



Parliamentary Service Amendment (Managing Recruitment Activity and Other Measures) Determination 2017

We, Senator the Hon Stephen Parry, President of the Senate, and the Hon Tony Smith MP, Speaker of the House of Representatives, make the following determination.

Dated 21 September 2017

Senator the Hon Stephen Parry
President of the Senate

The Hon Tony Smith MP
Speaker of the House of Representatives

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1 Name

This is the *Parliamentary Service Amendment (Managing Recruitment Activity and Other Measures) Determination 2017*.

2 Commencement

This instrument commences on the day after registration.

3 Authority

This instrument is made under subsection 71(1) of the *Parliamentary 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Parliamentary Service Determination 2013

1 Clause 6

Repeal the clause, substitute:

6 Parliamentary Service Value 1—Committed to Service

Having regard to an individual's duties and responsibilities, upholding the Parliamentary Service Value in subsection 10(1) of the Act requires the following:

- (a) engaging effectively and providing responsive, client-focussed service delivery;
- (b) ensuring that decisions and interactions are objective and impartial;
- (c) encouraging innovative thought and supporting innovative solutions;
- (d) supporting collaboration and teamwork, both within a Department and with other Departments and APS agencies and the wider community;
- (e) promoting continuous improvement and managing change effectively;
- (f) identifying and managing areas of potential risk;
- (g) pursuing and supporting training and development to improve capability;
- (h) being responsive to the needs of the Parliament and understanding the environment in which it operates.

2 Paragraph 7(g)

Repeal the paragraph.

3 Paragraph 9(g)

Omit “through performance management systems”.

4 Paragraph 10(b)

Omit “question the ability of the individual to serve the Parliament”, substitute “conclude that the individual could not serve the Parliament impartially”.

5 Clause 13

Repeal the clause, substitute:

13 Meaning of *similar vacancy*

For this Part, a vacancy is a *similar vacancy* to a vacancy that is notified under clause 20 (a *notified vacancy*) if:

- (a) one of the following applies:
 - (i) it is in the same Department;
 - (ii) it is an SES vacancy;
 - (iii) it is a vacancy in a centrally coordinated entry-level program;
 - (iv) the Secretary of the Department in which the notified vacancy existed, another Secretary and a candidate who applied for the notified

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- vacancy agree, in writing, that the vacancy is a similar vacancy in relation to the candidate;
- (v) if the notified vacancy relates to a function that was moved to another Department after the notification—it is in the Department to which the function was moved; and
- (b) all of the following apply:
- (i) it is the same category of employment (ongoing or non-ongoing);
 - (ii) it comprises similar duties;
 - (iii) it is at the same classification;
 - (iv) it is to be performed in a similar location.

6 After clause 13

Insert:

13A Meaning of *Senior Executive Service (SES)* vacancy

In this determination, *SES vacancy* means a vacancy at an SES classification as set out in the Classification Rules.

7 Clause 19

Repeal the clause, substitute:

19 Merit-based selection process for engagement or promotion

- (1) A selection process meets the requirements of this Subdivision if all of the following apply:
- (a) the aim and purpose of the selection process is determined in advance;
 - (b) information about the selection process is readily available to applicants;
 - (c) the selection process is applied fairly in relation to each eligible applicant;
 - (d) the selection process is appropriately documented.

Note: Clauses 15 and 16 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

- (2) When making a decision using such a selection process:
- (a) merit is the primary consideration; and
 - (b) if any eligible applicants are otherwise equal on merit—secondary considerations may be taken into account if they relate to matters within the control of the applicant.

Note: Paragraph (b)—matters within the control of the applicant include the applicant's ability to start by a particular date, willingness to relocate or to meet other reasonable Departmental requirements.

