

EXPLANATORY STATEMENT

Issued by the authority of the Australian Public Service
Commissioner

Public Service Act 1999

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

Purpose

The *Australian Public Service Commissioner's Directions 2022* (the Directions) are made under the *Public Service Act 1999* (the Act), and are necessary for its effective operation.

The Directions are a legislative instrument for the purposes of the *Legislation Act 2003*. They prescribe standards with which Agency Heads and Australian Public Service (APS) employees must comply in order to meet their obligations under the Act, and support Agency Heads to fulfil their responsibilities in respect of their employer powers. The *Australian Public Service Commissioner's Amendment (2023 Measures No. 1) Directions 2023* (the instrument) amends the Directions. The amendments to the Directions by the instrument are to:

- make consequential amendments due to the making of the *Public Service Regulations 2023* (2023 Regulations), which replaced the *Public Service Regulations 1999* (1999 Regulations);
- simplify certain promotion notification obligations;
- deal with circumstances where an agency does not meet certain Gazettal obligations;
- enable sharing of merit lists and merit pools by certain intelligence agencies; and
- make further clarifying, streamlining amendments.

Legislative framework

Section 10A of the Act sets out the APS Employment Principles and explains when a decision relating to engagement or promotion is based on merit.

Subsection 11A(1) of the Act provides that the Commissioner may issue directions about employment matters relating to APS employees, including engagement, promotion, redeployment, mobility, training schemes and termination.

Subsection 11A(2) of the Act provides that the Commissioner may issue directions in relation to any of the APS Employment Principles for the purpose of:

- ensuring that the APS incorporates and upholds the APS Employment Principles; and
- determining, where necessary, the scope or application of the APS Employment Principles.

Subsection 11A(3) of the Act provides that the APS Employment Principles have effect subject to the restrictions (if any) in directions made under subsection 11A(2).

Subsection 42(2) of the Act states that Agency Heads and APS employees must comply with the Directions.

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.

Commencement

Schedule 1 to the instrument commences the seventh day after it is registered, and Schedule 2 commences the later of the day after the instrument is registered and the day on which Part 10 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences. Sections 1 to 4 and the remainder of the instrument commence the day after it is registered.

Consultation

The Australian Public Service Commission undertook consultation with the Merit Protection Commission.

The Australian Public Service Commission undertook consultation with the Community and Public Sector Union on the draft Instrument.

Consultation was also undertaken with the Department of Defence on the definition of ‘outsider’ for the 2023 Regulations. A consequential amendment to the Directions is made in this instrument for the ‘outsider’ definition.

Consultation with the Australian Security Intelligence Organisation, Australian Secret Intelligence Service and the Australian Signals Directorate occurred for the sharing of merit lists and merit pools.

A Regulation Impact Statement is not required because there is not a more than minor regulatory impact on businesses, community organisations or individuals.

Explanation of the provisions

An explanation of the provisions is set out at [Attachment A](#).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the Directions is at [Attachment B](#).

EXPLANATION OF THE PROVISIONS

Section 1 sets out the name of the instrument, being the *Australian Public Service Commissioner's Amendment (2023 Measures No. 1) Directions 2023*.

Section 2 states when each provision of the instrument commences. Sections 1 to 4 (and anything else in the instrument not contained in Schedules 1 or 2) will commence the day after the instrument is registered. Schedule 1 will commence on the seventh day after the instrument is registered. Schedule 2 will commence the later of the day after the instrument is registered, and the day on which Part 10 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences.

Section 3 provides the authority for the making of the instrument, namely subsections 11A(1) and (2) of the Act.

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments commencing seventh day after registration

Australian Public Service Commissioner's Directions 2022

Schedule 1 to the instrument contains the amendments to the Directions that commence on the seventh day after the instrument is registered.

Items 1, 2 and 3

Section 5 – Definitions

Section 5 of the Directions defines certain words and expressions used in the Directions that have a particular meaning in the APS employment context.

