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Government Response to the Senate  
Foreign Affairs, Defence and Trade Legislation  
Committee

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Australian Civilian Corps Bill 2010 [Provisions]

March 2011

Committee Recommendations	Government Response
<p><b>Recommendation 1</b></p> <p><i>The committee recommends that the bill include a statement on the humanitarian and development purpose for establishing the Australian Civilian Corps.</i></p>	<p>Not agreed.</p> <p>The Government does not consider it necessary to include such a statement in the Bill. The Government has sought to align the ACC with the broader aid program by making the Director General of AusAID responsible for the management of the ACC. The ACC Values, which will be prescribed by regulation, will further define the principles that will govern the operation of the ACC.</p>
<p><b>Recommendation 2</b></p> <p><i>The committee recommends that a new subsection (2) be added to section 12 as follows:</i></p> <p><i>(2) Regulations made under this Section must provide that Australian Civilian Corps Values be consistent with the APS Values.</i></p> <p><i>The committee recommends that a new subsection (1A) be added to section 15 as follows:</i></p> <p><i>(1A) Regulations made under this Section must provide that Australian Civilian Corps Code of Conduct incorporate the APS Code of Conduct and the AusAID Code of Conduct for Overseas Service.</i></p>	<p>Not agreed.</p> <p>Nothing in the ACC Values will contradict the APS Values, and as the Explanatory Memorandum states, the intention is to broadly align the ACC Values and Code with existing APS Values and Code. The AusAID Code of Conduct for Overseas Service (the 'AusAID Overseas Code') will not apply to the ACC, although the ACC Code of Conduct will be broadly consistent with the AusAID Overseas Code.</p> <p>However, there are elements in the APS Values and existing Codes of Conduct that apply to APS employees which are not appropriate for, or relevant to, the ACC and its work environment. As a result, incorporation of the existing Codes of Conduct into the ACC Code would be inappropriate. Since there would inevitably be differences between the terms of the ACC Values and the APS Values, expressly requiring 'consistency' could create unnecessary difficulty in interpreting particular provisions of the ACC Values.</p> <p>The ACC Values and ACC Code of Conduct will be prescribed by regulation and as such will be tabled and subject to Parliamentary scrutiny and disallowance.</p>

**Recommendation 3**

*The committee recommends that consistent with the Public Service Act, the bill require that exemptions to the entitlement to review be made under regulations and subject to Parliamentary scrutiny.*

Agree.

**Recommendation 4**

*The committee recommends that the bill include a provision that would allow an ACC employee, following an adverse finding of AusAID's internal review, to apply for the matter to be referred to an external merits review authority. The committee suggests that this provision should be modelled on section 33 of the Public Service Act.*

Agree to provide for external review of code of conduct decisions.

In light of the proposed external review right, the Government does not consider that it would be necessary for the Bill to also provide for internal review. Under the arrangement established pursuant to section 33 of the *Public Service Act 1999*, decisions on breaches of the APS Code of Conduct are not subject to internal review. Consistent with that, it is proposed that decisions relating to breaches of the ACC Code of Conduct will only be reviewable by an external party.

Under the proposed Government amendments to the Bill, the Director General of AusAID will be required to arrange for external review by a suitably qualified person or committee. AusAID has reached in-principle agreement with the Merit Protection Commissioner for the Commissioner to be a reviewer of code of conduct decisions, subject to further negotiation of the terms of the review arrangement. Under the present proposal, the Commissioner may agree to review decisions, for a fee, at the request of the Director General of AusAID from time to time pursuant to an MOU between the Director General of AusAID and the Commissioner. Following consultation with the Merit Protection Commissioner and the Australian Public Service Commission, it has been decided that the Bill and the regulations will not expressly refer to the Merit Protection Commissioner as the external reviewer. If the Commissioner declines for some reason to review a particular decision, the Director-General would be required by the amended Bill to find an alternative external reviewer who meets the criteria set out in the Bill in relation to independence and qualifications.

The proposed arrangement is similar to existing review arrangements established between the Merit Protection Commissioner and a number of other non-APS Government agencies.