8 Clause 20

Repeal the clause, substitute:

20 Notification of vacancy in *Public Service Gazette*

Basic requirement for notification of vacancy

- (1) Subject to this clause, a selection process for a decision to fill a vacancy meets the requirements of this Subdivision only if:
 - (a) the vacancy in the Department, or a similar vacancy, was notified in the *Public Service Gazette* within a period of 12 months before the written decision to engage or promote the successful applicant; and
 - (b) the vacancy was notified as open to all eligible members of the community; and
 - (c) the vacancy was notified with a closing date for applications of:
 - (i) at least 7 calendar days after the notification; or
 - (ii) if the Secretary was satisfied that there were special circumstances and the Secretary approved a shorter period—the end of that shorter period.

Restricting applications to Parliamentary Service employees (other than Parliamentary Service Level 1 and training classifications)

- (2) If the Secretary decides that, for reasons of cost or operational efficiency, a vacancy at a non-SES classification should be filled by a person who is already a Parliamentary Service employee, the vacancy may be notified in the *Public Service Gazette* as open only to persons who are Parliamentary Service employees at the time of the notification.
- (3) Subclause (2) does not apply in relation to a vacancy at the Parliamentary Service Level 1 classification or a training classification, and these must be notified as open to all eligible members of the community.

Multiple Department notification

- (4) A Department participating in a multiple Department selection process must ensure as far as practicable that a specified vacancy is brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for it.

External advertising

- (5) A vacancy notified in the *Public Service Gazette* as open to all eligible members of the community must, if also advertised externally, be advertised within 4 weeks before or 4 weeks after the *Gazette* notification.

Example: A vacancy may be advertised externally on a recruitment website.

- (6) A vacancy notified in the *Public Service Gazette* as open only to persons who are Parliamentary Service employees must, if it is later advertised externally as open to all eligible members of the community, be re-notified in the *Public Service Gazette* as open to all eligible members of the community.

Meaning of Parliamentary Service employee

- (7) In this clause:

Parliamentary Service employee means a person who:

- (a) is a current ongoing Parliamentary Service employee or APS employee; or

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- (b) was, at the time of the relevant Public Service *Gazette* notification, a non-ongoing Parliamentary Service employee (within the meaning of the *Parliamentary Service Act 1999*) or non-ongoing APS employee (within the meaning of the *Public Service Act 1999*).

9 Clause 21

Repeal the clause, substitute:

21 Additional requirements for SES engagement or promotion decisions

A selection process for an SES vacancy meets the requirements of this Subdivision if, in addition to the requirements of clauses 19 and 20, the following apply:

- (a) the Commissioner, or a representative of the Commissioner, was a full participant in the selection process;
- (b) if a representative of the Commissioner participated in the selection process—the representative certified that the selection process complied with the Act and this Determination.

10 Clause 23

Repeal the clause, substitute:

23 Engagement on a short-term, irregular or intermittent basis

- (1) A Secretary may engage a person to perform duties as a non-ongoing Parliamentary Service employee if:
 - (a) the engagement is for a specified term or the duration of a specified task and the period of employment is 18 months or less; or
 - (b) the engagement is for duties that are irregular or intermittent.
- (2) A Secretary may extend or further extend an engagement mentioned in paragraph (1)(a) if:
 - (a) there is a continuing need for the duties to be performed; and
 - (b) the person engaged is performing the duties satisfactorily or better; and
 - (c) the Secretary is satisfied that:
 - (i) it is still appropriate for the duties to be performed on a non-ongoing basis; and
 - (ii) the extension, or further extension, will contribute to efficient and effective organisational performance.

However, the total period of engagement (including any extension), must not exceed 3 years.
- (3) The Secretary must ensure as far as practicable that such a vacancy is brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for it.

Example: A vacancy may be brought to the notice of the community by being advertised or access being provided to non-ongoing employment registers.
- (4) As a minimum requirement, the Secretary must be satisfied that the person to be engaged has the work-related qualities genuinely required to perform the relevant duties.

