc353888360)

[Superannuation Act 1976, Superannuation Act 1990, Superannuation Act 2005 12](#_Toc353888361)

[Superannuation Guarantee (Administration) Act 1992 13](#_Toc353888362)

[Superannuation Guarantee (Administration) Amendment Act 2012 13](#_Toc353888363)

[Superannuation (Productivity Benefit) Act 1988 13](#_Toc353888364)

[Superannuation Benefits (Supervisory Mechanisms) Act 1990 13](#_Toc353888365)

[Safety, Rehabilitation and Compensation Act 1988 13](#_Toc353888366)

[Work Health & Safety Act 2011 13](#_Toc353888367)

[Discrimination and Human Rights Legislation 14](#_Toc353888368)

[Financial Management and Accountability Act 1997 (FMA), Regulations and Orders 14](#_Toc353888369)

[Commonwealth Authorities and Companies Act 1997 (CAC Act) 14](#_Toc353888370)

[Privacy Act 1988 14](#_Toc353888371)

[Crimes Act 1914 15](#_Toc353888372)

[Secondary References 15](#_Toc353888373)

[Agency policies and statements 15](#_Toc353888374)

[Circulars, advices and memoranda 15](#_Toc353888375)

[HR Operations Training Program course material 16](#_Toc353888376)

[Delegations 16](#_Toc353888377)

[Clarification of matters 16](#_Toc353888378)

[Useful internet sites 17](#_Toc353888379)

[Australian Commonwealth Government Entry Points 17](#_Toc353888380)

[Australian Public Service Commission 17](#_Toc353888381)

[Fair Work Commission 17](#_Toc353888382)

[Fair Work Ombudsman 18](#_Toc353888383)

[Department of Finance and Deregulation 18](#_Toc353888384)

[Australian Government Information Management Office *(AGIMO)* 18](#_Toc353888385)

[ComSuper 18](#_Toc353888386)

[Australian Taxation Office 18](#_Toc353888387)

[Comlaw 19](#_Toc353888388)

[Comcare 19](#_Toc353888389)

[Australian Human Rights Commission 19](#_Toc353888390)

[Office of Australian Information Commissioner (previously Australian Privacy Commissioner) 19](#_Toc353888391)

[Australian Prudential Regulation Authority 20](#_Toc353888392)

[Australian Safety and Compensation Council 20](#_Toc353888393)

[Australasian Legal Information Institute (AustLII) 20](#_Toc353888394)

[National Archives of Australia 20](#_Toc353888395)

# Introduction

This guide details information on the source references which provide the authority for, or guidance on employees' entitlements, and pay and conditions of service in the APS and Commonwealth employment.

The intent of the guide is to support human resource practitioners in APS agencies by assisting them to research the authority for a particular entitlement or condition of service as part of resolving enquiries in human resource casework.

# Overview of this guide

This guide outlines the legislation and reference points that apply to workplace relations and human resource arrangements in APS departments and agencies. It explains what primary and secondary references are and how to determine the right source of reference. The guide lists all relevant legislation (with handy links) and a brief description of its function. It also explains in more detail how enterprise agreements interact with other legislative instruments; and the hierarchy of prevalence in uncertain circumstances.

Material in this guide is designed primarily for APS agencies covered by the Public Service Act 1999 (Public Service Act), other Commonwealth Acts, enterprise agreements and industrial awards. However there are some agencies that may have their own governing legislation (for example, some statutory authorities) similar to the Public Service Act.

It is important to know what legislation specifically applies to an agency. Nevertheless, common principles apply when researching primary reference sources such as enterprise agreements, legislation and awards, and the secondary reference sources.

# What are primary and secondary reference sources?

The reference sources in this guide are defined as being primary or secondary.

Primary information sources are those with a legal basis. These include Acts of Parliament, like the *Public Service Act 1999*, the *Long Service Leave (Commonwealth Employees) Act 1976* and the *Maternity Leave (Commonwealth Employees) Act 1973*.

Enterprise agreements (EAs), Awards and Determinations also have the force of law, (that is, they are legal documents) but are not legislated through Parliament. These are all primary references.

