

## **EXPLANATORY STATEMENT**

Issued by the authority of the Australian Public Service Commissioner

*Public Service Act 1999*

### **Australian Public Service Commissioner's Amendment (2015 Measures No. 2) Direction 2015**

#### **Authority**

Subsection 11A(1) of the *Public Service Act 1999* (the Act) provides that the Australian Public Service Commissioner (the Commissioner) may issue directions in writing about employment matters relating to Australian Public Service (APS) employees.

Directions issued by the Commissioner are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### **Legislative framework**

The *Australian Public Service Commissioner's Directions 2013* (the Commissioner's Directions), made under the Act, elaborate on the standards required of APS Agency Heads and APS employees and prescribe details in respect of matters underpinning the Act.

Part 4 of the Act sets out employment arrangements in the APS, including provision for engagement and termination of employment.

Chapter 7 of the Commissioner's Directions relates to employment matters including the restrictions on engaging redundancy benefit recipients and the termination of non-ongoing employment.

#### **Purpose of the amendments**

The purpose of the *Australian Public Service Commissioner's Amendment (2015 Measures No. 2) Direction 2015* (the Amendment Direction) is to amend the Commissioner's Directions to:

- simplify the requirements for the engagement of a former APS employee who has accepted a redundancy benefit; and
- streamline content, including removing redundant or unnecessarily prescriptive directions and content better provided in guidance.

Further detail about the Amendment Direction is provided at [Attachment A](#) to this Explanatory Statement.

#### **Reasons**

The Amendment Direction makes changes to streamline and simplify the Commissioner's Directions, including:

- making existing requirements clearer and simpler; and
- removing content that is covered in other legislation or is better provided for in policy or guidance material.

**Consultation**

The Commission consulted with all APS departments, Comcare, the Australian Bureau of Statistics and the Australian Taxation Office on these amendments.

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is included at Attachment B to this Explanatory Statement.

## **NOTES ON CLAUSES**

### **Operative clauses**

**Clause 1** sets out the name of the Amendment Direction.

**Clause 2** provides that the Amendment Direction commences on 30 November 2015.

**Clause 3** specifies the authority for making the Amendment Direction.

**Clause 4** provides that Schedule 1 amends the Commissioner's Directions.

### **Schedule 1**

#### **Part 1—Amendments**

**Item 1** of the Schedule amends subclause 2.8(1) of the Commissioner's Directions by substituting text at paragraph (g). This is a consequential amendment to the repeal of clause 7.1 at item 3.

**Item 2** of the Schedule amends clause 2.14 to extend its application to all APS employees, not only SES. This amendment will allow Agency Heads to support any APS employee who is a member of the Commonwealth Superannuation Scheme to voluntarily enter into transition to retirement arrangements, where the Agency Head chooses to support such an arrangement. This clause does not provide an avenue for Agency Heads to compel an employee to relinquish their ongoing status for any purpose.

**Item 3** of the Schedule substitutes clause 7.1 with a new clause 7.1 that is streamlined, clear and easy to read.

This item of the Schedule clarifies that only previously ongoing APS or Australian Parliamentary Service employees can be a redundancy benefit recipient. For this reason, reference at clause 7.1(3)(b) and (c) to payments made to non-ongoing or locally engaged staff overseas is no longer required.

This item of the Schedule also clarifies the calculation of a redundancy benefit period in a streamlined manner. There is no change to the method of calculation.

This item of the Schedule also removes the requirement at paragraph 7.1(7)(b) and (c) for Agency Heads to consult with the Commissioner before engaging a person who has received a redundancy benefit as a non-ongoing non-SES APS employee or as a locally engaged employee overseas, or extending a non-ongoing engagement of a person who has received a redundancy benefit. The removal of this requirement reduces internal red tape and gives Agency Heads greater ability to make employment-related decisions promptly and effectively, without unnecessary additional processes. The requirement to obtain the Commissioners approval prior to the engagement of a redundancy benefit recipient as an ongoing APS employee or a non-ongoing SES employee remains.

This item of the Schedule also repeals clause 7.2 which is difficult to read and has no practical effect. The obligations of an Agency Head under an employment agreement, contract or determination must generally be complied with as a matter of law.

This item of the Schedule also repeals clause 7.3 to remove the requirement for the Commissioner to be satisfied certain requirements have been met before an Agency Head may give notice to an SES employee under section 37 of the Act.

This amendment reduces internal red tape and gives Agency Heads greater flexibility to manage their SES separations promptly and efficiently, without additional processes.

**Item 4** of the Schedule makes minor amendment to the Dictionary. This term is no longer used in the Commissioner's Directions.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

### ***Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011***

Australian Public Service Commissioner's Amendment (2015 Measures No. 2) Direction 2015

The *Australian Public Service Commissioner's Amendment (2015 Measures No. 2)*

*Direction 2015* (the Amendment Direction) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The *Australian Public Service Commissioner's Directions* (the Commissioner's Directions) is a legislative instrument under the *Public Service Act 1999*.

Part 4 of the *Public Service Act 1999* sets out employment arrangements in the Australian Public Service (APS), including provision for engagement and termination of employment.

Chapter 7 of the Commissioner's Directions relates to employment matters including the restrictions on engaging redundancy benefit recipients and the termination of non-ongoing employment.

The main purpose of the Amendment Direction is to amend the Commissioner's Directions to:

- simplify the requirements for the engagement of a former APS employee who has accepted a redundancy benefit; and
- make other changes to streamline the Commissioner's Directions, removing unnecessarily prescriptive content and content that is already provided for in other legislation or is better provided for in guidance.

### **Human rights implications**

The Amendment Direction does not affect the legislated responsibilities of Agency Heads and APS employees to uphold the APS Employment Principles. This requirement is provided in section 12 and paragraph 13(11)(a) of the *Public Service Act 1999*, respectively.

Agency Heads and APS employees must also comply with all relevant Commonwealth anti-discrimination legislation.

APS agencies and employees come under the coverage of the *Fair Work Act 2009*, which protects certain employees' rights to request flexible working arrangements, including employees who are parents of young children, carers, people with disability and older workers. APS agencies are also subject to particular requirements related to people who are carers under the *Carers Recognition Act 2010*. The Statement for Australia's Carers under the Carers Recognition Act may be taken to apply to employees who are also carers.

For these reasons, the Amendment Direction does not engage the relevant human rights and freedoms.

### **Conclusion**

The Amendment Direction is compatible with human rights as it does not raise any human rights issues.