



## **Australian Public Service Commissioner's Directions 2016**

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I, John Lloyd PSM, Australian Public Service Commissioner, make the following directions.

Dated 13 September 2016

John Lloyd PSM  
Australian Public Service Commissioner

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## Part 1—Introduction

### Division 1—Introduction

#### 1 Name

This instrument is the *Australian Public Service Commissioner’s Directions 2016*.

#### 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. The whole of this instrument	1 December 2016.	1 December 2016

Note: This table relates only to the provisions of this instrument as originally made.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 11(1), 11A(1) and (2) and 15(6) 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Division 2—Definitions

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

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

In this instrument:

**Act** means the *Public Service Act 1999*.

**broadband** has the same meaning as in subrule 9(4) of the Classification Rules.

**classification** means an approved classification within the meaning of the Classification Rules.

**disability employment service provider** means an organisation that facilitates access to employment for persons with disability.

**employment arrangement** means any of the following:

- (a) a fair work instrument (within the meaning of the *Fair Work Act 2009*);
- (b) a transitional instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*);
- (c) a determination under subsection 24(1) or (3) of the Act;
- (d) a written contract of employment.

**Independent Selection Advisory Committee** has the same meaning as in the Regulations.

**merit**: see subsection 10A(2) of the Act.

**ongoing Parliamentary Service employee** has the same meaning as in the *Parliamentary Service Act 1999*.

**Parliamentary Service employee** has the same meaning as in the *Parliamentary Service Act 1999*.

**PRC review** means review by a Promotion Review Committee under Part 5 of the Regulations.

**promotion**, for an ongoing APS employee, see section 6.

**Promotion Review Committee** or **PRC** has the same meaning as in the Regulations.

**Public Service Gazette** means the Gazette published in electronic form.

Note: The Public Service Gazette may be accessed at <https://www.apsjobs.gov.au>.

**redundancy benefit**: see subsection 48(2).

**Regulations** means the *Public Service Regulations 1999*.

**SES vacancy**: see section 8.

**similar vacancy**: see section 9.

**Torres Strait Regional Authority** means the Authority established by section 142 of the *Aboriginal and Torres Strait Islander Act 2005*.

**training classification** has the same meaning as in the Classification Rules.

**vacancy**: see section 7.

**work level standards**, for a classification, means the work level standards for the classification, as referred to in subrule 9(2A) of the Classification Rules or rule 10 of those Rules (as the case requires).

**work-related qualities**: see section 10.

## 6 Meaning of *promotion*

In this instrument, a reference to a **promotion** is a reference to the ongoing assignment of duties to an ongoing APS employee at a classification that is higher than the employee's current classification, in the same or another Agency, other than:

- (a) the allocation of a higher classification within the same broadband in the same Agency; or
- (b) the allocation of an operational classification to a trainee.

Note: The following are not promotions:

- (a) following a voluntary temporary reduction in an ongoing APS employee's classification—the ongoing assignment of duties to the employee at the original classification;
- (b) the temporary assignment of duties to an APS employee at a higher classification than the employee's current classification.

## 7 Meaning of *vacancy*

In this instrument, a **vacancy** exists in an Agency when a decision has been made that:

- (a) a specified group of duties need to be performed; and
- (b) it is appropriate to consider engaging a person or promoting an APS employee to perform the duties.

Note: A vacancy may also be filled by the movement of an APS employee at the employee's current classification.

## 8 Meaning of *Senior Executive Service (SES) vacancy*

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

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### 9 Meaning of *similar vacancy*

In this instrument, a vacancy is a *similar vacancy* to a notified vacancy if:

- (a) one of the following applies:
  - (i) it is in the same Agency;
  - (ii) it is an SES vacancy;
  - (iii) it is a vacancy in a centrally coordinated entry-level program;
  - (iv) the Agency Head of the Agency in which the notified vacancy existed, another Agency Head and a candidate who applied for the notified 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 Agency after the notification by a machinery of government change—it is in the Agency 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.