Item 1 amends section 5 to insert a definition of 'intelligence agency'. 'Intelligence agency' is defined to mean an organisation continued in existence by the *Australian Security Intelligence Organisation Act 1979* or section 16 or 27A of the *Intelligence Services Act 2001*. These agencies are the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service and the Australian Signals Directorate. This definition relates to the amendment to be made by Item 6 to the definition of 'similar vacancy' in section 9 of the Directions which will allow APS agencies to engage or promote persons identified as suitable through a merit-based process conducted by one of these specified intelligence agencies.

Item 2 amends the definition of 'PRC review' in section 5. This is a minor consequential amendment to replace a redundant reference to the *Public Service Regulations 1999* (1999 Regulations) with a reference to Division 2 of Part 4 of the *Public Service Regulations 2023* (2023 Regulations).

Item 3 amends the definition of 'regulations' contained in section 5. This is a minor consequential amendment to replace a redundant reference to the 1999 Regulations with a reference to the 2023 Regulations.

Items 4 and 5

Section 7 – Meaning of *vacancy*

Section 7 of the Directions provides that a 'vacancy' exists for the purposes of the Directions if a decision has been made that a specified group of duties needs to be performed and it is appropriate to consider engaging a person or promoting an APS employee to perform the duties. The legislative note to section 7 states that a vacancy may also be filled by the movement of an APS employee at the employee's current classification. Items 4 and 5 amend section 7 to incorporate the substance of the note into the definition of

‘vacancy’. This amendment will not materially alter the operation of the Directions.

Item 6

Section 9 – Meaning of *similar vacancy*

Section 9 of the Directions defines ‘similar vacancy’ for the purposes of the Directions. Item 6 repeals section 9 and substitutes it with a new provision which differs from the existing provision in a number of ways.

Instead of stating that a vacancy is a similar vacancy to a notified vacancy within the meaning of the Directions or Part 3 of the *Parliamentary Services Determination 2013*, section 9 will apply if the notified vacancy is one that exists in an Agency, a Department (within the meaning of the *Parliamentary Service Act 1999*) or the Australian Security Intelligence Organisation, Australian Secret Intelligence Service or the Australian Signals Directorate (see subsection 9(2) and the new definition of ‘intelligence agency’). This recognises similarities for these specified intelligence agencies in conducting merit-based recruitment, and would enable APS agencies to engage or promote a person identified as suitable through a merit-based process conducted by one of these specified intelligence agencies.

Instead of requiring that the notified vacancy and similar vacancy be for similar duties, section 9 will now require that the work-related qualities required by a person to perform the duties of the similar vacancy and the notified vacancy must be similar (see new paragraph 9(1)(b)). This amendment aligns the language contained in section 9 with the language contained in paragraph 10A(2)(c) of the Act.

Section 9 outlines requirements in relation to the classification level of the notified and similar vacancies. Section 9 will now provide that if the notified vacancy is in an intelligence agency, it is sufficient for the similar vacancy and notified vacancy to be at the same corresponding classification as determined under an agreement about corresponding classifications made between the Director-General of the relevant intelligence agency and the Commissioner (see new subparagraph 9(1)(c)(iii)).

New subparagraph 9(1)(e)(vi) will provide that a vacancy may be a similar vacancy if 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. New subparagraph 9(1)(e)(iii) will clarify that a vacancy may be a similar vacancy to a notified vacancy where both vacancies are in the same Agency, without any agreement of another Agency Head being required.

The existing requirements that the vacancy and the notified vacancy be for the same category of employment (ongoing or non-ongoing) and that the duties are to be performed in the same location will remain (paragraphs 9(1)(a) and 9(1)(d)).

Items 7 and 8

Section 23 – How an Agency Head upholds APS Employment Principle 10A(1)(c)

To improve readability, Item 7 amends subsection 23(a) of the Directions to more explicitly clarify the application of section 23 to Subdivision B of Division 1 of Part 4. Item 7 replaces a reference to ‘the requirements of Subdivision B...’ with a reference to ‘the requirements set out in Subdivision B...’. This change aligns with the primary source of the obligation being APS Employment Principle 10A(1)(c), and Subdivision B setting out the requirements necessary to meet that obligation.