Note: Clauses 15 and 16 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

11 Clause 24

Repeal the clause, substitute:

24 Engagement of non-ongoing Parliamentary Service employee as ongoing employee in exceptional circumstances

- (1) The Commissioner may authorise the engagement by a Secretary of a non-ongoing Parliamentary Service employee as an ongoing Parliamentary Service employee if:
 - (a) the Secretary requests, in writing, such an authorisation in respect of the non-ongoing Parliamentary Service employee; and
 - (b) the Commissioner is satisfied that exceptional circumstances justify such an engagement.
- (2) A Secretary may only make a request in respect of a non-ongoing Parliamentary Service employee if the Secretary is satisfied that:
 - (a) the duties of the relevant employment are more appropriately undertaken by an ongoing Parliamentary Service employee; and
 - (b) the person to be engaged as an ongoing Parliamentary Service employee has the work-related qualities genuinely required to perform the relevant duties; and
 - (c) the engagement as an ongoing Parliamentary Service employee is at the person's classification (or equivalent) as a non-ongoing Parliamentary Service employee; and
 - (d) the original engagement of the person as a non-ongoing Parliamentary Service employee, or an extension of the engagement of the person as a non-ongoing Parliamentary Service employee, complied with the requirements of Subdivision 1; and
 - (e) the engagement is necessary for the Department's operations.

12 Clause 25

Repeal the clause, substitute:

25 Engagement of ongoing Parliamentary Service employee as non-ongoing Parliamentary Service employee

A Secretary may engage a person who is an ongoing Parliamentary Service employee as a non-ongoing Parliamentary Service employee if:

- (a) the person is to be engaged for a specified term or specified task; and
- (b) the person resigns as an ongoing Parliamentary Service employee to start the engagement; and
- (c) the engagement is at the same classification as the person's current classification or at a lower classification.

Note: Clauses 15 and 16 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

13 Clause 26

Repeal the clause, substitute:

26 Affirmative measure—Indigenous employment

- (1) A Secretary may, consistently with Commonwealth law, identify a vacancy as open only to Aboriginal and/or Torres Strait Islander persons.
- (2) The Secretary must ensure that for such a vacancy:
 - (a) eligible applicants are only persons:
 - (i) of Aboriginal and/or Torres Strait Islander descent; and
 - (ii) who identify as Aboriginal and/or Torres Strait Islander; and
 - (iii) who are accepted by their community as being Aboriginal and/or Torres Strait Islander; and
 - (b) either:
 - (i) the selection process for the vacancy otherwise satisfies the requirements of Subdivision 1; or
 - (ii) clause 23 is satisfied.

Note: Clauses 15 and 16 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

- (3) In this clause:

Aboriginal has the same meaning as in the *Racial Discrimination Act 1975*.

Torres Strait Islander has the same meaning as in the *Racial Discrimination Act 1975*.

14 Clause 27

Repeal the clause, substitute:

27 Affirmative measure—disability

- (1) A Secretary may, consistently with Commonwealth law, identify a vacancy as open only to persons who have a disability or a particular type of disability.
- (2) The Secretary must ensure that for such a vacancy:
 - (a) eligible applicants are only persons described in subclause (1); and
 - (b) one of the following applies:
 - (i) the selection process for the vacancy otherwise satisfies the requirements of Subdivision 1;
 - (ii) clause 23 is satisfied;
 - (iii) a disability employment service provider has assessed each applicant as being likely to be unable to compete successfully on merit in a competitive selection process.

Note: Clauses 15 and 16 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

15 Clause 28

Repeal the clause.

16 Clause 29

Repeal the clause, substitute:

29 Engagement of person from State or Territory jurisdiction

A Secretary may engage a person as a non-ongoing Parliamentary Service employee for a specified term if:

- (a) the person is an employee of:
 - (i) a State or Territory; or
 - (ii) an authority of a State or Territory; and
- (b) the Secretary has entered into an agreement with the State or Territory, or the authority of the State or Territory, to engage the person as a non-ongoing employee for a specified term.

Note: Clauses 15 and 16 provide for matters regarding the engagement of non-ongoing Parliamentary Service employees.