### 10 Meaning of *work-related qualities*

In this instrument, *work-related qualities* that may be taken into account in making an assessment of candidates' suitability to perform duties in accordance with paragraph 10A(2)(c) of the Act include the following:

- (a) skills and abilities;
- (b) qualifications, training and competencies;
- (c) standard of work performance;
- (d) capacity to produce outcomes by effective performance at the level required;
- (e) relevant personal qualities, such as honesty and integrity;
- (f) potential for further development;
- (g) ability to contribute to team performance.



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## Part 2—APS Values

### 11 Overview

#### **Application of the APS Values**

The APS Values, and these Directions, set out standards and outcomes that are required of APS employees and Agency Heads.

The APS Values can overlap, and actions can involve the application of more than one APS Value.

Each of the APS Values is of equal importance.

### 12 APS to incorporate and uphold APS values

- (1) The APS must incorporate and uphold the APS Values.
- (2) The following provisions determine the scope or application of the APS Values.

### 13 Committed to Service:

**The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government**

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

- (a) engaging effectively with the community and providing responsive, client-focussed service delivery;
- (b) providing appropriate information to clients and the community about rights and entitlements, and the process for gaining access to them;
- (c) ensuring that decisions and interactions with clients are objective and impartial, and in accordance with Government policy;
- (d) encouraging innovative thought and supporting innovative solutions;
- (e) managing data to enhance evidence-based policy advice, ensuring information is readily available to the community;
- (f) supporting collaboration and teamwork, both within an Agency and with other agencies and the wider community;
- (g) promoting continuous improvement and managing change effectively;
- (h) identifying and managing areas of potential risk;
- (i) pursuing and supporting training and development to improve capability;
- (j) being responsive to Ministers, including being knowledgeable about the Government's policies and understanding the relevant issues and options, the Government's objectives and the environment in which it operates.

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**14 Ethical:**

**The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does**

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(2) of the Act requires the following:

- (a) acting in a way that models and promotes the highest standard of ethical behaviour;
- (b) following through on commitments made;
- (c) having the courage to address difficult issues;
- (d) complying with all relevant laws, appropriate professional standards and the APS Code of Conduct;
- (e) acting in a way that is right and proper, as well as technically and legally correct or preferable;
- (f) reporting and addressing misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way;
- (g) providing leadership in policy development, implementation, program management and regulation;
- (h) supporting systems that give APS employees appropriate opportunities to develop and demonstrate leadership qualities.

**15 Respectful:**

**The APS respects all people, including their rights and their heritage**

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(3) of the Act requires the following:

- (a) treating all people with dignity and recognising that all people have value;
- (b) dealing with all people honestly and with integrity;
- (c) recognising the importance of human rights and understanding Australia's human rights obligations;
- (d) recognising and fostering diversity;
- (e) collaborating and being open to ideas in policy development, implementation, program management and regulation;
- (f) complying with all relevant anti-discrimination laws.

**16 Accountable:**

**The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility**

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(4) of the Act requires the following:

- (a) being answerable to Ministers for the exercise of delegated authority, and, through them, to Parliament;
- (b) being open to scrutiny and being transparent in decision making;
- (c) being able to demonstrate that actions and decisions have been made with appropriate consideration;
- (d) being able to explain actions and decisions to the people affected by them;

- (e) being accountable for actions and decisions through statutory and administrative reporting systems;
- (f) being able to demonstrate clearly that resources have been used efficiently, effectively, economically and ethically;
- (g) being answerable for individual performance.

**17 Impartial:**

**The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence**

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(5) of the Act requires the following:

- (a) serving the Government of the day with high quality professional support, irrespective of which political party is in power and of personal political beliefs;
- (b) ensuring that the individual's actions do not provide grounds for a reasonable person to conclude that the individual could not serve the Government of the day impartially;
- (c) ensuring that management and staffing decisions are made on a basis that is independent of the political party system, free from political bias and not influenced by the individual's political beliefs;
- (d) understanding the needs of the Government and providing it with the best objective, non-partisan advice based on the best evidence available;
- (e) providing advice that is relevant and comprehensive, is not affected by fear of consequences, and does not withhold important facts or bad news;
- (f) providing advice that takes account of the context in which policy needs to be implemented, the broader policy directions set by Government and, where appropriate, implications for the longer term;
- (g) implementing Government policies in a way that is free from bias, and in accordance with the law.