Secondary information sources are those which provide guidance or interpretation, but are not legally binding. These kinds of documents cannot be used as an authority or legal reference. Examples of secondary sources are guidelines and policies drafted in agencies. An overview of the APS Employment Framework

Employment in the APS is covered by a range of legislation and other instruments. An overview of the key instruments is below; however these are covered in more detail under ‘Primary References’.

[Public Service Act 1999](http://www.comlaw.gov.au/ComLaw/Management.nsf/current/bytitle/2B1A7B9F7929EE9DCA256F71000717D7?OpenDocument&VIEW=compilations)

[Public Service Regulations 1999](http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200400976?OpenDocument)

[Public Service Classification Rules 2000](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/all/search/DEBBB2F9413E404ECA25720F0083CCDE)

[Public Service Commissioner's Directions](http://www.apsc.gov.au/aps-employment-policy-and-advice/legislationlegal-and-government-frameworks/commdir) 1999

[Prime Minister’s Public Service Directions 1999](http://www.comlaw.gov.au/Details/F2006C00228/Html/Text)

[Australian Public Service Award 1998](http://www.fwa.gov.au/consolidated_awards/AP/AP766579/asframe.html)

[The Australian Public Service Bargaining Framework](http://www.apsc.gov.au/aps-employment-policy-and-advice/workplace-relations)

[Fair Work Act 2009](http://www.fwa.gov.au/index.cfm?pagename=legislation)

[Long Service Leave (Commonwealth Employees) Act 1976](http://www.comlaw.gov.au/ComLaw/legislation/actcompilation1.nsf/current/bytitle/CEA788A1B982AB87CA2575F400155FB6?OpenDocument&mostrecent=1)

[Long Service Leave (Commonwealth Employees) Regulations 1957](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/all/search/1CED16790C352CBBCA256F710041F5E9)

[Maternity Leave (Commonwealth Employees) Act 1973](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/30236CFB0853E13ACA2576C3007EDD49?OpenDocument&mostrecent=1)

[Maternity Leave (Commonwealth Employees) Regulations 1982](http://www.comlaw.gov.au/comlaw/legislation/legislativeinstrumentcompilation1.nsf/current/bytitle/13C94314C61ADD69CA2575E700175F87?OpenDocument&mostrecent=1)

[Work Health & Safety Act 2011](http://www.comlaw.gov.au/Details/C2011A00137/Html/Text)

[Paid Parental Leave Act 2010](http://www.comlaw.gov.au/Series/C2010A00104)

[Workplace Gender Equality Act 2012](http://www.comlaw.gov.au/Details/C2012C00899)

# Primary References

This section outlines in more detail the primary legislative references that impact on Commonwealth employment.

## Public Service Act 1999

The *Public Service Act 1999* (PS Act) provides the framework for the employment of APS employees. It specifies the broad powers of Agency Heads, the Public Service Commissioner, and the Merit Protection Commissioner. The APS Values and the Code of Conduct are included in primary legislation. The Act applies from 5 December 1999.

[Public Service Act 1999](http://www.comlaw.gov.au/ComLaw/Management.nsf/current/bytitle/2B1A7B9F7929EE9DCA256F71000717D7?OpenDocument&VIEW=compilations)

## Public Service Regulations 1999

The regulations made under the authority of the PS Act, provide more detailed provisions on a number of topics, including employment matters for non-ongoing (temporary) employees, review of actions, machinery of government changes, the Code of Conduct and whistleblowing.

 [Public Service Regulations 1999](http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200400976?OpenDocument)

## Public Service Amendment Bill 2012

The Public Service Amendment Bill 2012 provides amendments to the PS Act and subordinate legislation. The Bill was introduced into the House of Representatives on 1 March 2012, and was passed in the Senate on 7 February 2013. The bill received royal assent on 14 February but is not yet in operation. – When this occurs the *Public Service Act 1999* will be subsumed by the new Act.