17 Clause 30

Repeal the clause, substitute:

30 Re-engagement of election candidates

Person may apply to be re-engaged as a Parliamentary Service employee

- (1) A Secretary may engage a person as a Parliamentary Service employee if:
 - (a) the person is a former Parliamentary Service employee, whose employment ended because they resigned to contest:
 - (i) an election for a member of a House of the Parliament of the Commonwealth or of a State; or
 - (ii) an election for a member of the Legislative Assembly of the Australian Capital Territory or the Northern Territory; or
 - (iii) an election for a member of the Torres Strait Regional Authority; and
 - (b) section 32 of the Act (right of return for election candidates) applies to the person; and
 - (c) the person applies to the Secretary to be engaged as a Parliamentary Service employee within the applicable timeframe mentioned in subclause (2); and
 - (d) if the former employment was non-ongoing:
 - (i) the employment would not have ended except for the resignation; and
 - (ii) the person applies to the Secretary to be engaged before the employment would have ended if the person had not resigned.
- (2) A person mentioned in paragraph (1)(a) must apply to the relevant Secretary:
 - (a) if the result of the election is not disputed—within 2 months after the declaration of the result of the election; or
 - (b) if the result of the election is disputed—within 2 months after a court of disputed returns decides the petition disputing the result, or the petition is withdrawn or lapses; or
 - (c) if the Commissioner has made a declaration under subclause (3)—as soon as practicable after receiving notice of the declaration.

- (3) If the Commissioner is satisfied that it is appropriate to do so, the Commissioner may declare that the person is taken to be a former Parliamentary Service employee for the purposes of paragraph (2)(c).

Example: The Commissioner may make a declaration if the Department in which the person was employed no longer exists or is no longer responsible for duties that were previously carried out by the employee.

Basis on which person may be re-engaged as a Parliamentary Service employee

- (4) If the Secretary engages the person as a Parliamentary Service employee, the person must be:
- (a) engaged on the same basis (ongoing or non-ongoing) as the person's employment before resigning and at the same classification; and
 - (b) assigned duties that are the same as, or similar to, the duties the person had immediately before the resignation or, if such duties are unavailable, other duties at the same classification; and
 - (c) engaged on:
 - (i) the same terms and conditions of employment that applied to the person when the person resigned; or
 - (ii) if the remuneration, or another term or condition, applying to the person's previous classification has changed since the person resigned—the changed terms and conditions.
- (5) The person's continuity of service is taken not to have been broken by the period between the person's resignation and the person's re-engagement as a Parliamentary Service employee, but that period does not count as service for the purposes of:
- (a) the National Employment Standards; or
 - (b) an employment arrangement that applies to the person.

Note: For entitlements to long service leave and paid maternity leave, see the *Long Service Leave (Commonwealth Employees) Act 1976* and the *Maternity Leave (Commonwealth Employees) Act 1973*.

Specified elections

- (6) For the purposes of paragraph 32(1)(a) of the Act, the elections mentioned in subparagraphs (1)(a)(i), (ii) and (iii) are specified.

18 Clause 32

Repeal the clause, substitute:

32 Engagement of an ongoing APS employee as an ongoing Parliamentary Service employee

A Secretary may engage a person who is an ongoing APS employee as an ongoing Parliamentary Service employee if the person is to be employed at a comparable classification or lower, as set out in Schedule 2.

Note: See sections 26 and 26A of the Act for the engagement of an ongoing APS employee as an ongoing or non-ongoing Parliamentary Service employee.

19 Clause 33

Repeal the clause, substitute:

33 Re-engagement of a former Parliamentary Service employee

- (1) The relevant Secretary may engage a former Parliamentary Service employee as an ongoing or non-ongoing Parliamentary Service employee if:
 - (a) the Secretary is satisfied that the person's former employment should not have ended; or
 - (b) the engagement will settle legal action relating to the termination of the employee's employment; or
 - (c) an appropriate authority has recommended or ordered the reinstatement of the person.

Note: An appropriate authority includes, for example, the Federal Court of Australia, the Fair Work Commission or the Australian Human Rights Commission.

