



# Australian Public Service Commissioner's Amendment Direction 2013 (No. 1)

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Public Service Commissioner

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## 1 Name of direction

This direction may be cited as the *Australian Public Service Commissioner's Amendment Direction 2013 (No. 1)*.

## 2 Commencement

This direction commences on 1 July 2013.

## 3 Authority

This direction is issued under subsection 11(1), subsections 11A(1) and (2), and subsection 15(4) of the *Public Service Act 1999*.

## 4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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# Schedule 1—Amendments

## *Australian Public Service Commissioner's Directions 2013*

### **1 At the end of clause 2.15**

Add:

Note: If an engagement made in accordance with this affirmative measure is to be as a non-ongoing APS employee for a specified term, or for the duration of a specified task, the requirements of regulation 3.5 of the Regulations apply to the engagement, including requirements relating to the grounds for the engagement and the term of the engagement.

### **2 At the end of clause 2.16**

Add:

Note: If an engagement made in accordance with this affirmative measure is to be as a non-ongoing APS employee for a specified term, or for the duration of a specified task, the requirements of regulation 3.5 of the Regulations apply to the engagement, including requirements relating to the grounds for the engagement and the term of the engagement.

### **3 After clause 2.17**

Insert:

#### **2.17A Affirmative measure—RecruitAbility Scheme**

- (1) In notifying a vacancy in accordance with clause 2.9, an Agency Head may specify that the RecruitAbility Scheme applies in relation to the filling of that vacancy.

Note: The RecruitAbility Scheme is a set of measures, coordinated by the Commissioner, to make arrangements for people with disability to be considered for engagement or promotion as an APS employee in circumstances where the applicant is assessed as meeting the minimum requirements for the position.

- (2) If a vacancy has been notified in accordance with subclause (1), the consideration of a person for engagement or promotion using the measures in the RecruitAbility Scheme is conduct that complies with the APS Employment Principle in paragraph 10A(1)(c) of the Act.
- (3) Subclause (1) does not require the Agency Head to consider a person for a vacancy in accordance with the RecruitAbility Scheme.
- (4) If a vacancy has been notified in accordance with subclause (1) and a person is considered for engagement or promotion using the measures in the RecruitAbility Scheme, the Agency Head must ensure that, in all other respects, a decision to fill the vacancy is made in a way that meets the requirements of the APS Employment Principle in paragraph 10A(1)(c) of the Act and Part 2.1 of these Directions.

### **4 Paragraph 2.25(2)(a)**

Repeal the paragraph, substitute:

- (a) the duration of the duties to be performed and whether it would be more appropriate for those duties to be performed on an ongoing basis;

## 5 Clause 2.29

Repeal the clause, substitute:

### 2.29 Decisions that must be notified in the *Gazette*

- (1) An Agency Head must notify an employment decision of any of the following kinds in the *Public Service Gazette*:
  - (a) an engagement of a person as an ongoing APS employee (including under paragraph 72(1)(c) or (d) of the Act);
  - (b) an engagement of a person as an APS employee for a specified term of more than 12 months or for the duration of a specified task that is reasonably expected to take more than 12 months (including under paragraph 72(1)(c) or (d) of the Act);
  - (c) in relation to a person who is engaged as an APS employee for a specified term of 12 months or less—an extension of the engagement that results in the term of engagement being more than 12 months;
  - (d) a movement (other than a temporary movement) by an ongoing APS employee to perform duties in another Agency, if the vacancy was notified in the *Public Service Gazette*;
  - (e) an assignment of duties (other than a temporary assignment of duties) to an ongoing APS employee in an Agency, if the vacancy was notified in the *Public Service Gazette*;
  - (f) the promotion of an ongoing APS employee;
  - (g) the promotion of an ongoing APS employee, following the decision of a Promotion Review Committee under subparagraph 5.18(1)(b)(ii) of the Regulations that has not been notified under paragraph (f);
  - (h) the engagement of an ongoing Parliamentary Service employee as an ongoing APS employee if the engagement:
    - (i) follows a decision of a Promotion Review Committee mentioned in subparagraph 5.18(1)(b)(iii) of the Regulations; and
    - (ii) has not been notified under paragraph (a);
  - (i) the termination, and the grounds for termination, of the employment of an ongoing APS employee under section 29 of the Act;
  - (j) the retirement of an SES employee with the payment of an incentive under section 37 of the Act.
- (2) A decision mentioned in subclause (1) must be notified in the *Public Service Gazette* within 3 months after the decision is made, unless the Commissioner agrees to a different arrangement.
- (3) If the employment decision is:
  - (a) a decision to engage, promote or move a person, or assign the duties of a person; and
  - (b) made on the basis that the person is required to satisfy an eligibility requirement (such as a security or character clearance);the 3 month period mentioned in subclause (2) is taken to commence at the time the eligibility requirement is met.
- (4) A notification must include the employee's name unless the Agency Head decides that the name should not be included, because of the person's work-related or personal circumstances.