Item 8 inserts section 23A at the start of Subdivision B. Section 23A provides that Subdivision B sets out requirements for the purposes of subsection 23(a).

Items 9, 13, 14, 15, 16, and 18

Sections 24, 27, 28, 29, 31 and 33

Items 9, 13, 14, 15, 16 and 18 make minor consequential amendments to sections 24, 27, 28, 29, 31 and 33 to replace redundant references to regulations 3.4 and 3.5 of the 1999 Regulations with references to sections 12 and 13 of the 2023 Regulations.

Items 10 and 11

Section 25 – Notification of vacancy in the Public Service Gazette

Subsection 25(1) of the Directions provides basic requirements for notifying a vacancy in the Public Service Gazette. To improve readability, Item 10 repeals and replaces paragraph 25(1)(b).

Paragraph 25(1)(b) requires that the vacancy (the new vacancy) is a ‘similar vacancy’ to another vacancy (as defined by new section 9) that 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. This provision permits agencies to access merit lists from a previously notified vacancy to fill a new similar vacancy.

Subsection 25(7) of the Directions provides requirements for external advertising. Item 11 amends subsection 25(7) to explicitly provide that a vacancy notified in the Gazette as open to all eligible members of the community must, if advertised externally, be advertised with the same closing date for applications as specified in the Gazette notification.

Item 12

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

Item 12 repeals and replaces the heading for Subdivision C of Division 1 of Part 4. The heading was previously ‘Subdivision C - Engagement and promotion in certain circumstances’. The new heading is ‘Subdivision C - Selection processes for certain types of engagements and promotions’.

Item 12 also inserts new section 26A. Section 26A provides that Subdivision C sets out requirements for the purposes of paragraph 23(b), that is, the circumstances in which merit-based selection processes are modified or do not apply.

Item 17

Section 32 – Affirmative measure – RecruitAbility Scheme

Section 32 of the Directions relates to selection processes for the RecruitAbility Scheme.

Paragraph 32(1)(c) refers to a candidate being short-listed for progression to the next stage of a selection process because the candidate meets the ‘minimum requirements’ and eligibility requirements (if any) for the vacancy. Item 17 amends paragraph 32(1)(c) so that rather than referring to a candidate meeting the ‘minimum requirements’, the requirement is now that the candidate ‘has the work-related qualities required to perform the relevant duties for the vacancy’. This aligns the language of the subparagraph with the language used in paragraph 10A(2)(c) of the Act.

Items 19, 20, 21, and 22

Section 40 – Gazette of employment decisions

Section 40 of the Directions provides for notification in the Public Service Gazette of certain employment decisions.

Item 19 makes a minor consequential amendment to paragraph 40(1)(b) of the Directions to replace a redundant reference to subparagraph 5.18(1)(b)(ii) of the 1999 Regulations with a reference to subparagraph 33(2)(a)(ii) of the 2023 Regulations.

Item 20 makes a minor consequential amendment to paragraph 40(1)(c) of the Directions to remove a reference to the assignment of duties, in order to align with subsection 69(2) of the 2023 Regulations which does not anticipate that decisions regarding assignment of duties will be notified in the Public Service Gazette.

Subsection 40(4) of the Directions provides that a notification of an employment decision must include the relevant employee’s name unless the Agency Head decides otherwise due to the person’s work-related or personal circumstances or if the notification is under (1)(e), the Agency Head may decide that including the name is not necessary to ensure public confidence in the integrity of the APS. Subsection 40(5)

provides that if a notification does not include an employee's name and relates to a promotion that is subject to review, the Agency Head must notify all parties eligible to seek review of the promotion of their rights of review, and must notify the Merit Protection Commissioner (MPC) that eligible parties have been notified. Item 21 replaces subsection 40(5) with a requirement to provide the name of the employee to the MPC if the MPC requests the name of the employee. The eligible parties will be able ascertain their review rights from the notification in the Gazette, aligning the provision with the notification of employment decisions where the employee's name is included. The previous requirement was seen as involving a high administrative burden for agencies without a material impact on promotion review rights for eligible parties.