- (2) The person must be engaged:
 - (a) on the same basis (ongoing or non-ongoing) as the person was when formerly employed; and
 - (b) at the same or a lower classification.

20 Clause 34

Repeal the clause.

21 Clause 35

Repeal the clause.

22 Clause 35A

Repeal the clause, substitute:

35A Moves between Departments not associated with promotion

- (1) This clause applies if:
 - (a) a Secretary enters into a written agreement with an ongoing Parliamentary Service employee for the employee to move to the Secretary's Department (the *new Department*) from another Department (the *original Department*); and
 - (b) the movement between Departments is not associated with a promotion.
- (2) The move takes effect:
 - (a) in the case of an ongoing move:
 - (i) if a date of effect has been agreed by the Parliamentary Service employee and the 2 Secretaries—on the agreed date of effect; and
 - (ii) if a date of effect has not been agreed—4 weeks after the Parliamentary Service employee informs the original Secretary in writing; and
 - (b) in the case of a temporary move:
 - (i) if the original Secretary has approved it in writing—on the date of effect specified in the approval; and

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- (ii) if the original Secretary has not approved it in writing—on the date the Parliamentary Service employee begins duties in the new Department. The move has the effect of an ongoing move to the new Department at the Parliamentary Service employee’s existing classification.
- (3) In the case of an agreed temporary move, an agreement between the new Secretary and the Parliamentary Service employee to vary the period of the move:
 - (a) if approved by the original Secretary in writing—has effect according to its terms; and
 - (b) if not approved by the original Secretary in writing—has no effect.

Movement between Departments in cases of a suspected breach of the Code of Conduct

- (4) Despite subclause (2), if:
 - (a) a Parliamentary Service employee is suspected of having breached the Code of Conduct and is formally advised of the suspected breach in accordance with procedures established under subsection 15(3) or 48A(2) of the Act; and
 - (b) the matter to which the suspected breach relates has not yet been resolved; then, unless the Parliamentary Service employee’s current Secretary and the new Secretary agree otherwise, a move by the Parliamentary Service employee does not take effect until the matter to which the suspected breach relates is resolved.
- (5) For the purposes of subclause (4), the matter to which the suspected breach relates is taken to be resolved when:
 - (a) a determination is made as to whether the Parliamentary Service employee has breached the Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.

23 After clause 35A

Insert:

35B Moves between Departments on promotion

- (1) If:
 - (a) a decision is taken to promote a Parliamentary Service employee; and
 - (b) the Parliamentary Service employee is suspected of having breached the Code of Conduct and is formally advised of the suspected breach in accordance with procedures established under subsection 15(3) or 48A(2) of the Act; and
 - (c) the matter to which the suspected breach relates is not resolved before the Parliamentary Service employee moves to take up the promotion; then, unless the Parliamentary Service employee’s current Secretary and the new Secretary agree otherwise, the Parliamentary Service employee’s promotion does not take effect until the matter to which the suspected breach relates is resolved.
- (2) For the purposes of subclause (1), the matter to which the suspected breach relates is taken to be resolved when:

- (a) a determination is made as to whether the Parliamentary Service employee has breached the Code of Conduct; or
- (b) it is decided that such a determination is not necessary.

35C Movement from an APS agency in cases of a suspected breach of the APS Code of Conduct

- (1) If:
 - (a) an APS employee is suspected of having breached the APS Code of Conduct and is formally advised of the suspected breach in accordance with procedures established under subsection 15(3), 41B(3) or 50A(2) of the *Public Service Act 1999*; and
 - (b) the matter to which the suspected breach relates is not resolved before the APS employee moves to a Department under section 26 of the Act;then, unless the head of the APS agency in which the employee is employed and the Secretary of the Department to which the employee would be moving agree otherwise, the movement does not take effect until the matter to which the suspected breach relates is resolved.
- (2) For the purposes of subclause (1), 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 APS Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.
- (3) In this clause:

APS Code of Conduct means the rules in section 13 of the *Public Service Act 1999*.