## **Part 3—Recruitment and selection**

### **Division 1—Upholding APS Employment Principle 10A(1)(c)**

#### **Subdivision A—Introduction**

#### **18 How an Agency Head upholds APS Employment Principle 10A(1)(c)**

An Agency Head upholds APS Employment Principle 10A(1)(c) when deciding whether to engage or promote a person in the Agency if the Agency Head ensures that the decision is based on a selection process that meets:

- (a) the requirements of Subdivision B (which requires merit-based selection processes); or
- (b) the requirements of a provision set out in Subdivision C (which sets out circumstances in which merit-based selection processes are modified or do not apply).

Note: Paragraph 10A(1)(c) of the Act requires decisions relating to engagement and promotion to be based on merit.

#### **Subdivision B—Merit-based selection processes**

#### **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: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing 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 Agency requirements.

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## 20 Notification of vacancy in the Public Service Gazette

### *Basic requirement for notification of vacancy*

- (1) Subject to this section, a selection process for a decision to fill a vacancy meets the requirements of this Subdivision only if:
  - (a) the vacancy, or a similar vacancy, in the Agency 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 Agency Head was satisfied that there were special circumstances and the Agency Head approved a shorter period—the end of that shorter period; and
  - (d) in the case of a vacancy which required approval by the Commissioner under subsection (2) before it could be notified—the Agency Head obtained that approval before the vacancy, or a class of vacancies including the vacancy, was notified.

### *Commissioner may require notification of vacancy, or class of vacancies, to be approved by Commissioner*

- (2) The Commissioner may, by notice in writing, require an Agency Head to obtain the approval of the Commissioner before notifying a specified vacancy, or a specified class of vacancies, in the Public Service Gazette.

### *Restricting applications to APS employees (other than APS Level 1 and training classifications)*

- (3) If the Agency Head 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 an APS employee, the vacancy may be notified in the Public Service Gazette as open only to persons who are APS employees at the time of the notification.
- (4) Subsection (3) does not apply in relation to a vacancy at the APS Level 1 classification or a training classification, and these must be notified as open to all eligible members of the community.

### *Multiple Agency notification*

- (5) An Agency participating in a multiple Agency 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*

- (6) 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.

**Part 3** Recruitment and selection

**Division 1** Upholding APS Employment Principle 10A(1)(c)

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

- (7) A vacancy notified in the Public Service Gazette as open only to persons who are APS 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 APS employee*

- (8) In this section:

**APS employee** means a person who:

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

**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 sections 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 instrument.

**Subdivision C—Engagement and promotion in certain circumstances**

**22 Engagement on a short-term, irregular or intermittent basis**

- (1) An Agency Head may engage a person to perform duties as a non-ongoing APS 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) An Agency Head 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 Agency Head 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 Agency Head 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 APS employment registers.

- (4) As a minimum requirement, the Agency Head must be satisfied that the person to be engaged has the work-related qualities genuinely required to perform the relevant duties.

Note: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

### **23 Engagement of person from state or territory jurisdiction**

An Agency Head may engage a person as a non-ongoing APS 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 Agency Head 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: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

### **24 Engagement of ongoing APS employee as non-ongoing APS employee**

An Agency Head may engage a person who is an ongoing APS employee to perform duties as a non-ongoing APS employee if:

- (a) the person is to be engaged for a specified term or specified task; and
- (b) the person resigns as an ongoing APS 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: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

### **25 Engagement of non-ongoing APS employee as ongoing employee in exceptional circumstances**

- (1) The Commissioner may authorise the engagement by an Agency Head of a non-ongoing APS employee as an ongoing APS employee if:
  - (a) the Agency Head requests, in writing, such an authorisation in respect of the non-ongoing APS employee; and
  - (b) the Commissioner is satisfied that exceptional circumstances justify such an engagement.
- (2) An Agency Head may only make a request in respect of a non-ongoing APS employee if the Agency Head is satisfied that:

