



Australian Public Service Commissioner's Amendment (2024 Measures No. 1) Directions 2024

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

Dated 5 August 2024

Dr Gordon de Brouwer PSM
Australian Public Service Commissioner

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1 Name

This instrument is the *Australian Public Service Commissioner's Amendment (2024 Measures No. 1) Directions 2024*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	8 August 2024
2. Schedule 1, Part 1	At the same time as the <i>Public Service Amendment Act 2024</i> commences.	
3. Schedule 1, Part 2	26 August 2024.	26 August 2024
4. Schedule 1, Part 3	1 November 2024.	1 November 2024

Note: This table relates only to the provisions of this instrument as originally made.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) and 11A(1) and (2) of the *Public Service Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—APS values

Australian Public Service Commissioner's Directions 2022

1 At the end of Part 2

Add:

17A Stewardship:

The APS builds its capability and institutional knowledge, and supports the public interest now and into the future, by understanding the long-term impacts of what it does

Having regard to an individual's duties and responsibilities, upholding the APS Value in subsection 10(6) of the Act requires the following:

- (a) having proper regard to known and reasonably foreseeable implications of advice, decisions, and other actions;
- (b) having proper regard to Agency goals and responsibilities and the way in which the individual's work contributes to the achievement of those goals and responsibilities;
- (c) supporting and contributing to a workplace culture that sustains core knowledge, expertise, and standards of professionalism to deliver intended results with integrity;
- (d) reflecting on and learning from past experience and institutional knowledge, including through robust evaluation, to inform operations, advice, and decisions;
- (e) ensuring complete, accurate, and appropriately accessible recordkeeping of key actions and decisions;
- (f) representing the Agency and the APS in a way that maintains trust and confidence in the integrity and professionalism of the APS.

Part 2—Employee choice

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2 Section 5

Insert:

employee choice notification: see subsection 25A(1).

3 Section 7

Repeal the section, substitute:

7 Meaning of *vacancy*

In this instrument, a reference to a *vacancy* in an Agency is a reference to a specified group of duties that are, or that need to be, performed in the Agency in respect of which:

- (a) a decision is made that it is appropriate to:
 - (i) engage a person to perform the duties; or
 - (ii) promote an APS employee to perform the duties; or
 - (iii) assign the duties to an APS employee; or
- (b) the Agency Head of the Agency is required, under subsection 25A(3), to conduct a merit-based selection process.

4 After section 25

Insert:

25A Requirement to conduct merit-based selection processes for certain non-ongoing APS employees exercising employee choice

- (1) This section applies if an Agency Head receives a written notification (an *employee choice notification*) under section 66AAB of the *Fair Work Act 2009* from a person who is engaged as an APS employee for duties that are irregular or intermittent (see paragraph 22(2)(c) of the Act).

Circumstance in which employee has been assessed as suitable in accordance with this Subdivision

- (2) For the purposes of considering the ground for not accepting a notification at paragraph 66AAC(4)(c) of the *Fair Work Act 2009*, the Agency Head is taken to comply with the requirements of this Subdivision in respect of the employee if:
 - (a) the employee has been assessed as suitable in a merit-based selection process for a vacancy that was notified in the Public Service Gazette in the 18-month period before the day the Agency Head receives the employee choice notification; and
 - (b) the group of duties performed by the employee, if they were taken to be a vacancy (within the meaning of section 7 of this instrument) for an ongoing category of employment, would be a similar vacancy to the vacancy mentioned in paragraph (a) of this section.

Merit-based selection process to be conducted if employee has not been assessed as suitable in accordance with this Subdivision

- (3) Subject to subsection (5), if:
- (a) the Agency Head does not accept the employee choice notification on the ground referred to in paragraph 66AAC(4)(c) of the *Fair Work Act 2009*; and
 - (b) but for that ground, the Agency Head would accept the notification; the Agency Head must conduct a merit-based selection process in accordance with this Subdivision in respect of the group of duties performed by the employee.

Note: The group of duties is a **vacancy**: see paragraph 7(b).

- (4) The vacancy must be notified in the Public Service Gazette within the period of 3 months beginning on the day the Agency Head receives the employee choice notification.
- (5) Subsection (3) does not apply if, in the 6-month period before the day the Agency Head receives the employee choice notification, the employee was assessed as unsuitable for a similar vacancy to the vacancy by a recruitment process that met the requirements of this Subdivision.

Part 3—Other matters

Australian Public Service Commissioner's Directions 2022

5 Section 6

Repeal the section, substitute:

6 Meaning of *promotion*

- (1) 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:
 - (a) in a higher classification group than the classification group that includes the employee's current classification, in the same or another Agency, other than in a circumstance mentioned in subsection (2); or
 - (b) if the employee's current classification is a training classification—in a higher classification group than the classification group that includes the operational classification mentioned in column 3 of the table in Schedule 2 to the Classification Rules that relates to the employee's training classification.
- (2) For subsection (1), the circumstances are:
 - (a) both:
 - (i) the duties are assigned to the employee because of the allocation of a higher classification to the employee within the same broadband in the same Agency; and
 - (ii) that allocation has not been made as a result of a selection process meeting the requirements of Subdivision B of Division 1 of Part 4; or
 - (b) the duties are assigned to the employee because of the allocation of an operational classification mentioned in column 3 of Schedule 2 to the Classification Rules that relates to the employee's training classification.

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.

6 Paragraph 9(1)(d)

Repeal the paragraph.

7 At the end of subsection 9(1)

Add:

- Note 1: This definition must be considered in conjunction with paragraph 10A(1)(c) of the Act. In conducting a merit-based selection process in accordance with Subdivision B of Division 1 of Part 4 of this instrument, the concept of ***similar vacancy*** is relevant to whether the basic requirements for the notification of the similar vacancy have been met (see subsection 25(1) of this instrument).
- Note 2: The Commissioner may, from time to time, provide guidance on matters relating to similar vacancies.

8 In the appropriate position in Part 10

Insert:

Division 3—Amendments made by the Australian Public Service Commissioner’s Amendment (2024 Measures No. 1) Directions 2024

78 Application of amendments made by Part 3 of Schedule 1

- (1) Section 6, as substituted by Part 3 of Schedule 1 to the *Australian Public Service Commissioner’s Amendment (2024 Measures No. 1) Directions 2024* (the ***amending instrument***), applies in relation to the allocation of a classification to an employee on or after 1 November 2024.
- (2) The amendment of section 9 made by Part 3 of Schedule 1 to the amending instrument applies in relation to a vacancy notified in the Public Service Gazette on or after 1 November 2024.