24 Clause 36

Repeal the clause.

25 Clause 37

Repeal the clause.

26 Clause 39

Repeal the clause, substitute:

39 Gazettal of employment decisions

Decisions that must be notified

- (1) A Secretary must notify the following employment decisions in the *Public Service Gazette*:
 - (a) the promotion of an ongoing Parliamentary Service employee;
 - (b) the promotion of an ongoing Parliamentary Service employee, following the decision of a Promotion Review Committee under subparagraph 90(1)(b)(ii) that has not been notified under paragraph (a);

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- (c) the engagement, promotion or assignment of duties of a person made in accordance with an Independent Selection Advisory Committee recommendation;
 - (d) the engagement of an ongoing APS employee as an ongoing Parliamentary Service employee at a higher classification than the person's current classification as an APS employee;
 - (e) the termination of the employment of an ongoing Parliamentary Service employee on the ground mentioned in paragraph 29(3)(g) of the Act (breach of the Code of Conduct).

Time within which notification must be made

- (2) A decision 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) For an employment decision to engage or promote a person that is made on the basis that the person is required to satisfy an eligibility requirement, the 3 month period mentioned in subclause (2) is taken to commence at the time the eligibility requirement is met.

Note: Examples of an eligibility requirement include a security or character clearance.

Notification generally to include employee's name

- (4) A notification must include the employee's name unless the Secretary decides that the name should not be included because of the person's work-related or personal circumstances.
- (5) If a notification does not include the employee's name and relates to a promotion that is subject to review, the Department must:
 - (a) on or before the day the decision is notified, notify all parties eligible to seek review of the promotion of their rights of review; and
 - (b) at the same time as parties are notified, advise the Merit Protection Commissioner that eligible parties have been notified.

Notification relating to a former ongoing APS employee

- (6) If an employment decision is made to engage a person at a higher classification than the person's current classification as an APS employee, the notification must include a statement to the following effect:

This engagement of an ongoing APS employee at a higher classification may be subject to review by a Promotion Review Committee in accordance with Part 9 of the Parliamentary Service Determination 2013.

27 Clause 40

Repeal the clause, substitute:

40 Gazettal when decisions previously notified are cancelled

Decisions that must be notified

- (1) A Secretary must notify a decision (a ***cancellation decision***) to cancel the following employment decisions in the *Public Service Gazette*:

- (a) a promotion notified under paragraph 39(1)(a) (in a case where the cancellation decision is made by the Secretary);
- (b) a promotion notified under paragraph 39(1)(a) or (b) (in a case where the cancellation decision is the result of a decision of a Promotion Review Committee);
- (c) an engagement, promotion or assignment of duties notified under paragraph 39(1)(c);
- (d) the engagement of an ongoing APS employee as an ongoing Parliamentary Service employee under paragraph 39(1)(d);
- (e) a termination notified under paragraph 39(1)(e).

Time within which notification must be made

- (2) A cancellation decision must be notified in the *Public Service Gazette* within 3 months after the cancellation decision is made.

Requirements of notification

- (3) Notification of a cancellation decision must include:
 - (a) the date that the cancellation decision took effect; and
 - (b) the person's name, unless this was not included in the original notification.

28 Clause 41

Repeal the clause, substitute:

41 When promotion decisions take effect

- (1) This clause applies in respect of a decision (a *promotion decision*) to:
 - (a) promote an ongoing Parliamentary Service employee; or
 - (b) engage an ongoing APS employee as an ongoing Parliamentary Service employee at a classification that is higher than the employee's APS classification, worked out in accordance with clause 2 of Schedule 2.

Note: Clause 81 sets out requirements for review applications.