Item 22 makes a minor consequential amendment to subsection 40(7) of the Directions to replace a redundant reference to Part 5 of the 1999 Regulations with a reference to Part 4 of the 2023 Regulations.

Items 23, 24, 25, 26, 27, 28, 29, and 31

Division 2A – When promotion decisions take effect

Section 42 of the Directions deals generally with when promotion decisions take effect, and section 47 deals specifically with when a promotion takes effect in circumstances where the employee is subject to an ongoing Code of Conduct process. Items 23, 24, 25, 26, 27, 28, 29, and 31 improve the readability of the sections, including by repealing section 47 and replacing it with section 42A.

Item 23 will insert a new division heading, 'Division 2A—When promotion decisions take effect', before section 42 of the Directions.

Item 23 will also insert section 41A. The section provides that Division 2A is made for the purposes of subsection 11A(1) of the Act. Subsection 11A(1) provides that the Commissioner may issue directions about employment matters relating to APS employees, including promotion.

Item 24 amends the heading of section 42, so it will be 'When promotion decisions take effect—general case'.

Item 25 amends subsection 42(1) to make section 42 subject to new section 42A. Item 28 repeals subsection 42(4), which made section 42 subject to existing section 47 (which will be repealed by Item 31).

Item 26 makes a minor consequential amendment to the note to subsection 42(1) to replace a redundant reference to regulation 5.9 of the 1999 Regulations with a reference to section 24 of the 2023 Regulations.

Item 27 makes a minor consequential amendment to column 1 of table item 4 of subsection 42(3) to replace a redundant reference to subregulation 5.10(1) of the 1999 Regulations with a reference to subsection 25(1) of the 2023 Regulations.

Item 29 will insert new 42A which will be in substantially the same terms as existing section 47, which will be repealed by Item 31. Section 42A provides for moves between agencies on promotion where the employee is suspected of having breached the Code of Conduct. Subsection 42A(1) provides that if the employee has been advised that a Code of Conduct inquiry has commenced in accordance with procedures established under the Act, the move between agencies will not take effect until the matter to which the alleged breach relates is resolved, unless the two Agency Heads otherwise agree. Minor amendments have been made to the provision to make clear that it applies where an employee is to move to another Agency to take up a promotion.

Item 29 also inserts a new section 42B. This new provision deals with circumstances where the Agency Head has not met their obligation under section 40 to notify the promotion of an ongoing APS employee in the Gazette due to an error or omission. As soon as practical after identifying the error or omission, the Agency Head must notify the decision in accordance with section 40. If the promotion is not subject to PRC review, it is taken to take effect on the day that had been agreed between the parties as the day the promotion was to take effect (subsection 42B(3)).

If the promotion is subject to PRC review, the Agency Head must as soon as practical after identifying the error or omission notify all parties eligible to seek review of the promotion of their rights to review. Other than where an application for review is made and the PRC varies the promotion decision, the promotion is

taken to take effect on the day that had been agreed between the parties as the day the promotion was to take effect (paragraph 42B(4)(a)). If an application for review is made and the PRC varies the promotion decision, the decision is taken to take effect on the earlier of 4 weeks after the Agency Head is notified of the PRC's decision and a date that has been agreed by the relevant parties that is after the Agency Head is notified of the PRC's decision (paragraph 42B(4)(b)).

Providing for the backdating of the promotion date to the day the purported promotion took effect in appropriate circumstances (i.e. in the circumstances dealt with by subsection 42B(3) and paragraph 42B(4)(a)) is intended to prevent adverse outcomes, such as financial disadvantage, for employees where through no fault of their own a promotion notice is not notified in the Public Service Gazette according to section 40, while also not reducing promotion review rights of eligible applicants.