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- (a) the duties of the relevant employment are more appropriately undertaken by an ongoing APS employee; and
- (b) the person to be engaged as an ongoing APS employee has the work-related qualities genuinely required to perform the relevant duties; and
- (c) the engagement as an ongoing APS employee is at the person's classification (or equivalent) as a non-ongoing APS employee; and
- (d) the original engagement of the person as a non-ongoing APS employee, or an extension of the engagement of the person as a non-ongoing APS employee, complied with the requirements of Subdivision B; and
- (e) the engagement is necessary for the Agency's operations.

**26 Affirmative measure—Indigenous employment**

- (1) An Agency Head may, consistently with Commonwealth law, identify a vacancy as open only to Aboriginal and/or Torres Strait Islander persons.
- (2) The Agency Head 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 B; or
    - (ii) section 22 is satisfied.

Note: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

- (3) In this section:

*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*.

**27 Affirmative measure—disability**

- (1) An Agency Head 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 Agency Head must ensure that for such a vacancy:
  - (a) eligible applicants are only persons described in subsection (1); and
  - (b) one of the following applies:
    - (i) the selection process for the vacancy otherwise satisfies the requirements of Subdivision B;
    - (ii) section 22 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: Regulations 3.4 and 3.5 of the Regulations provide for matters regarding the engagement of non-ongoing APS employees.

## **28 Affirmative measure—RecruitAbility Scheme**

- (1) An Agency Head may:
  - (a) notify a vacancy under section 20; and
  - (b) specify that the RecruitAbility Scheme applies to the selection process for that vacancy.

Note: The RecruitAbility Scheme is an affirmative measure to make arrangements for people with disability to be considered for engagement or promotion.

- (2) The Agency Head must ensure that for such a vacancy the selection process otherwise satisfies the requirements of Subdivision B.
- (3) To avoid doubt, paragraph (1)(b) does not require that the successful applicant be a person who applied in accordance with the RecruitAbility Scheme.

## **29 Promotion after appointment to a statutory office**

- (1) An Agency Head may, in writing, request the Commissioner to authorise the promotion of an ongoing APS employee if the following apply:
  - (a) the employee was granted leave without pay for appointment to a statutory office of a kind that requires the Commissioner, or a representative of the Commissioner, to be a participant in the selection process for the office;
  - (b) the employee's appointment to the statutory office:
    - (i) has not expired; or
    - (ii) expired no more than 3 months before the Commissioner was asked to authorise the promotion;
  - (c) the duties to which the employee is to be assigned are assessed by the Agency Head as being at an APS classification that is equivalent to, or lower than, the duties of the statutory office;
  - (d) the Agency Head is satisfied that the employee has the necessary work-related qualities to perform duties at the APS classification to which the employee is to be promoted.
- (2) The Commissioner may authorise the promotion, and in deciding whether to do so may also take into account:
  - (a) how long the employee was appointed to the statutory office; and
  - (b) the selection process for the appointment to the statutory office; and
  - (c) any other matter the Commissioner considers relevant.
- (3) If the Commissioner authorises the promotion, the Agency Head may promote the employee.

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**30 Engagement of non-APS employee following a machinery of government change**

The requirements of this section are met if the Commissioner acts under paragraph 72(1)(c) or (d) of the Act to engage a person, or determine that a person becomes engaged, in a specified Agency.

**31 Engagement of an ongoing Parliamentary Service employee as an ongoing APS employee**

An Agency Head may engage a person who is an ongoing Parliamentary Service employee as an ongoing APS employee if the person is to be employed at a comparable classification or lower.

Example: A comparable classification or lower for a person whose Parliamentary Service Group classification is level 5 is APS Group classification level 1, 2, 3, 4 or 5.

