



Australian Public Service Commissioner's Amendment (2023 Measures No. 1) Directions 2023

I, Dr Gordon de Brouwer PSM, Australian Public Service Commissioner, make the following directions.

Dated 23 June 2023

Dr Gordon de Brouwer PSM
Australian Public Service Commissioner

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments commencing seventh day after registration	2
	<i>Australian Public Service Commissioner’s Directions 2022</i>	2
	Schedule 2—Amendments relating to short-term engagements	8
	<i>Australian Public Service Commissioner’s Directions 2022</i>	8

1 Name

This instrument is the *Australian Public Service Commissioner's Amendment (2023 Measures No. 1) Directions 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	1 July 2023
2. Schedule 1	The seventh day after this instrument is registered.	7 July 2023
3. Schedule 2	The later of: (a) the day after this instrument is registered; and (b) the day on which Part 10 of Schedule 1 to the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsections 11A(1) and (2) 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 commencing seventh day after registration

Australian Public Service Commissioner’s Directions 2022

1 Section 5

Insert:

intelligence agency means an organisation continued in existence by:

- (a) the *Australian Security Intelligence Organisation Act 1979*; or
- (b) section 16 or 27A of the *Intelligence Services Act 2001*.

2 Section 5 (definition of *PRC review*)

Omit “Part 5”, substitute “Division 2 of Part 4”.

3 Section 5 (definition of *Regulations*)

Omit “1999”, substitute “2023”.

4 Paragraph 7(b)

Repeal the paragraph, substitute:

- (b) it is appropriate to consider:
 - (i) engaging a person to perform the duties; or
 - (ii) promoting an APS employee to perform the duties; or
 - (iii) assigning the duties to an APS employee.

5 Section 7 (note)

Repeal the note.

6 Section 9

Repeal the section, substitute:

9 Meaning of similar vacancy

- (1) In this instrument, a vacancy is a *similar vacancy* to another vacancy that has been notified in the Public Service Gazette (the *notified vacancy*) if:
 - (a) the vacancy and the notified vacancy are for the same category of employment (ongoing or non-ongoing); and
 - (b) the work-related qualities required by a person to perform the duties of the vacancy and the notified vacancy are similar; and
 - (c) the vacancy and the notified vacancy are:
 - (i) at the same classification; or
 - (ii) if the notified vacancy is in a Department of the Parliament established under the *Parliamentary Service Act 1999*—at the same corresponding classification under rules about classification made under section 23 of that Act; or
 - (iii) if the notified vacancy is in an intelligence agency—at the same corresponding classification under the agreement about corresponding

- classifications made between the Director-General of the relevant intelligence agency and the Commissioner; and
- (d) the vacancy and the notified vacancy are for duties to be performed in a similar location; and
- (e) any of the following apply:
- (i) the vacancy is an SES vacancy;
 - (ii) the vacancy is in a centrally coordinated entry-level program;
 - (iii) the vacancy and the notified vacancy are in the same agency;
 - (iv) the Agency Head of the agency in which the notified vacancy existed and another Agency Head agree, in writing, that the vacancy is a similar vacancy to the notified vacancy;
 - (v) the Secretary of a Department (within the meaning of the *Parliamentary Service Act 1999*) in which the notified vacancy existed and an Agency Head agree, in writing, that the vacancy is a similar vacancy to the notified vacancy;
 - (vi) the Director-General of the intelligence agency in which the notified vacancy existed and an Agency Head agree, in writing, that the vacancy is a similar vacancy to the notified vacancy.
- (2) The notified vacancy mentioned in subsection (1) may be a vacancy that exists in an Agency, a Department (within the meaning of the *Parliamentary Service Act 1999*) or an intelligence agency.

7 Paragraph 23(a)

Omit “requirements of”, substitute “requirements set out in”.

8 Before section 24

Insert:

23A Purpose of this Subdivision

This Subdivision sets out requirements for the purposes of paragraph 23(a).

9 Subsection 24(1) (note)

Omit “Regulations 3.4 and 3.5”, substitute “Sections 12 and 13”.

10 Paragraph 25(1)(b)

Repeal the paragraph, substitute:

- (b) both:
- (i) the vacancy (the *new vacancy*) is a similar vacancy to another vacancy (the *other vacancy*); and
 - (ii) the other vacancy was notified in the Public Service Gazette within the period of 18 months before the written decision to engage or promote the successful candidate for the new vacancy.

11 Subsection 25(7)

Repeal the subsection, substitute:

External advertising

- (7) A vacancy notified in the Public Service Gazette as open to all eligible members of the community must, if advertised externally, be advertised:
- (a) within 4 weeks before or 4 weeks after the Gazette notification; and
 - (b) with the same closing date for applications as the day specified in the Gazette notification.

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

12 Subdivision C of Division 1 of Part 4 (heading)

Repeal the heading, substitute:

Subdivision C—Selection processes for certain types of engagements and promotions

26A Purpose of this Subdivision

This Subdivision sets out requirements for the purposes of paragraph 23(b).

13 Subsection 27(4) (note 1)

Omit “Regulations 3.4 and 3.5”, substitute “Sections 12 and 13”.

14 Section 28 (note)

Omit “Regulations 3.4 and 3.5”, substitute “Sections 12 and 13”.

15 Section 29 (note)

Omit “Regulations 3.4 and 3.5”, substitute “Sections 12 and 13”.

16 Subsection 31(2) (note)

Omit “Regulations 3.4 and 3.5”, substitute “Sections 12 and 13”.

17 Paragraph 32(1)(c)

Repeal the paragraph, substitute:

- (c) under the scheme, the candidate is short-listed for progression to the next stage of the section process because that candidate:
- (i) has the work-related qualities required to perform the relevant duties for the vacancy; and
 - (ii) meets the eligibility requirements (if any) for the vacancy.