Item 30

Section 44 – APS employees to be engaged on probation

Subsection 44(1) of the Directions provides a default position that an APS employee must be engaged on probation. Item 30 amends subsection 44(1) so that the probation requirement does not apply to employees who are engaged for duties that are irregular or intermittent. The rationale for this change is that probation is not considered necessary for such engagements, and probation requirements are generally waived by Agency Heads under subsection 44(2) for such employees.

Items 32 and 33

Section 69 – Delegation by Agency Head

Subsection 69(2) enables Agency Heads to delegate functions or powers under the Directions, other than to outsiders. Items 32 and 33 make a minor consequential change to subsection 69(2) to exclude members of the Australian Defence Force from being considered outsiders. The purpose of this change is to allow the Secretary of Defence and other Agency Heads to delegate their functions or powers to members of the Australian Defence Force without first seeking the Commissioner's approval to do so. The previous position created unnecessary administrative burden for APS Agencies. This change reflects subsection 105(9) of the 2023 Regulations.

Item 34

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

Item 34 inserts new Division 2 into Part 10 of the Directions. Division 2 will contain new section 76. Section 76 provides for how certain amendments made by Schedule 1 to the instrument will apply.

Subsections 76(1) and (2) provide that the amendments to subsections 25(7) and 40(5) made by Schedule 1 to the instrument apply in relation to a vacancy or employment decision respectively that is notified on or after the commencement of Schedule 1.

Subsection 76(3) provides that section 42B as inserted by Schedule 1 applies in relation to an error or omission identified on or after the commencement of Schedule 1, regardless of whether the error or omission was made before or after that time.

Subsection 76(4) provides that the 'other vacancy' referred to in paragraph 25(1)(b) as amended by Schedule 1 may have been notified in the Public Service Gazette before the commencement of Schedule 1.

Schedule 2 – Amendments relating to short-term engagements

Australian Public Service Commissioner's Directions 2022

Schedule 2 to the instrument contains amendments relating to short-term engagements.

Items 1 and 2

Section 27 – Engagement on a short-term, irregular or intermittent basis

Subdivision C of Division 1 of Part 4 of the Directions specify the circumstances in which merit- based selection processes are modified or do not apply. Section 27 is in Subdivision C and provides for circumstances in which a person may be engaged as a non-ongoing APS employee without conducting a merit- based selection process.

Item 1 amends paragraph 27(1)(a). Previously the paragraph provided that an Agency Head may engage a person to perform duties as a non-ongoing APS employee if the engagement is, among other requirements, for a period of employment that is 18 months or less. Item 1 amends the provision so the new requirement is that the period of employment be for 12 months or less.

Item 2 amends subsection 27(2), which previously provided that an Agency Head may extend an engagement mentioned in paragraph 27(1)(a) so long as the total period of engagement did not exceed 3 years. Item 2 amends the subsection so the new requirement is that the total period of engagement must not exceed 18 months.

These amendments respond the enactment of section 333E of the *Fair Work Act 2009* (FW Act). Section 333E will make it unlawful to engage a fixed-term employee for a period of greater than 2 years, including any contract extensions. If an employee is engaged contrary to this requirement, the employee will automatically convert to ongoing employment. The amendments to section 27 of the Directions will minimise the risk of contraventions of section 333E occurring and of non-ongoing employees being unintentionally converted to ongoing employment without undergoing a merit-selection process.

Section 27 is only relevant when engaging a person as a non-ongoing APS employee without a merit selection process. If a merit selection process is conducted, a non-ongoing employee will, subject to the operation of section 333E of the FW Act, be able to be engaged for the longer periods provided for by sections 12 and 13 of the 2023 Regulations.

Item 3

Section 77 – Application of amendments made by Schedule 2

Item 3 inserts section 77 into the Directions, which provides that the amendments made by Schedule 2 apply in relation to an engagement of a person made on or after the commencement of the Schedule.