The aim of the new legislation is to boost and support APS workforce and leadership and embed new practices and behaviour into APS culture including new APS Values. It will significantly impact on a range of existing policies and procedures such as Code of Conduct procedures and whistleblowing procedures. More information is available on the [APSC website.](http://www.apsc.gov.au/home/latest-news/public-service-amendment-bill-2012)

## Public Service Classification Rules 2000

The Public Service Classification rules include provisions covering the classification of APS employees and work level standards. [Public Service Classification Rules 2000](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/all/search/DEBBB2F9413E404ECA25720F0083CCDE)

## Public Service Commissioner and Prime Minister’s Public Directions 1999

Under the PS Act, these Directions are binding on Agency Heads and relate to the APS Values, diversity in employment, merit in Employment, procedural requirements concerning the Code of Conduct and SES employment matters. The Prime Minister’s Public Service Directions were issued on leave for employment.

[Public Service Commissioner's Directions](http://www.apsc.gov.au/aps-employment-policy-and-advice/legislationlegal-and-government-frameworks/commdir) 1999 [Prime Minister’s Public Service Directions 1999](http://www.comlaw.gov.au/Details/F2006C00228/Html/Text)

## Parliamentary Service Act 1999

The *Parliamentary Service Act 1999* applies from 5 December 1999 and provides the framework for employment in the Parliamentary departments. This mirrors the PS Act on most provisions. The Parliamentary Service has Parliamentary Service Determinations (instead of regulations which apply to the APS).

 [Parliamentary Service Act 1999](http://www.comlaw.gov.au/Details/C2010C00839)

## Australian Public Service Award 1998

The *Australian Public Service Award 1998* (APS Award) is an enterprise award. Under transitional arrangements, the Fair Work system allows enterprise awards to continue to operate until 31 December 2013 to enable these awards to be integrated into the new system.

Work is currently underway in the APSC to modernise the APS award which must be completed by 31 December 2013.

[Australian Public Service Award 1998](http://www.fwa.gov.au/consolidated_awards/AP/AP766579/asframe.html)

## Fair Work Act 2009

The *Fair Work Act 2009* provides the legislative basis for terms and conditions of employment for the Australian workforce. The Act creates a national workplace relations system which includes enterprise agreement making, Modern Awards and ten minimum employment standards called the National Employment Standards (NES) (sections 70-85).

These ten minimum standards include maximum weekly hours of work, flexible working arrangements, parental leave and related entitlements, annual leave, personal/carer’s leave and compassionate leave, community service leave, long service leave, public holidays, notice of termination and redundancy pay and the requirement that employers have to give the Fair Work Information Statement to all new employees. Further Information on the NES is available at [www.fairwork.gov.au](http://www.fairwork.gov.au)

[Fair Work Act 2009](http://www.fwa.gov.au/index.cfm?pagename=legislation)

## The Australian Public Service Bargaining Framework

On 31 January 2011, the Government released the [Australian Public Service Bargaining Framework](http://www.apsc.gov.au/publications-and-media/current-publications/aps-public-service-bargaining-framework)  to support Australian Government employment as it relates to APS agencies.

Replacing the Australian Government Employment Bargaining Framework 2009, the framework’s aim is to implement the Government’s workplace relations policy in regard to APS employment. The 2009 Bargaining Framework is still used by non-APS agencies to negotiate enterprise agreements.

Under the 2011 arrangements, employees and representatives continue to bargain agency terms and conditions at the agency level. The framework introduces a range of [recommended, non-binding terms and conditions](http://www.apsc.gov.au/publications-and-media/current-publications/aps-public-service-bargaining-framework/common-terms) and model clauses, with the aim of supporting the concept of ‘One APS’. It includes guidance for agencies around appropriate agency salary increases; and there are also changes to some processes such as the introduction of approval of an agency’s bargaining position and proposed enterprise agreement by the Minister for the Public Service and Integrity.

[Supporting guidance](http://www.apsc.gov.au/publications-and-media/current-publications/aps-public-service-bargaining-framework/supporting-guidance)  provides the detailed guidance on the framework to assist agencies in their agreement-making.

The framework provides guidance for agencies on the implementation and making of workplace agreements and other workplace arrangements with their employees. It does not cover all aspects of the Government’s workplace relations policy or federal workplace relations legislation.

#### Enterprise Agreements (EAs)

Enterprise agreements are agreements between groups of employees and management, made under the provisions of the *Fair Work Act 2009.*

When undertaking research to determine what provisions apply the first place to start is with an agency's EA. Additional information may be found in agency policy documents.