**32 Re-engagement of election candidates**

*Person may apply to be re-engaged as an APS employee*

- (1) An Agency Head may engage a person as an APS employee if:
  - (a) the person is a former APS employee in the Agency, whose employment ended because he or she 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 Agency Head to be engaged as an APS employee within the applicable timeframe mentioned in subsection (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 Agency Head 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 Agency Head:
  - (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 subsection (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 APS employee of a specified Agency for the purposes of paragraph (2)(c).

Example: The Commissioner may make a declaration if the Agency 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 an APS employee*

- (4) If the Agency Head engages the person as an APS 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 an APS 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.

### **33 Re-engagement of a former APS employee**

- (1) The relevant Agency Head may engage a former APS employee as an ongoing or non-ongoing APS employee if:
- (a) the Agency Head 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:

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- (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.

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## **Division 2—Gazettal of certain employment decisions and promotions**

### **34 Gazettal of employment decisions**

#### *Decisions that must be notified*

- (1) An Agency Head must notify the following employment decisions in the Public Service Gazette:
  - (a) the promotion of an ongoing APS employee;
  - (b) the promotion of an ongoing APS employee, following the decision of a Promotion Review Committee under subparagraph 5.18(1)(b)(ii) of the Regulations that has not been notified under paragraph (a);
  - (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 Parliamentary Service employee as an ongoing APS employee at a higher classification than the person's current classification as a Parliamentary Service employee;
  - (e) 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).

#### *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 subsection (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 Agency Head 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 Agency 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.

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### *Notification relating to a former ongoing Parliamentary Service employee*

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

*This engagement of an ongoing Parliamentary Service employee at a higher classification may be subject to review by a Promotion Review Committee in accordance with Part 5 of the Public Service Regulations 1999.*

## 35 Gazettal when decisions previously notified are cancelled

### *Decisions that must be notified*

- (1) An Agency Head must notify a decision (a **cancellation decision**) to cancel the following employment decisions in the Public Service Gazette:
- (a) a promotion notified under paragraph 34(1)(a) (in a case where the cancellation decision is made by the Agency Head);
  - (b) a promotion notified under paragraph 34(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 34(1)(c);
  - (d) the engagement of an ongoing Parliamentary Service employee as an ongoing APS employee under paragraph 34(1)(d);
  - (e) a termination notified under paragraph 34(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.

## 36 When promotion decisions take effect

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

Note: Regulation 5.9 of the Regulations 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:

<b>When promotion decisions take effect</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>If the promotion decision is subject to PRC review and ....</b>	<b>then, the decision takes effect ...</b>
1	no application for review is made before the end of the period within which an application for PRC review of the decision may be made	(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 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 Agency Head 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 Agency Head is notified that the application has lapsed—on that date; or (b) 2 weeks after the day the Agency Head is notified that the application has lapsed
4	an application for review is made but the Merit Protection Commissioner decides under subregulation 5.10(1) of the Regulations 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 Agency Head is notified of the decision of the Merit Protection Commissioner—on that date; or (b) the later of: (i) the day the Agency Head is notified; and (ii) 4 weeks after the day the decision is notified in the Public Service Gazette
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 Agency Head is notified of the PRC's decision—on that date; or (b) 4 weeks after the day the Agency Head is notified of the PRC's decision
6	an application for review is made and the	(a) if a date of effect has been agreed by

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**When promotion decisions take effect**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>If the promotion decision is subject to PRC review and ...</b>	<b>then, the decision takes effect ...</b>
	PRC varies the promotion decision	the relevant parties and is after the Agency Head is notified of the PRC's decision—on that date; or (b) 4 weeks after the day the Agency Head is notified of the PRC's decision

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(4) This section is subject to section 38.



## **Part 4—Working in the APS**

### **Division 1—Movement of APS employees between agencies**

#### **37 Moves between agencies not associated with promotion**

- (1) This section applies if:
  - (a) an Agency Head enters into a written agreement with an ongoing APS employee for the employee to move to the Agency Head's Agency (the *new Agency*) from another Agency (the *original Agency*); and
  - (b) the movement between APS Agencies is not associated with a promotion.