- (2) If a promotion decision is not subject to PRC review, the decision takes effect:
 - (a) if a date of effect has been agreed by the relevant parties and is after the day the decision is notified in the *Public Service Gazette*—on that date; or
 - (b) otherwise—4 weeks after the day the decision is notified in the *Public Service Gazette*.
- (3) A promotion decision that is subject to PRC review takes effect on the date mentioned in column 3 of an item in the following table in the circumstances mentioned in column 2 of the item:

When promotion decisions take effect		
Column 1	Column 2	Column 3
Item	If the promotion decision is subject to PRC review and ...	then, the decision takes effect ...
1	no application for review is made before the end of the period within which an	(a) if a date of effect has been agreed by the relevant parties and is after the

When promotion decisions take effect		
Column 1	Column 2	Column 3
Item	If the promotion decision is subject to PRC review and	then, the decision takes effect ...
	application for PRC review of the decision may be made	application period ends—on that date; or (b) 2 weeks after the end of the application period
2	an application for review is made but withdrawn before the PRC makes a decision on the application	(a) if a date of effect has been agreed by the relevant parties and is after the application period ends—on that date; or (b) 2 weeks after the day the Secretary is notified that the application was withdrawn
3	an application for review is made but the application lapses before the PRC completes its review	(a) if a date of effect has been agreed by the relevant parties and is after the Secretary is notified that the application has lapsed—on that date; or (b) 2 weeks after the day the Secretary is notified that the application has lapsed
4	an application for review is made but the Merit Protection Commissioner decides under clause 82 that it is unnecessary to appoint a PRC to consider the application	(a) if a date of effect has been agreed by the relevant parties and is after the Secretary is notified of the decision of the Merit Protection Commissioner—on that date; or (b) the later of: (i) the day the Secretary is notified; and (ii) 4 weeks after the day the decision is notified in the <i>Public Service Gazette</i>
5	an application for review is made and the PRC upholds the promotion decision	(a) if a date of effect has been agreed by the relevant parties and is after the Secretary is notified of the PRC's decision—on that date; or (b) 4 weeks after the day the Secretary is notified of the PRC's decision
6	an application for review is made and the PRC varies the promotion decision	(a) if a date of effect has been agreed by the relevant parties and is after the Secretary is notified of the PRC's decision—on that date; or (b) 4 weeks after the day the Secretary is notified of the PRC's decision

(4) This clause is subject to clauses 35B and 35C.

(5) In this clause:

PRC review means review by a Promotion Review Committee under Part 9 of this determination.

29 Part 4

Repeal the part.

30 Clause 51

Repeal the clause, substitute:

51 Achieving effective performance

A Secretary upholds the Employment Principle mentioned in paragraph 10A(1)(d) of the Act by ensuring that:

- (a) the Department has performance management policies and processes that support a culture of high performance; and
- (b) performance by Parliamentary Service employees in the Department is effectively managed; and
- (c) each Parliamentary Service employee in the Department is given a clear statement of the performance and behaviour expected of the employee, and an opportunity to discuss their duties; and
- (d) each Parliamentary Service employee in the Department is required to participate constructively in performance management processes; and
- (e) fair and effective measures are in place to address underperformance by a Parliamentary Service employee in the Department.

Note: Paragraph 10A(1)(d) of the Act provides that the Parliamentary Service is a career-based service that requires effective performance from each employee.

31 Clause 52

Repeal the clause, substitute:

52 Managing performance in cases of a potential breach of the Code of Conduct

A Secretary must have regard to any relevant standards and guidance issued by the Commissioner if:

- (a) a Parliamentary Service employee in the Department has engaged in conduct that:
 - (i) may breach the Code of Conduct; or
 - (ii) raises concerns relating to effective performance; and
- (b) the Secretary is considering whether to initiate an inquiry under procedures established by the Secretary under subsection 15(3) of the Act.

32 Part 6

Repeal the Part.

33 Subclause 54(1)

Omit “whistleblower’s report”, substitute “public interest disclosure (within the meaning of the *Public Interest Disclosure Act 2013*)”.

34 Clause 55

Repeal the clause.