It is possible for an agency to have more than one EA, although government policy is for agencies to only have one EA apart from exceptional circumstances. In some cases, entitlements will be prescribed in legislation, rather than in EAs, for example Long Service Leave Act and Regulations.

In practice, it is not always clear cut which provisions apply as there may be more than one reference authority or document which applies, or in some cases there may be inconsistencies in provisions in different references applying to the same matter. In the case of any inconsistencies, legislation prevails over other industrial instruments. This is outlined further in the section, [Hierarchy Framework.](#Hierachy)

#### What if an EA is silent on a condition?

If an EA **does not** provide for a particular entitlement or condition, or call up the condition from another document, then there is no entitlement under that EA. However, it is important to remember that some conditions and entitlements, such as long service leave and maternity leave are provided separately under legislation and cannot be amended or overridden by EAs.

An Agency Head has the power to exercise discretion in particular cases where no legal entitlement is provided by way of an EA or agency policies. Such decisions should be made fairly and consistently in accordance with agency policies and other relevant principles, such as the APS Values.

## Hierarchy Framework

As the APS and Commonwealth employment is regulated by legislation, regulations, EAs, awards, determinations and agency specific policy guidelines, it is important to determine which instruments take precedence ***where there are inconsistencies*** between provisions in different documents.

#### Interaction between an EA and other instruments

The following table portrays how an EA interacts with other instruments. In considering these interactions the role of government policy as reflected in the APS Bargaining Framework (introduced January 2011) needs to be considered. Government policy informs the development of EAs and; subsequently may inform agency-specific policies. However, once an EA is in place that EA overrides agency specific policy.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Type of Agreement** | **Enterprise Agreement made under the *Industrial Relations Act 1998* including *Continuous Improvement in the APS Enterprise Agreement 1995-96*** | **Enterprise Agreement made under the *Fair Work Act 2009 Act passed Nominal Expiry Date*** | ***Australian Public Service Award 1998*** | **Agency Head Determinations under subsection 24(1) of PS Act 1999** | **Public Sector Legislation including PS Regulations, PS Commissioner’s Directions and Classification Rules** | **Other Public Sector legislation** |
| **Enterprise Agreement****(EA)** | EA prevails over agreement  | Expired EA ceases to operate when replaced | An EA displace awards entirely | EA can prevail over Determinations to the extent of any inconsistency  | Legislation prevails over EA except for PS Act subsection 24(1) Determinations as outlined in PS Act  | Legislation prevails over EA |
| **Australian Workplace Agreement****(Historical)** | AWA prevails over EA to the extent of any inconsistency | AWA operates to the exclusion of an expired EA | AWA operates to the exclusion of any award | AWA can prevail over Determinations to the extent of any inconsistency if Determinations displaced (WR Reg 30ZJ) | Legislation prevails over AWA except for PS Act subsection 24(1) Determinations as prescribed in WR Regulations 30ZJ | Legislation prevails over AWA |

**EAs and other industrial instruments**

#### Interaction of terms and conditions instruments for APS employees

 *Can co-exist*

## Maternity Leave (Commonwealth Employees) Act 1973 and Regulations

This legislation contains the maternity leave provisions for Commonwealth employees. Agencies cannot override the provisions of the Act, but may provide administrative arrangements such as spreading the 12 weeks of required absence over 24 weeks, effectively giving half pay maternity leave – the second 12 weeks not counting as service.

[Maternity Leave (Commonwealth Employees) Act 1973](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/30236CFB0853E13ACA2576C3007EDD49?OpenDocument&mostrecent=1)

[Maternity Leave (Commonwealth Employees) Regulations 1982](http://www.comlaw.gov.au/comlaw/legislation/legislativeinstrumentcompilation1.nsf/current/bytitle/13C94314C61ADD69CA2575E700175F87?OpenDocument&mostrecent=1)

## Paid Parental Leave Act 2010

The Paid Parental Leave scheme provides financial support to eligible working parents of newborn or recently adopted children. Under the scheme, the government funds employers to provide Parental Leave Pay to their eligible employees. Eligible working parents can get government-funded pay (up to 18 weeks Parental Leave Pay or two weeks Dad and Partner Pay) when they take time off work to care for a new child. Full-time, part-time, casual, seasonal, contract and self-employed workers may be eligible.