Note: For the power to enter into agreements of this kind, see section 26 of the Act.

- (2) The move takes effect:
  - (a) in the case of an ongoing move:
    - (i) if a date of effect has been agreed by the APS employee and the 2 Agency Heads—on the agreed date of effect; and
    - (ii) if a date of effect has not been agreed—4 weeks after the APS employee informs the original Agency Head in writing; and
  - (b) in the case of a temporary move:
    - (i) if the original Agency Head has approved it in writing—on the date of effect specified in the approval; and
    - (ii) if the original Agency Head has not approved it in writing—on the date the APS employee begins duties in the new Agency. The move has the effect of an ongoing move to the new Agency at the APS employee's existing classification.
- (3) In the case of an agreed temporary move, an agreement between the new Agency Head and the APS employee to vary the period of the move:
  - (a) if approved by the original Agency Head in writing—has effect according to its terms; and
  - (b) if not approved by the original Agency Head in writing—has no effect.

#### *Movement in cases of a suspected breach of the Code of Conduct*

- (4) Despite subsection (2), if:
  - (a) an APS 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
  - (b) the matter to which the suspected breach relates has not yet been resolved; then, unless the APS employee's current Agency Head and the new Agency Head agree otherwise, a move by the APS employee does not take effect until the matter to which the suspected breach relates is resolved.
- (5) For the purposes of subsection (4), the matter to which the suspected breach relates is taken to be resolved when:

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**Division 1** Movement of APS employees between agencies

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- (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.

**38 Moves between agencies on promotion**

- (1) If:
  - (a) a decision is taken to promote an APS employee; and
  - (b) the APS 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
  - (c) 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.

## **Division 2—Performance management**

### **39 Achieving effective performance**

An Agency Head upholds APS Employment Principle 10A(1)(d) by ensuring that:

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

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

### **40 Managing performance in cases of a potential breach of the Code of Conduct**

An Agency Head must have regard to any relevant standards and guidance issued by the Commissioner if:

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

Note: See also Part 5.

## **Part 5—Handling suspected breaches of the Code of Conduct**

### **Division 1—Introduction**

#### **41 Purpose**

For the purposes of paragraph 15(4)(a) of the Act, this Part sets out the basic procedural requirements with which procedures established by an Agency Head under subsection 15(3) of the Act must comply.

Note 1: Subsection 15(3) of the Act requires an Agency Head to establish written procedures for determining:

- (a) whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct; and
- (b) what sanction, if any, should be imposed on an APS employee for a breach of the Code of Conduct.

Note 2: See also section 40.

#### **42 Application to former APS employees**

In Division 2 (other than subparagraph 43(a)(ii) and section 44), a reference to an APS employee in an Agency includes a reference to a former APS employee who is suspected of having breached the Code of Conduct while an employee in the Agency.

## **Division 2—Basic procedural requirements**

### **43 Employee must be informed that a determination is being considered**

A determination may not be made in relation to a suspected breach of the Code of Conduct by an APS employee unless reasonable steps have been taken to:

- (a) inform the APS employee of:
  - (i) the details of the suspected breach (including any subsequent variation of those details); and
  - (ii) the sanctions that may be imposed on the APS employee under subsection 15(1) of the Act; and
- (b) give the APS employee a reasonable opportunity to make a statement in relation to the suspected breach.

### **44 Employee must be informed before a sanction is imposed**

If a determination is made that an APS employee has breached the Code of Conduct, a sanction may not be imposed unless reasonable steps have been taken to:

- (a) inform the APS employee of:
  - (i) the determination; and
  - (ii) the sanction or sanctions that are under consideration; and
  - (iii) the factors that are under consideration in determining any sanction to be imposed; and
- (b) give the APS employee a reasonable opportunity to make a statement in relation to sanctions under consideration.

### **45 Person making determination to be independent and unbiased**

An Agency Head must take reasonable steps to ensure that:

- (a) the person who determines whether an APS employee has breached the Code of Conduct is, and appears to be, independent and unbiased; and
- (b) the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.