35 Clause 110

Repeal the clause, substitute:

110 Restrictions on engaging a person who has received a redundancy benefit

- (1) A Secretary may only engage a person who has received a redundancy benefit as an ongoing Parliamentary Service employee in accordance with the following paragraphs:
- (a) the Secretary must consider that the person's engagement is essential for the Department's operations, having regard to:
 - (i) the nature of the duties to be performed; and
 - (ii) the work-related qualities of the person;
 - (b) the Secretary must obtain the Commissioner's approval to do so.

Note: Subparagraph (a)(ii)—for *work-related qualities*, see clause 14.

- (2) A Secretary may only engage a person who has received a redundancy benefit as a non-ongoing SES employee, if the Secretary has obtained the Commissioner's approval to do so.

- (3) In this clause:

person who has received a redundancy benefit means a person who has received a redundancy benefit:

- (a) from a Department or an APS agency; and
- (b) for which the redundancy benefit period has not ended.

redundancy benefit means:

- (a) a severance payment, or similar payment, made to an employee on the ending of the employee's employment; or
- (b) a payment made to an employee as a result of the shortening of a retention period; or
- (c) an incentive to retire payment under section 37 of the Act or section 37 of the *Public Service Act 1999*;

but not:

- (d) a payment made to an employee as redundancy pay under section 119 of the *Fair Work Act 2009*; or
- (e) a payment made to a person in lieu of notice of termination of employment.

Note: Paragraph (d)—the amount of the payment mentioned in that paragraph is known as the National Employment Standards redundancy amount.

redundancy benefit period, relating to a person's redundancy benefit, means the period (rounded down to the nearest equivalent whole day):

- (a) beginning on the day after the person's employment ends; and
- (b) ending on the last day of the period worked out using the following formula:

$$\frac{\text{Gross amount of employee's redundancy benefit}}{\text{Weekly salary}}$$

where:

weekly salary means:

- (a) for a person who has periods of full-time and part-time service and whose redundancy benefit is calculated on the basis of a part-time weekly salary—the full-time equivalent of the part-time weekly salary; or
- (b) in any other case—the weekly salary used to calculate the redundancy benefit.

36 Clause 111

Repeal the clause.

37 Part 16

Repeal the Part, substitute:

Part 16—Application and transitional provisions

148 Definitions

In this Part:

commencement means the day the *Parliamentary Service Amendment (Managing Recruitment Activity and Other Measures) Determination 2017* commences.

149 Application—Gazettal of certain employment decisions and promotions

Division 5 of Part 3 of this determination applies in respect of:

- (a) an employment decision made on or after commencement; and
- (b) an employment decision made before commencement but not notified under Division 5 of this determination as it was in force immediately before commencement.

150 Transitional—use of merit lists

For the purposes of paragraph 20(1)(a) of this determination, a vacancy is taken to be a similar vacancy if the vacancy:

- (a) was advertised in the 12 month period occurring before commencement; and
- (b) otherwise satisfies the requirements of clause 13 of this determination.

151 Transitional—vacancies notified before commencement

This determination as it was in force immediately before commencement continues to apply in relation to a vacancy if, immediately before commencement:

- (a) the vacancy had been notified in the *Public Service Gazette*; and

-
- (b) a decision had not been made to fill the vacancy.

152 Transitional—engagement on a short-term, irregular or intermittent basis

If a person was, immediately before commencement, engaged to perform duties as a non-ongoing Parliamentary Services employee under clause 23 of this determination as it was in force immediately before commencement, then:

- (a) the person is taken to be engaged to perform duties as a non-ongoing Parliamentary Services employee under clause 23 of this determination; and
- (b) clause 23 of this determination applies in respect of that engagement.

153 Transitional—managing effective performance

This determination as it was in force immediately before commencement continues to apply in relation to performance management taken in respect of a Parliamentary Service employee if:

- (a) immediately before commencement, performance management was being taken in respect of the Parliamentary Service employee in accordance with the Act and the requirements of Part 5 of the determination as it was in force immediately before commencement; and
- (b) on commencement, that performance management had not ended.