[Paid Parental Leave Act 2010](http://www.comlaw.gov.au/Series/C2010A00104)

A comprehensive face to face training course on maternity leave and parental leave is available in the APSC. For further information on course availability visit <http://www.apsc.gov.au/learn>

## Long Service Leave (Commonwealth Employees) Act 1976 and Regulations

This legislation provides the Long Service Leave (LSL) provisions for Commonwealth employees, and includes non-APS agencies. Agencies cannot override the provisions of the Act, but may provide administrative arrangements which are not stipulated in the legislation but outlined in EAs.

[Long Service Long Service Leave (Commonwealth Employees) Act 1976](http://www.comlaw.gov.au/Series/C2004A01621)

[Long Service Leave Regulations 1957](http://www.austlii.edu.au/au/legis/cth/consol_reg/lsler1957524/)

A comprehensive face to face training course on long service leave is available in the APSC. For further information on course availability visit <http://www.apsc.gov.au/learn>

## Superannuation Act 1976, Superannuation Act 1990, Superannuation Act 2005

These acts contain the superannuation provisions for Commonwealth employees as follows:

Superannuation Act 1976 (CSS); Superannuation Act 1990 (PSS); Superannuation Act 2005 (PSSap)

ComSuper administers the CSS, PSS and PSSap schemes and their web site contains useful information. Further information and training material developed by ComSuper is available on their web site, <http://www.comsuper.gov.au> The Department of Finance and Deregulation provides an overview of [superannuation arrangements for government employees](http://www.finance.gov.au/superannuation/arrangements-for-australian-government-employees/index.html).

## Superannuation Guarantee (Administration) Act 1992

This Act introduced a compulsory requirement for employers to pay superannuation contributions for eligible employees and the right for employees to choose their fund.

[Superannuation Guarantee (Administration) Act 1992](http://www.austlii.edu.au/au/legis/cth/consol_act/sga1992430/)

## Superannuation Guarantee (Administration) Amendment Act 2012

Under this Act the superannuation guarantee (SG) rate will gradually increase from 9% to 12% between 1 July 2013 and 1 July 2019. The SG age limit of 70 is removed from 1 July 2013, and employers will be required to contribute to complying super funds of eligible mature age employees aged 70 and older. This legislation received royal assent on 29 March 2012.

[Superannuation Guarantee (Administration) Amendment Act 2012](http://www.comlaw.gov.au/Details/C2012A00022)

## Superannuation (Productivity Benefit) Act 1988

This Act contains the provisions to provide superannuation benefits to employees who are not CSS, PSS or PSSap members. Agencies must provide superannuation for those employees in accordance with this Act. The Superannuation Group from the Department of Finance and Deregulation administers this Act.

[Superannuation (Productivity Benefit) Act 1988](http://www.austlii.edu.au/au/legis/cth/consol_act/sba1988419/)

## Superannuation Benefits (Supervisory Mechanisms) Act 1990

This Act allows the Minister for Finance and Deregulation to oversee and maintain strategic control over Australian Government superannuation arrangements.

[Superannuation Benefits (Supervisory Mechanisms) Act 1990](http://www.comlaw.gov.au/Series/C2004A03970)

## Safety, Rehabilitation and Compensation Act 1988

This legislation established Comcare and provides the compensation, safety and rehabilitation provisions for Commonwealth employees. Originally it was called the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, and introduced a new approach to compensation and a greater emphasis on rehabilitation and return to work. The name was changed to the SRC Act in 1992.

[Safety, Rehabilitation and Compensation Act 1988](http://www.comlaw.gov.au/Series/C2004A03668)

## Work Health & Safety Act 2011

The main intent of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work.