### **46 Determination process to be informal**

The process for determining whether an APS employee has breached the Code of Conduct must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

### **47 Record of determination and sanctions**

If a determination is made in relation to a suspected breach of the Code of Conduct by an APS employee, a written record must be made of:

- (a) the suspected breach; and
- (b) the determination; and

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- (c) any sanctions imposed as a result of a determination that the APS employee breached the Code of Conduct; and
- (d) if a statement of reasons was given to the APS employee—the statement of reasons.

Note: The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this section.

## Part 6—Other employment matters

### 48 Restrictions on engaging a person who has received a redundancy benefit

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

Note: Subparagraph (a)(ii)—for *work-related qualities*, see section 10.

- (2) In this section:

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

- (a) from an APS agency or the Australian Parliamentary Service; 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 *Parliamentary 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:

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**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.

### 49 Matters relating to leave without pay

- (1) An Agency Head must grant leave without pay to an ongoing APS employee who applies for the leave to undertake or continue employment:
  - (a) for the purposes of section 13 of the *Governor-General Act 1974*; or
  - (b) for the purposes of section 13 or 20 of the *Members of Parliament (Staff) Act 1984*.
- (2) If an APS employee who has been granted leave without pay to undertake or continue employment for the purposes mentioned in paragraph (1)(a) or (b) notifies his or her Agency Head, in writing, that he or she wishes to return to the Agency to undertake duties:
  - (a) the Agency Head must arrange for the APS employee to return to the Agency as soon as practicable; and
  - (b) the Agency Head must arrange for the APS employee to undertake duties at the employee's classification immediately before the employee was granted leave without pay or, if the classification no longer exists, at an equivalent classification determined by the Agency Head.

Note 1: The right of return under subsection (2) applies in relation to leave without pay whether granted before or after the commencement of these provisions.

Note 2: APS employees also have certain rights of return from leave granted under the *Australian Civilian Corps Act 2011* and these are provided in the *Prime Minister's Australian Civilian Corps Directions 2012*.

### 50 Collection of employment-related data

- (1) An Agency Head must ensure that there are measures in place to collect information from each employee in the Agency, including information relating to the following matters, and to give information that is collected to the Commissioner:
  - (a) the employee's highest level of attainment in education;
  - (b) the employee's main field of study;
  - (c) the employee's previous work experience;
  - (d) the employee's Indigenous status;
  - (e) the employee's disability status;
  - (f) the employee's country of birth;
  - (g) the employee's first language spoken;
  - (h) the first non-English language (if any) spoken by the employee;
  - (i) the first language of the employee's father;
  - (j) the first language of the employee's mother.



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- Note 1: This requirement is in addition to the Agency Head's duty to give the Commissioner information for the Commissioner to prepare an annual report: see section 44 of the Act.
- Note 2: Information collected using the measures mentioned in subsection (1) will be included in the Australian Public Service Employment Database.
- Note 3: In collecting information using the measures mentioned in subsection (1), an Agency Head will have regard to the specifications in relation to the collection of information that are set out in the APSED Manual published on the website of the Australian Public Service Commission.
- (2) In seeking information relating to the matters in paragraphs (1)(a) to (j), an Agency Head must allow APS employees to provide a response of "choose not to give this information".

## Part 7—Delegation

### 51 Delegation by the Commissioner

- (1) The Commissioner may delegate, in writing, any of the Commissioner's powers or functions under this instrument (other than under this section) to:
  - (a) a person who holds any office or appointment under an Act; or
  - (b) an SES employee or acting SES employee.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

- (2) A person (the **first delegate**) to whom powers or functions are delegated under subsection (1) may, in writing, delegate any of those powers or functions to another person (the **second delegate**).
- (3) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subsection (2), the first delegate must give corresponding directions to the second delegate.
- (4) A person exercising powers or functions under a delegation under this section must comply with any directions given by the Commissioner.

