

EXPLANATORY STATEMENT

Public Service Act 1999

Prime Minister's Public Service Amendment Directions 2005 (No. 1)

Background

The *Public Service Act 1999* (the Act) commenced on 5 December 1999.

Section 21 of the Act provides that the Prime Minister may issue general directions in writing to Agency Heads relating to the management and leadership of Australian Public Service (APS) employees.

Subsections 22(1) and (2) of the Act provide that an Agency Head, on behalf of the Commonwealth, may engage persons as employees for the purposes of the Agency and that the engagement must be as an ongoing APS employee; or for a specified term or for the duration of a specified task; or for duties that are irregular or intermittent.

The Prime Minister made the Prime Minister's Public Service Directions 1999 (the Directions) on 3 December 1999. The Directions came into effect on 5 December 1999. They have not been amended previously.

The Directions are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA), but are not subject to the disallowance or sunset provisions of that Act (as provided by section 44 LIA, item 32 and section 54 LIA, item 37 respectively). In accordance with subsection 56(1) of the LIA, the Prime Minister's Public Service Amendment Directions 2005 (No. 1) are not required to be published in the Gazette, notwithstanding subsection 21(2) of the Act.

Purpose of these amendments

The purpose of the Prime Minister's Public Service Amendment Directions 2005 (No. 1) is to:

- remove the requirement for an APS Agency Head to grant leave without pay to an APS employee who applies for such leave to take up a full-time statutory appointment. (Leave without pay will continue to be mandatory for APS employees taking up employment under certain provisions of the *Members of Parliament (Staff) Act 1984* (MoPS Act) and the *Governor-General Act 1974* (G-G Act)). As with leave without pay for a range of other purposes, a decision on whether to grant leave without pay to take up a full time statutory appointment is now at the discretion of an employee's Agency Head. However, Agency Heads will be encouraged to ensure in making their decision that the removal of the automatic leave without pay provision does not diminish the attractiveness of statutory appointments, particularly at the more junior level;
- clarify that the provisions which require an Agency Head to grant leave without pay to an APS employee who applies for such leave to undertake employment for the purposes of sections 13 or 20 of the MoPS Act or section 13 of the G-G Act only apply to ongoing APS employees; and
- provide transitional provisions to preserve existing periods of leave without pay that have already been granted to APS employees to take up a full time statutory appointment, and which allow those employees to exercise their right of return to the APS as set out in clause 2.2 of the Directions at any time during, or at the expiration of, the period of approved leave.

Notes on clauses

- Clause 1** sets out the name of the amendment.
- Clause 2** provides for the amendment to take effect the day after they are registered on the Federal Register of Legislative Instruments.
- Clause 3** provides that the amendments to the Prime Minister's Public Service Directions 1999 are set out in Schedule 1.

Schedule 1

Item 1

Clause 1.3 previously included a definition of 'statutory appointment'. Item 1 omits this definition as it is no longer necessary—a grant of leave without pay to take up a full time statutory appointment is no longer mandatory under the Directions.

Item 2

Item 2 substitutes a new paragraph 2.1(c) in place of former paragraphs 2.1(c) and (d). Former paragraph (c) is no longer necessary as it referred to a full-time statutory appointment. Existing paragraph (d) has been renumbered as paragraph (c) and amended to remove references to former paragraph (c).

Item 3

Item 3 amends clause 2.1 by substituting the words 'an ongoing APS employee' for 'an APS employee'. The effect of this amendment is to clarify that the mandatory leave without pay provisions set out in clause 2.1 only apply to ongoing APS employees and not to APS employees engaged for a specified term, or for the duration of a specified task, or for duties that are irregular or intermittent.

Item 4

Item 4 inserts a note after clause 2.1 which explains that nothing in these Directions prevents an Agency Head from granting leave without pay for a range of other purposes that are not set out in clause 2.1, including to enable an APS employee to take up a statutory appointment.

Item 5

Item 5 excludes the boxed text which was previously located after clause 2.2. This explanatory information, which dealt with access to leave credits for persons taking up employment outside the APS, is now out of date and, in some cases, irrelevant given the changes to the Directions.

Item 6

Item 6 inserts clause 2.3 in the Directions which sets out the arrangements that will apply in the case of persons who are on approved periods of leave without pay to take up a statutory appointment that were granted prior to the commencement of these amendments to the Directions, where the period of leave has not expired.

These transitional provisions provide that the grant of leave without pay is not affected by the amendments to the Directions. In addition, where such a person notifies their Agency Head of their wish to return to the Agency to undertake duties, the Agency Head must comply with the provisions of subclauses 2.2(2) to (4) of the Directions which set out the rights of return to the APS of persons on leave without pay approved in accordance with subclause 2.1.

The transitional provisions also make it clear that any further grant of leave without pay in order to continue employment in a full time statutory appointment after the commencement of these amendments is at the discretion of the employee's Agency Head.