It also aims to maintain and strengthen the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety. This Act replaced *the Occupational Health and Safety (Commonwealth Employment) Act 1991.*

[Work Health & Safety Act 2011](http://www.comlaw.gov.au/Details/C2011A00137/Html/Text#_Toc309986323)

## Discrimination and Human Rights Legislation

The Australian Human Rights Commission is the administrative body responsible for the implementation of federal human rights and anti-discrimination law in Australia. Their [website](http://www.humanrights.gov.au/about/legislation/index.html) provides a central location with links to all legislation relevant to discrimination and human rights in Australia as following:

* *Racial Discrimination Act 1975*
* *Sex Discrimination Act 1984*
* *Disability Discrimination Act 1992*
* *Age Discrimination Act 2004*
* Australian Human RightsCommissionAct 1986 (formerly called the Human Rights and Equal Opportunity Commission Act 1986)
* *Workplace Gender Equality Act 2012*
* *Equal Employment Opportunity (Commonwealth Authorities) Act 1987* (Note: this legislation places reporting obligations on non-APS (CAC) agencies with 40+ employees. The Act is administered by the APSC.

In Australia there are both federal laws covering everyone, and local laws covering people in a particular state or territory. Some state or territory laws cover circumstances where there is no federal law or their laws can be in line with federal law. If there is a clash between federal and state or territory laws, the federal law overrides them.

## Financial Management and Accountability Act 1997 (FMA), Regulations and Orders

This legislation governs the control of Commonwealth funds and documents. The FMA Act provides the authority for Agency Heads to make Chief Executive Instructions on financial related matters, such as how overpayments are to be recovered, and the authority to advance salary. A Financial Management Order covers payments for leave liability when employees move between agencies.

[Financial Management and Accountability Act 1997](http://www.comlaw.gov.au/Series/C2004A05251)

## Commonwealth Authorities and Companies Act 1997 (CAC Act)

The CAC Act covers bodies that are not legally or financially part of the Commonwealth. CAC Act bodies are bodies corporate which hold money on their own account. They include Commonwealth authorities and Commonwealth companies. The [Department of Finance and Deregulation](http://www.finance.gov.au/publications/flipchart/index.html) provides more explanatory information and lists government bodies covered under the CAC Act.

[Commonwealth Authorities and Companies Act 1997 (CAC Act)](http://www.austlii.edu.au/au/legis/cth/consol_act/caaca1997387/)

## Privacy Act 1988

The *Privacy Act 1988* lays down strict privacy safeguards which federal government departments, agencies and organisations in the private sector must observe in handling information. Agencies must comply with the 11 Information Privacy Principles (IPPs) which govern how personal information is collected, stored, used and disclosed.

The IPPs also require that people should have a right of access to the information that agencies hold about them, and to correct it if necessary, subject to any exemptions in the *Freedom of Information Act 1982*.

[Privacy Act 1988](http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/)

## Crimes Act 1914

Section 70 of the *Crimes Act 1914* provides that where there is a duty not to disclose official information, unauthorised disclosure of that information is a criminal offence.

There are restrictions on the disclosure of official information after leaving Commonwealth employment. The Crimes Act prohibits unauthorised disclosure by former Commonwealth employees of information which was protected at the time they ceased to be employed by the Commonwealth.

[Crimes Act 1914](http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/)

# Secondary References

Secondary references may assist in the interpretation of primary sources, and can be useful in researching conditions of service but they do not have the force of law and are not binding in a legal sense. Where guidelines conflict with a particular Act, award or EA, the legislation or EA prevails over the guidelines. Examples of secondary references are following.

## Agency policies and statements

The devolution of many decision-making powers to agencies under the PS Act means agencies have developed policies and guidelines appropriate to their needs and operations in many areas, including conditions of employment.

The purpose of agency policies, guidelines and procedures is to ensure:

* compliance with legislation (including amendments and new interpretations by the Courts)
* the aims of the legislation are carried out
* that practices reflect government and community expectations and the agency’s needs
* that decisions are made correctly, fairly and equitably
* that the requirements of associated legislation are presented, packaged and summarised for ease of reference.

Agency guidelines and procedures on a specific issue must take into account all legislation which affects that issue and the particular organisation's needs.

An example of an agency guideline is the Chief Executive’s Instructions (CEIs) (arising from the FMA Act). CEIs may be a useful reference in regard to topics such as recovery of overpayments.

Agency policy guidelines or statements are not legal documents in the strict sense like Acts, awards or EAs, but, where procedures or policy guidelines are published by an agency to aid decisions being made, for example in CEIs, the Courts may hold that employees have a reasonable expectation that published guidelines will be followed and that they should apply.

Where agency guidelines conflict with, or are inconsistent with a higher level document like a piece of legislation or an EA, the legislation or EA takes precedence.