- (5) The Agency Head may not make a decision under subclause (4), unless he or she has obtained the approval of the Commissioner, who will consult the Merit Protection Commissioner in the case of a non-SES employee.
- (6) If a notification that does not include the employee's name relates to a promotion that is subject to review:
- (a) the Agency must, on or before the day of the notification, notify all parties who are eligible to seek review of the promotion so they are aware of their rights of review; and
  - (b) the Agency must, at the same time as parties are notified, advise the Merit Protection Commissioner that eligible parties have been notified.
- (7) If an engagement notified under paragraph (1)(a), or a promotion notified under paragraph (1)(f), was made as a result of a selection process that complied with Part 2.1 in relation to a similar vacancy, the notification of the decision must include a statement to the following effect:
- This engagement/promotion is made following a selection process that complies with Part 2.1 of the Australian Public Service Commissioner's Directions 2013—similar vacancy previously notified.*
- (8) If an engagement notified under paragraph (1)(a) is the engagement of a person who:
- (a) was an ongoing Parliamentary Service employee immediately before the engagement; and
  - (b) was engaged at a higher classification than the person's classification as a Parliamentary Service employee;
- the notification of the decision must include a statement to the following effect:
- This engagement of an ongoing Parliamentary Service employee at a higher classification may be subject to review by a Promotion Review Committee in accordance with Part 5 of the Public Service Regulations 1999.*
- Note: See Schedule 2 for comparison of Parliamentary Service classifications with APS classifications.
- (9) If an engagement notified under paragraph (1)(a) was made under clause 2.13 (engagement of non-ongoing APS employee as ongoing employee in exceptional circumstances), the notification of the decision must include a statement to the following effect:
- This engagement was authorised by the Australian Public Service Commissioner under clause 2.13 of the Australian Public Service Commissioner's Directions 2013—exceptional circumstances.*

## 6 Chapter 7 (summary of Chapter 7)

Repeal the summary, substitute:

### Summary of this Chapter

This Chapter provides Directions on a range of employment matters including the restrictions on engaging redundancy benefit recipients, the termination of employment of non-ongoing employees, minimum requirements relating to employees who apply for leave without pay to undertake employment under the *Governor-General Act 1974* or the *Members of Parliament (Staff) Act 1984* and details of employment-related information that agencies are required to seek from employees.

## 7 After clause 7.5

Insert:

### 7.6 Collection of employment-related data

- (1) An Agency Head must ensure that there are measures in place to collect information from each employee of the agency, including information relating to the following matters, and to give information that is collected to the Commissioner:
  - (a) the employee's highest level of attainment in education;
  - (b) the employee's main field of study;
  - (c) the employee's previous work experience;
  - (d) the employee's Indigenous status;
  - (e) the employee's disability status;
  - (f) the employee's country of birth;
  - (g) the employee's first language spoken;
  - (h) the first non-English language (if any) spoken by the employee;
  - (i) the first language of the employee's father;
  - (j) the first language of the employee's mother.
- Note 1: This requirement is in addition to the Agency Head's duty to give the Commissioner information for the Commissioner to prepare an annual report: see section 44 of the Act.
- Note 2: Information collected using the measures mentioned in subclause (1) will be included in the Australian Public Service Employment Database.
- Note 3: In collecting information using the measures mentioned in subclause (1), an Agency Head will have regard to the specifications in relation to the collection of information that are set out in the APSED Manual published on the website of the Australian Public Service Commission.
- (2) In seeking information relating to the matters in paragraphs 7.6(1)(a) to (j), an Agency Head must allow APS employees to provide a response of "choose not to give this information".

## 8 After Chapter 8

Insert:

# Chapter 9—Transitional arrangements

### 9.1 Amendments made by the *Australian Public Service Commissioner's Amendment Direction 2013 (No. 1)*

*Employment opportunities notified before 1 July 2013*

- (1) If an Agency Head notified an employment opportunity in accordance with Chapter 4 of the *Public Service Commissioner's Directions 1999* before 1 July 2013:
  - (a) clause 2.9 does not apply in relation to that action; and
  - (b) the relevant provisions of Chapter 4 of the *Public Service Commissioner's Directions 1999* continue to apply in relation to that action.

*Employment decisions and cancellation decisions not notified before 1 July 2013*

(2) If:

- (a) an employment decision of a kind mentioned in subclause 2.29(1), or a cancellation decision of a kind mentioned in subclause 2.30(1), was made before 1 July 2013; and
- (b) the Agency Head did not notify the decision in the *Gazette* before 1 July 2013;

a reference in subclause 2.29(2) or 2.30(1) to a period of 3 months is taken to be a reference to a period of 3 months commencing on 1 July 2013.

Note: Subclauses 2.29(2) and 2.30(1) require that employment decisions and cancellation decisions of the kind specified in those subclauses be notified in the *Gazette* within 3 months after the decision is made.

**9 Paragraph 1(2)(a) of Schedule 1**

Omit “or a lower”.