



Australian Public Service Commissioner's Amendment (Notification of Decisions and Other Measures) Direction 2014

I, Stephen Sedgwick AO FIPAA, Australian Public Service Commissioner, make the following direction.

Dated 21 October 2014

Stephen Sedgwick
Australian Public Service Commissioner

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1 Name

This is the *Australian Public Service Commissioner's Amendment (Notification of Decisions and Other Measures) Direction 2014*.

2 Commencement

This instrument commences on 1 November 2014.

3 Authority

This instrument is made under section 11A of the *Public Service Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Australian Public Service Commissioner's Directions 2013

1 Heading before clause 1

Repeal the heading, substitute:

Chapter 1A—Preliminary

2 Clause 1 (heading)

Repeal the heading, substitute:

1A.1 Name

3 Clause 4

Repeal the clause, substitute:

1A.2 Definitions—the Dictionary

The Dictionary at the end of these Directions defines certain words and expressions.

4 Clauses 1.7 and 1.8

Omit “employees”, substitute “APS employees”.

5 Subclauses 2.12(1) and (2)

Omit “non-ongoing employee”, substitute “non-ongoing APS employee”.

6 Subclause 2.12(3)

Omit “non-ongoing employment”, substitute “non-ongoing APS employment”.

7 Clause 2.12 (note)

Omit “non-ongoing employees”, substitute “non-ongoing APS employees”.

8 Subclause 2.23(1)

Omit “former employee”, substitute “former APS employee”.

9 Subclause 2.27(2)

Omit “clause 6.8”, substitute “clause 2.27A”.

10 At the end of Part 2.3

Add:

2.27A Movement of ongoing APS employee to another Agency during an inquiry into a suspected breach of the Code of Conduct

(1) This clause applies if:

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- (a) an ongoing APS employee in an Agency is suspected of having breached the Code of Conduct; and
 - (b) in accordance with procedures established under subsection 15(3), 41B(3) or 50A(2) of the Act, the employee has been informed of the details of the suspected breach; and
 - (c) the matter to which the suspected breach relates has not yet been resolved; and
 - (d) a decision has been made that, apart from this clause, would result in the employee moving to another Agency (including on promotion) under section 26 of the Act.
- (2) Unless the employee's current Agency Head and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter to which the suspected breach relates is resolved.
- (3) For this clause, the matter to which the suspected breach relates is taken to be resolved when:
- (a) a determination is made as to whether the APS employee has breached the Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.

11 Paragraphs 2.29(1)(i) and (j)

Repeal the paragraphs, substitute:

- (i) the termination of the employment of an ongoing APS employee on the ground mentioned in paragraph 29(3)(g) of the Act (breach of the Code of Conduct)."

12 Paragraph 2.30(1)(f)

Omit "paragraph 2.29(1)(i);", substitute "paragraph 2.29(1)(i)."

13 Paragraph 2.30(1)(g)

Repeal the paragraph.

14 Subclause 2.31(1)

Omit "clause 6.8", substitute "clause 2.27A".

15 Subclause 6.2(2)

Omit "former employee", substitute "former APS employee".

16 Clause 6.8

Repeal the clause.

17 Clause 7.3 (note 1)

Omit "Note 1", substitute "Note".

18 Clause 7.3 (note 2)

Repeal the note.

19 Chapter 9

Repeal the Chapter, substitute:

Chapter 9—Transitional provisions

Part 9.1—Transitional provisions relating to the Australian Public Service Commissioner’s Amendment (Notification of Decisions and Other Measures) Direction 2014

9.1 Decision to terminate employment of ongoing APS employee

- (1) This clause applies if, before the commencement of the *Australian Public Service Commissioner’s Amendment (Notification of Decisions and Other Measures) Direction 2014* (the **amendment direction**):
 - (a) an Agency Head had made a decision (a **termination decision**) to terminate the employment of an ongoing APS employee under section 29 of the Act (other than for breach of the Code of Conduct); and
 - (b) the termination had taken effect; and
 - (c) the termination decision had not been notified in the Gazette.
- (2) Despite the amendments made by the amendment direction, clause 2.29 of these Directions, as in force immediately before the commencement of the amendment direction, continues to apply in relation to the termination decision.

9.2 Decision to cancel termination decision

- (1) This clause applies in relation to a decision (a **cancellation decision**) by an Agency Head to cancel a decision (a **termination decision**) to terminate the employment of an ongoing APS employee under section 29 of the Act (other than for breach of the Code of Conduct), if:
 - (a) the termination decision has been notified in the Gazette; and
 - (b) the cancellation decision has not been notified in the Gazette.
- (2) Despite the amendments made by the *Australian Public Service Commissioner’s Amendment (Notification of Decisions and Other Measures) Direction 2014* (the **amendment direction**), clause 2.30 of these Directions, as in force immediately before the commencement of the amendment direction, continues to apply in relation to the cancellation decision.

9.3 Retirement by SES employee with payment of incentive

- (1) This clause applies if, before the commencement of the *Australian Public Service Commissioner’s Amendment (Notification of Decisions and Other Measures) Direction 2014* (the **amendment direction**):
 - (a) an SES employee had been given a notice under section 37 of the Act; and
 - (b) the employee had retired within the period specified in the notice; and
 - (c) the retirement had not been notified in the Gazette.
- (2) Despite the amendments made by the amendment direction, clause 2.29 of these Directions, as in force immediately before the commencement of the amendment direction, continues to apply in relation to the retirement.

20 Subclause 1(4) of Schedule 1

Omit “former employee”, substitute “former APS employee”.

21 Dictionary (notes after heading)

Repeal the notes, substitute:

Note 1: See clause 1A.2.

Note 2: A number of expressions used in these Directions are defined in the Act, including the following:

- (a) Agency;
- (b) Agency Head;
- (c) APS employee;
- (d) APS Employment Principles;
- (e) APS Values;
- (f) Code of Conduct;
- (g) ongoing APS employee;
- (h) SES employee.

22 Dictionary

Repeal the following definitions:

- (a) definition of *Agency*;
- (b) definition of *Agency Head*;
- (c) definition of *APS*;
- (d) definition of *APS employee*;
- (e) definition of *APS employment*;
- (f) definition of *APS employment principles*;
- (g) definition of *APS Values*;
- (h) definition of *Code of Conduct*;
- (i) definition of *Commissioner*;
- (j) definition of *employee*;
- (k) definition of *fair work instrument*;
- (l) definition of *Merit Protection Commissioner*;
- (m) definition of *National Employment Standards*;
- (n) definition of *non-SES employee*;
- (o) definition of *ongoing APS employee*;
- (p) definition of *SES*;
- (q) definition of *SES employee*.