**It is important to check your agency’s current policies on particular matters.**

## Circulars, advices and memoranda

Central APS agencies regularly issue circulars, advices and memoranda on their websites on conditions of service and other matters related to human resource management. The following agencies regularly issue key information that may provide reference material:

* Australian Public Service Commission (APSC)
* Department of Finance and Deregulation
* ComSuper
* Comcare
* Attorney-General’s Department
* Australian Taxation Office.

## HR Operations Training Program course material

A range of topics on employment and conditions of service that may be of assistance are covered in either face-to face-training courses, or in guide format on this site. The HR Operations Training Program course material does not have the force of law. For further information on courses and topics covered email hrtraining@apsc.gov.au

# Delegations

A delegation is the empowering of one person to make a decision on behalf of another person or authority. For example, under the PS Act, Agency Heads have decision making powers on employment matters in their agencies. In turn, these powers may be delegated within an agency to a particular person.

Delegations are required because it is not possible for the decision-maker to make every decision that the legislation has conferred on them, nor is it desirable. There are two types of delegations - human resources delegations and financial delegations.

It is important to know who has the delegation to approve various conditions and entitlements, to ensure that a lawful decision has been made. For more details refer to your agency's delegations.

# Clarification of matters

As discussed earlier in this guide most matters concerning the employment of employees, including pay and conditions, are now the responsibility of individual agencies.

Circumstances may arise where an agency will need to seek independent advice or a legal opinion on a particular matter or case.

Some circumstances where this might arise are when:

* an EA is silent on an issue and a decision needs to be made in a particular case
* a provision in a EA is unclear or inconsistent, or
* an employee challenges a decision.

Under the Legal Services Directions issued by the Attorney-General (pursuant to section 55ZF of the *Judiciary Act 1903*), agencies who seek legal advice on legislation administered by another agency are required to follow certain procedures.

This includes, depending on the circumstances, a requirement to:

* consult prior to making the request,
* provide details of the request for legal advice, and
* provide a copy of the legal advice obtained, to the agency responsible for administering the relevant legislation. For example, in the case of the PS Act, this would be provided to the APSC. See section 10 of the Legal Services Directions for details.

When clarifying matters relating to Commonwealth legislation, it is good practice to check with the agency responsible whether there is any guidance material that may have been issued on the matter or to seek their advice.

# Useful internet sites

The following is a list of internet sites which may be useful for human resources practitioners. Please note that some addresses may change over time.

## Australian Commonwealth Government Entry Points

[***www.australia.gov.au***](http://www.australia.gov.au)

This entry point aims to put customers in touch with what they need from the Australian Government without them needing to know which department to go to. The site links to information and services on over 700 Australian Government websites as well as selected state and territory resources.

[***www.gov.au***](http://www.gov.au)

Provides links to the information and services of the Australian, State, Territory and Local Governments.

[***www.gold.gov.au***](http://www.gold.gov.au)

The Government Online Directory provides contact details for the Commonwealth Parliament, the Courts, the Governor-General and the executive of the Commonwealth Public Service.

***[Government publications](http://australia.gov.au/publications/)***

This link provides a reference point to a range of resources on Australian Government publications.

## Australian Public Service Commission

[***www.apsc.gov.au***](http://www.apsc.gov.au)

* APS Bargaining framework
* APS Workplace Relations Policy Advice
* Agreement Making
* APS Employment and Policy Advice
* Employment Framework
* Workplace Relations Advice series
* Public Administration and People Management issues
* APS Employment Database Information
* APS employment opportunities and notices (***www.apsjobs.gov.au***)
* Values, Conduct and Diversity
* Advices, circulars and publications
* Office of the Merit Protection Commissioner
* Review of Action information

The APSC publication, [The Foundations of Governance](http://www.apsc.gov.au/publications-and-media/current-publications/foundations-of-governance) is comprehensive resource with further useful information.

## Fair Work Commission

[***http://www.fwc.gov.au/***](http://www.fwc.gov.au/) Fair Work Commission (previously known as Fair Work Australia) is the national workplace relations tribunal. It is an independent body with power to carry out a range of functions relating to:

* the safety net of minimum wages and employment conditions
* enterprise bargaining
* industrial action
* dispute resolution
* termination of employment
* other workplace matters.