18 Subsection 33(2) (note)

Omit “Regulations 3.4 and 3.5”, substitute “Sections 12 and 13”.

19 Paragraph 40(1)(b)

Omit “subparagraph 5.18(1)(b)(ii)”, substitute “subparagraph 33(2)(a)(ii)”.

20 Paragraph 40(1)(c)

Omit “, promotion or assignment of duties”, substitute “or promotion”.

21 Subsection 40(5)

Repeal the subsection, substitute:

- (5) If a notification does not include the employee's name and the Merit Protection Commissioner requests the Agency Head to provide the employee's name, the Agency Head must advise the Merit Protection Commissioner of the name of the employee as soon as practicable after the request is received.

22 Subsection 40(7)

Omit "Part 5 of the *Public Service Regulations 1999*", substitute "Part 4 of the *Public Service Regulations 2023*".

23 Before section 42

Insert:

Division 2A—When promotion decisions take effect

41A Purpose of this Division

This Division is made for the purposes of subsection 11A(1) of the Act.

24 Section 42 (heading)

After "take effect", insert "—general case".

25 Subsection 42(1)

Omit "This section", substitute "Subject to section 42A, this section".

26 Subsection 42(1) (note)

Omit "Regulation 5.9", substitute "Section 24".

27 Subsection 42(3) (table item 4)

Omit "subregulation 5.10(1)", substitute "subsection 25(1)".

28 Subsection 42(4)

Repeal the subsection.

29 After section 42

Insert:

42A When promotion decisions take effect—suspected breaches of Code of Conduct

- (1) If:
- (a) a decision is taken to promote an ongoing APS employee; and
 - (b) the employee will need to move to another Agency to take up the promotion; and
 - (c) the 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), 41B(3) or 50A(2) of the Act; and

- (d) the matter to which the suspected breach relates is not resolved before the APS employee moves to take up the promotion;
then, unless the APS employee's current Agency Head and the new Agency Head agree otherwise, the APS employee's promotion does not take effect until the matter to which the suspected breach relates is resolved.
- (2) For the purposes of subsection (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 Code of Conduct; or
 - (b) it is decided that such a determination is not necessary.

42B When promotion decisions take effect—failure to notify decision

- (1) This section applies if:
 - (a) a decision is taken to promote an ongoing APS employee; and
 - (b) the promotion decision had not been notified in accordance with section 40 by the relevant Agency Head because of an error or omission.
- (2) The Agency Head must as soon as practical after identifying the error or omission:
 - (a) notify the decision in accordance with section 40 (disregarding the requirements in subsections 40(2) and (3)); and
 - (b) if the notification relates to a promotion that is subject to PRC review—notify all parties eligible to seek review of the promotion of their rights to review.
- (3) If the promotion decision is not subject to PRC review, the decision is taken to take effect on the day that had been agreed between the parties as the day the promotion was to take effect.
- (4) If the promotion decision is subject to PRC review, the decision is taken to take effect on:
 - (a) if a circumstance mentioned in items 1 to 5 of column 1 of the table in subsection 42(3) applies in relation to the decision—the day that had been agreed between the parties as the day that the promotion was to take effect; or
 - (b) if an application for review is made and the PRC varies the promotion decision—the earlier of the following:
 - (i) 4 weeks after the day the Agency Head is notified of the PRC's decision;
 - (ii) a date that has been agreed by the relevant parties and is after the Agency Head is notified of the PRC's decision.

30 Subsection 44(1)

Before “must”, insert “(other than an employee engaged for duties that are irregular or intermittent)”.

31 Section 47

Repeal the section.

32 Paragraph 69(2)(b)

After “Commonwealth;”, insert “or”.

33 After paragraph 69(2)(b)

Insert:

(c) a member of the Australian Defence Force;

34 In the appropriate position in Part 10

Insert:

**Division 2—Amendments made by the Australian Public Service
Commissioner’s Amendment (2023 Measures No. 1)
Directions 2023**

76 Application of amendments made by Schedule 1

- (1) The amendment of subsection 25(7) made by Schedule 1 to the *Australian Public Service Commissioner’s Amendment (2023 Measures No. 1) Directions 2023* applies in relation to a vacancy notified in the Public Service Gazette on or after the commencement of that Schedule.
- (2) The amendment of subsection 40(5) made by Schedule 1 to the *Australian Public Service Commissioner’s Amendment (2023 Measures No. 1) Directions 2023* applies in relation to employment decisions notified on or after the commencement of that Schedule.
- (3) Section 42B, as inserted by Schedule 1 to the *Australian Public Service Commissioner’s Amendment (2023 Measures No. 1) Directions 2023*, applies in relation to an error or omission identified on or after the commencement of that Schedule whether that error or omission was made before or after that time.
- (4) For the avoidance of doubt, the other vacancy referred to in paragraph 25(1)(b), as amended by Schedule 1 to the *Australian Public Service Commissioner’s Amendment (2023 Measures No. 1) Directions 2023*, may have been notified in the Public Service Gazette before the commencement of that Schedule.

Schedule 2—Amendments relating to short-term engagements

Australian Public Service Commissioner’s Directions 2022

1 Paragraph 27(1)(a)

Omit “18 months”, substitute “12 months”.

2 Subsection 27(2)

Omit “3 years”, substitute “18 months”.

3 In the appropriate position in Part 10

Insert:

77 Application of amendments made by Schedule 2

The amendments of section 27 made by Schedule 2 to the *Australian Public Service Commissioner’s Amendment (2023 Measures No. 1) Directions 2023* apply in relation to an engagement of a person made on or after the commencement of that Schedule.