### 52 Delegation by Agency Head

- (1) An Agency Head may delegate, in writing, any of the Agency Head's powers or functions under this instrument (other than under this section) to a person.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

- (2) However, an Agency Head cannot delegate powers or functions to an outsider, being a person other than:
  - (a) an APS employee; or
  - (b) a person appointed to an office by the Governor-General, or by a Minister, under a law of the Commonwealth;without the prior written consent of the Commissioner.
- (3) A person (the **first delegate**) to whom powers or functions are delegated under subsection (1) may, in writing delegate any of the powers or functions to another person (the **second delegate**).
- (4) However, if the first delegate is subject to directions about the exercise of a power or function delegated under subsection (3), the first delegate must give corresponding directions to the second delegate.
- (5) A person exercising powers or functions under a delegation under this section must comply with any directions of the Agency Head who delegated the power or function.

## **Part 8—Application and transitional provisions**

### **Division 1—Application and transitional provisions relating to this instrument**

#### **53 Definitions**

In this Division:

*commencement* means the day this instrument commences.

*old law* means the *Australian Public Service Commissioner's Directions 2013*, as in force immediately before the day this instrument commences.

#### **54 Application—Gazettal of certain employment decisions and promotions**

Division 2 of Part 3 of this instrument 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 Part 2.4 of the old law on commencement.

#### **55 Transitional—use of merit lists**

For the purposes of paragraph 20(1)(a) of this instrument, 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 section 9 of this instrument.

#### **56 Transitional—vacancies notified before commencement**

Despite the repeal of the old law by Schedule 2, the old law 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.

#### **57 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 APS employee under clause 2.12 of the old law, then:

- (a) the person is taken to be engaged to perform duties as a non-ongoing APS employee under section 22 of this instrument; and
- (b) section 22 of this instrument applies in respect of that engagement.

#### **58 Transitional—managing effective performance**

Despite the repeal of the old law by Schedule 2, the old law continues to apply in relation to performance management taken in respect of an APS employee if:

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- (a) immediately before commencement, performance management was being taken in respect of the APS employee in accordance with the Act, the Regulations and the requirements of Chapter 4 of the old law; and
- (b) on commencement, that performance management had not ended.

**59 Savings—delegations**

*Delegation by the Commissioner*

- (1) A delegation by the Commissioner, as in force under clause 8.1 of the old law immediately before commencement, continues in force on and after commencement as if it had been made under section 51 of this instrument.

*Delegation by an Agency Head*

- (2) A delegation by an Agency Head, as in force under clause 8.2 of the old law immediately before commencement, continues in force on and after commencement as if it had been made under section 52 of this instrument.

**Division 2—Amendments made by the Prime Minister's Public Service Amendment Directions 2005 (No. 1)**

**60 Transitional—Prime Minister's Public Service Amendment Directions 2005 (No. 1)**

- (1) This section applies if:
  - (a) an Agency Head granted an application by an APS employee under subclause 2.1(1) of the *Prime Minister's Public Service Directions 1999*, as in force before the commencement of the *Prime Minister's Public Service Amendment Directions 2005 (No. 1)* on 19 October 2005, for leave without pay to undertake or continue employment in a full-time statutory appointment; and
  - (b) the period of leave has not expired on the day this instrument commences.
- (2) The grant of leave without pay is not affected by the amendments made by the *Prime Minister's Public Service Amendment Directions 2005 (No. 1)* or by the repeal of the *Prime Minister's Public Service Directions 1999*.
- (3) If the APS employee applies to his or her Agency Head, in writing, for leave without pay to continue the employment, the Agency Head may grant the application.
- (4) If the APS employee notifies his or her Agency Head, in writing, that he or she wishes to return to the Agency to undertake duties:
  - (a) the Agency Head must arrange for the APS employee to return to the Agency as soon as practicable; and
  - (b) the Agency Head must arrange for the APS employee to undertake duties at the employee's classification immediately before the employee was granted leave without pay or, if the classification no longer exists, at an equivalent classification determined by the Agency Head.

## **Schedule 1—Repeals**

### *Australian Public Service Commissioner's Directions 2013*

#### **1 The whole of the Directions**

Repeal the Directions.