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 (2023 Measures No. 1) Directions 2023

The *Australian Public Service Commissioner's Amendment (2023 Measures No. 1) Directions 2023* (the instrument) are 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 2022* (the Directions) are made under the *Public Service Act 1999* (the Act), and are necessary for its effective operation. The instrument amends the Directions.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. The Directions, as amended by the instrument, prescribe standards with which Agency Heads and Australian Public Service (APS) employees must comply in order to meet their obligations under the Act, and support Agency Heads to fulfil their responsibilities in respect of their employer powers. The instrument amends the Directions. Schedule 1 to the instrument commences on the seventh day after it is registered, and Schedule 2 commences the later of the day after the instrument is registered and the day on which Part 10 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* commences. Sections 1 to 4 and the remainder of the instrument commence the day after it is registered.

The amendments made by the instrument are to:

- make consequential amendments due to the making of the *Public Service Regulations 2023* (2023 Regulations), which replaced the *Public Service Regulations 1999* (1999 Regulations);
- simplify certain promotion notification obligations;
- deal with circumstances where an Agency Head does not meet certain Gazettal obligations;
- enable sharing of merit lists and merit pools by certain intelligence organisations; and
- make further clarifying, streamlining amendments.

Human rights implications

The instrument engages the following rights:

- Right to work and rights at work – general rights recognised by Article 6(1) and Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Right to privacy – Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Right to work and rights at work

Article 6(1) of the ICESCR provides that everyone should have the opportunity to gain their living by work which they freely choose or accept. Article 7(c) of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensure an equal opportunity for everyone to be promoted in employment to an appropriate higher level subject to no considerations other than seniority and competence.

The general right to work and rights at work are promoted by the following:

Item 11 of Schedule 1 – Amendments to section 25 – Notification of vacancy in the Public Service Gazette

This section provides for the basis on which decisions to fill vacancies in the APS. A selection process to fill a vacancy must be notified in the Public Service Gazette, unless it is a ‘similar vacancy’ to a vacancy that was notified in the Gazette within the 18 months prior to the written decision to engage or promote the successful candidate for the new vacancy being made. Item 11 of Schedule 1 to the instrument amends subsection 25(7) to add a requirement that vacancies which are notified in the Gazette as open to all eligible members of the community must, if advertised externally, be advertised with the same closing date as the day specified in the Gazette notification.

Right to privacy

Article 17 of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with their privacy.

Item 21 of Schedule 1 – Gazette notification requirements

Section 40 of the Directions imposes a general requirement that employment and promotion decisions be notified in the Public Service Gazette and that the relevant employee’s name be included in the notification. However, this requirement is reasonable, necessary and proportionate.

The purpose of the requirement is to ensure that employment decisions about the public service are transparent and capable of being subject to public scrutiny. There are exceptions to the general requirement that decisions be notified. Paragraph 40(4)(a) provides that the Agency Head may decide that the name should not be included because of the person’s work-related or personal circumstances.

Paragraph 40(4)(b) provides that where the notification is for a termination of employment for breach of the Code of Conduct, an employee’s name may not be included if the Agency Head decides that including the name is not necessary to ensure public confidence in the integrity of the APS. This exception (that was not in the 2016 Directions) is to ensure that any limitation on the right to privacy is necessary, having regard to the particular circumstances of the employee’s termination.

Subsection 40(5) provides that if a notification does not include an employee’s name and relates to a promotion that is subject to review, the Agency Head must notify all parties eligible to seek review of the promotion of their rights of review, and must notify the Merit Protection Commissioner (MPC) that eligible parties have been notified. Item 21 replaces this with a requirement to provide the name of the employee to the MPC if the MPC requests the name of the employee. Item 21 of Schedule 1 to the Instrument amends subsection 40(5) to replace this with a requirement to provide the name of the employee to the MPC if the MPC requests the name of the employee. It is contemplated that the MPC will only request the name of an employee where it is necessary to enable the MPC to carry out its functions of undertaking a promotion review. Any impact on an employee’s privacy will therefore be reasonable, necessary and proportionate.

Conclusion

The instrument 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*. This is because the instrument promotes the protection of human rights, and to the extent that its provisions operate to limit a right or freedom, those limitations are compatible with the nature of the rights and are reasonable, necessary and proportionate.