<p><b>Recommendation 5</b></p> <p><i>The committee recommends that the government look closely at the provisions governing accrued entitlements to ensure that employees who take up employment with the ACC are not disadvantaged in respect of entitlements such as superannuation, long service and annual leave.</i></p>	<p>Not agreed. While the Government is working to ensure that, to the extent possible, employees who take up employment with the ACC are not disadvantaged in respect of entitlements, there are constitutional and other limitations to the Commonwealth's ability to enact legislation seeking to interfere with the accrual of entitlements under State employment laws that ordinarily apply to relevant employees.</p> <p>It will be open to an employee not to accept an engagement with the ACC if the employee is not satisfied with the entitlements offered.</p>
<p><b>Recommendation 6</b></p> <p><i>The committee recommends that paragraph 27(2)(a) of the bill be amended to include the term 'at the request of the employees'.</i></p> <p><i>Paragraph 27(2)(a) to read:</i></p> <p><i>(a) the granting of leave to employees, at the request of the employees, for the purposes of service in the Australian Civilian Corps.</i></p>	<p>Agree.</p> <p>While the Government does not consider the additional words to be necessary, this recommendation is consistent with the intention that participation in the ACC is entirely voluntary. Accordingly, an amendment to the Bill has been drafted to implement this recommendation.</p>
<p><b>Recommendation 7</b></p> <p><i>The committee recommends that subclause 23(2) be added requiring the notice to specify the ground or grounds that are relied on for termination.</i></p>	<p>Agree.</p>

**Recommendation 8**

*The committee recommends that the government give consideration to including in the bill provisions governing the protection of whistleblowers, prohibition on patronage and favouritism and promotion of employment equity.*

The Government agrees with the recommendation to include provisions in the Bill mirroring section 17 of the *Public Service Act 1999* against patronage and favouritism.

The Government does not agree to the recommendation to include a provision governing the protection of whistleblowers. The Government has committed to enacting a broader ranging public interest disclosure scheme applying to Commonwealth employment which should be sufficient for the ACC's purposes. Accordingly, it is considered neither necessary nor appropriate for the ACC to have a separate arrangement under its own legislation.

The Government does not agree to the recommendation to include a provision on promotion of employment equity as there will only be a limited number of ACC employees at any one time. ACC employees will be selected from the ACC register based on the needs identified by the hosting entity/country, as well as the specific skills, experience and capacity of an individual to operate in that potentially high threat environment. In these circumstances, the Government does not consider that it is appropriate to require the Director General of AusAID to establish a workplace diversity program for the ACC.

<p><b>Recommendation 9</b></p> <p><i>The committee recommends that an additional subclause be inserted in clause 24 stating that any arrangements for, agreements on and actual secondments under this clause must be consistent with ACC Values and Code of Conduct and AusAID Code of Conduct for Overseas Service.</i></p>	<p>Not agreed.</p> <p>The AusAID Code of Conduct for Overseas Service (the 'AusAID Overseas Code') will not apply to the ACC. However, the ACC Code of Conduct will be broadly consistent with the AusAID Overseas Code, with appropriate modifications to take into account the unique nature of the ACC's operations.</p> <p>As the Bill is currently drafted, the ACC Values will already apply in relation to secondment arrangements (eg. the obligation of the Director General of AusAID to uphold and promote the ACC Values will apply in relation to the making of secondment arrangements).</p> <p>In addition, the ACC Values and ACC Code of Conduct will continue to apply to an ACC employee on secondment (subject to directions issued by the Director General of AusAID under subclause 16(1)). Including a provision to require that secondments must in all respects be consistent with the ACC Values and ACC Code of Conduct is considered unnecessary and may have unintended consequences.</p>
<p><b>Recommendation 10</b></p> <p><i>The committee recommends that the Explanatory Memorandum be more explicit on ACC's reporting obligations by specifying that the report on the activities of the ACC will form a separate and discrete section in AusAID's Annual Report and will include financial statements.</i></p>	<p>The Government agrees to amend the Explanatory Memorandum to specify that the activities of the ACC will be reported separately in AusAID's Annual Report but does not believe it is appropriate to include separate financial statements.</p>
<p><b>Recommendation 11</b></p> <p><i>The committee recommends that, subject to consideration of the committee's recommendations dealing with the provisions of the bill, the Senate pass the bill.</i></p>	<p>Agree.</p>