## Fair Work Ombudsman

[***www.fairwork.gov.au***](http://www.fairwork.gov.au)

Fair Work Ombudsman can assist employers and employees on the following matters relation to employment:

* Pay
* Awards
* Employment
* Leave
* Termination
* Complaints
* Resources
* FAQ’s

## Department of Finance and Deregulation

[***www.finance.gov.au***](http://www.finance.gov.au)

* Superannuation policy and legislation for Commonwealth civilian employees including *Superannuation (Productivity Benefit) Act 1988* and circulars, under Commonwealth Superannuation Group
* Government accountability and financial management frameworks under the *Financial Management Accountability Act 1997*
* Budget policy advice and process
* Competitive tendering and contracting

## [**Australian Government Information Management Office**](http://www.finance.gov.au/agimo/index.html) *(AGIMO)*

(Part of Dept of Finance and Deregulation) ***<http://agimo.gov.au/about-agimo/>***

AGIMO fosters the efficient and effective use of ICT by Australian Government departments and agencies. It provides strategic advice, activities and representation relating to the application of ICT to government administration, information and services.

## ComSuper

[***www.comsuper.gov.au***](http://www.comsuper.gov.au)
Go to Employer Info for information on:

* Personnel training notes
* CSS and PSS information and forms
* Employer News and Superannuation circulars
* CSS and PSS i-estimator
* Invalidity notes
* PSSap information

## Australian Taxation Office

[***www.ato.gov.au***](http://www.ato.gov.au)

For information on:

* Pay As You Go
* Tax calculator
* Tax tables and rates
* Tax file number declaration and withholding declaration forms
* Superannuation obligations under the Superannuation Guarantee legislation
* Eligible termination payments and reasonable benefit limits
* Higher Education Loan Program (HELP) information

## Comlaw

[***www.comlaw.gov.au***](http://www.comlaw.gov.au)

A central repository of:

* Commonwealth primary legislation, as well as other ancillary documents, and
* the new Federal Register of Legislative Instruments (FRLI) which is the authoritative source for legislative instruments and compilations of legislative instruments.

## Comcare

[***www.comcare.gov.au***](http://www.comcare.gov.au)

For information on:

* Worker’s compensation
* Workplace Health and Safety (WH&S) legislation
* Rehabilitation
* Incident and accident reporting

## Australian Human Rights Commission

[***www.humanrights.gov.au***](http://www.humanrights.gov.au)

For information on:

* Employer responsibilities on human rights and anti-discrimination
* *Racial Discrimination Act 1975*
* *Sex Discrimination Act 1984*
* *Human Rights and Equal Opportunity Commission Act 1986*
* and *Disability Discrimination Act 1992*
* *Age Discrimination Act 2004*
* Australian Human RightsCommissionAct 1986

## Office of Australian Information Commissioner (previously Australian Privacy Commissioner)

[***www.oaic.gov.au***](http://www.oaic.gov.au)

For information on:

* *Privacy Act 1988*
* 11 Information Privacy Principles for Commonwealth Government agencies
* Commonwealth Spent Convictions Scheme
* Tax file number guidelines
* Publications including privacy in government - guidelines and records.

## Australian Prudential Regulation Authority

[***www.apra.gov.au***](http://www.apra.gov.au)

* List of Complying Superannuation Funds and Approved Trustees
* Early Release of Superannuation Benefits
* Australian Government Actuary

## Safe Work Australia

[***www.safeworkaustralia.gov.au***](http://www.safeworkaustralia.gov.au)

(Formerly Australian Safety and Compensation Council)

* The national policy setting body whose key role is to improve work health and safety and workers’ compensation arrangements across Australia

## Australasian Legal Information Institute (AustLII)

[***www.austlii.edu.au***](http://www.austlii.edu.au)

* Access to Australian legal material
* Primary sources - legislation, treaties and decisions of courts and tribunals
* Secondary sources - law reform and royal commission reports

## National Archives of Australia

[***www.naa.gov.a*u**](http://www.naa.gov.au)

* *Archives Act 1983*
* Record keeping standards for Commonwealth agencies
* Administrative Functions Disposal Authority