



Public Service Amendment (2024 Measures No. 2) Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 12 December 2024

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Katy Gallagher
Minister for the Public Service

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1 Name

This instrument is the *Public Service Amendment (2024 Measures No. 2) Regulations 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. The whole of this instrument	1 April 2025.	1 April 2025

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Public Service Regulations 2023

1 Section 5 (definition of *Classification Rules*)

Repeal the definition.

2 Section 5

Insert:

merit pool means a pool of candidates for a vacancy, in respect of which each candidate included in the pool has been assessed as being suitable for the vacancy.

3 Section 5 (definition of *Promotion Review Committee*)

Repeal the definition.

4 Section 5

Insert:

ranked merit list means a list of candidates for a vacancy, in respect of which each candidate included in the list:

- (a) has been assessed as suitable for the vacancy; and
- (b) has been ranked in order of suitability.

ranked merit pool means a pool of candidates for a vacancy, in respect of which:

- (a) each candidate included in the pool has been assessed as suitable for the vacancy and is assigned to a group of candidates with a similar suitability for the vacancy (whether or not the group consists of one or more persons); and
- (b) each group is ranked in order of suitability.

similar vacancy has the same meaning as in the Commissioner's Directions.

vacancy has the same meaning as in the Commissioner's Directions.

5 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Review of actions relating to APS employment

6 Division 1 of Part 4 (heading)

Repeal the heading, substitute:

Division 1—Preliminary

7 Before section 17

Insert:

16A Purpose of this Part

- (1) For the purposes of section 33 of the Act, this Part makes provision for matters relating to the entitlement of APS employees to seek reviews of APS actions that affect their APS employment.
- (2) This Part also provides for the entitlement of ongoing Parliamentary Service employees to seek review of engagement decisions (where the engagement would be at a higher classification level than the employee's current classification level) and promotion decisions.

8 Subsection 17(2)

Repeal the subsection, substitute:

- (2) This Part is intended to provide for a fair system of review of certain APS actions and other engagement or promotion decisions.

9 Section 18 (heading)

Repeal the heading, substitute:

18 Review of certain engagement and promotion decisions**10 Section 18**

Omit "promotion decisions and engagement decisions to be made to the Merit Protection Commissioner for review by a Promotion Review Committee", substitute "engagement and promotion decisions to be made to the Merit Protection Commissioner".

11 Division 2 of Part 4

Repeal the Division, substitute:

Division 2—Review of certain engagement and promotion decisions**Subdivision A—Reviews on application by affected employees****20 Entitlement to review under this Subdivision**

Decisions affecting ongoing APS employees—applications for promotion review

- (1) A person who is an ongoing APS employee in an Agency is entitled to a review, under this Subdivision, of a decision by the Agency Head or a delegate of the Agency Head, if:
 - (a) the person has applied to be promoted to a vacancy in the Agency for a position with a classification mentioned in any of Groups 2 to 6 set out in Schedule 1 to the Classification Rules; and
 - (b) the decision is:
 - (i) to engage an ongoing Parliamentary Service employee in the circumstance mentioned in subsection (3), or to promote another APS employee, to the vacancy; or
 - (ii) if, as a result of the selection process for the vacancy, a merit pool, a ranked merit pool or a ranked merit list has been created—to engage an ongoing Parliamentary Service employee in the circumstance

mentioned in subsection (3), or to promote another APS employee, from that merit pool, ranked merit pool or ranked merit list to a similar vacancy; and

- (c) the person believes that the decision:
 - (i) was not based on merit (within the meaning of subsection 10A(2) of the Act); or
 - (ii) was not undertaken in accordance with the requirements for conducting merit-based selection processes specified by the Commissioner's Directions.

Decisions affecting ongoing Parliamentary Service employees—applications for engagement at a higher classification level than current classification level review

- (2) A person who is an ongoing Parliamentary Service employee may apply for a review, under this Subdivision, of a decision by the Agency Head of an Agency or a delegate of the Agency Head, if:
 - (a) the person has applied to be engaged as an APS employee in a vacancy in the Agency for a position with a classification mentioned in any of Groups 2 to 6 set out in Schedule 1 to the Classification Rules; and
 - (b) that classification is a higher classification than the person's classification as a Parliamentary Service employee; and
 - (c) the decision is:
 - (i) to engage another ongoing Parliamentary Service employee in the circumstance mentioned in subsection (3), or to promote an APS employee, to the vacancy; or
 - (ii) if, as a result of the selection process for the vacancy, a merit pool, ranked merit pool or ranked merit list has been created—to engage another ongoing Parliamentary Service employee in the circumstance mentioned in subsection (3), or to promote an APS employee, from the merit pool, ranked merit pool or ranked merit list to a similar vacancy; and
 - (d) the person believes that the decision:
 - (i) was not based on merit (within the meaning of subsection 10A(2) of the Act); or
 - (ii) was not undertaken in accordance with the requirements for conducting merit-based selection processes specified by the Commissioner's Directions.

Note: For **higher classification**, in relation to an ongoing Parliamentary Service employee, see section 6.

Circumstance in which engagement of ongoing Parliamentary Service employee is relevant

- (3) For the purposes of subparagraphs (1)(b)(i) and (ii) and (2)(c)(i) and (ii), the circumstance is that the classification of the position to which the ongoing Parliamentary Service employee is engaged is a higher classification than the employee's classification as a Parliamentary Service employee.

Decisions that are not reviewable under this Subdivision

- (4) However, a person is not entitled to a review under this Subdivision of a decision mentioned in subsection (1) or (2) in relation to the engagement or promotion of a person (the ***other person***) to a vacancy, if:
- (a) the other person was engaged or promoted to the vacancy on the recommendation of an Independent Selection Advisory Committee; or
 - (b) the other person was engaged or promoted to the vacancy (including from a merit pool, ranked merit pool or ranked merit list) as a result of a selection process that the Merit Protection Commissioner has decided, following a review under this Division:
 - (i) met the requirements in subsection 23(1) (see subsection 24(1)); or
 - (ii) resulted in outcomes that would not have been materially different had the selection process met the requirements in subsection 23(1) (see subsection 24(3)); or
 - (iii) met the requirements in subsection 28(1) (see subsection 29(1)); or
 - (iv) resulted in outcomes that would not have been materially different had the selection process met the requirements in subsection 28(1) (see subsection 29(3)); or
 - (c) the other person was engaged or promoted to the vacancy from a merit pool, ranked merit pool or ranked merit list created on the recommendation of the Merit Protection Commissioner under subsection 24(4).

21 Application for review of decision

- (1) A person who is entitled to a review of a decision under this Subdivision may apply directly to the Merit Protection Commissioner for a review of the decision.
- (2) The application must:
 - (a) be in writing; and
 - (b) state the reasons why the applicant considers that the selection process that resulted in the decision:
 - (i) was not based on merit (within the meaning of subsection 10A(2) of the Act); or
 - (ii) was not undertaken in accordance with the requirements for conducting merit-based selection processes specified by the Commissioner's Directions; and
 - (c) be made by:
 - (i) 5 pm of the 14th day after the day the decision is notified in the Public Service Gazette; or
 - (ii) if, before the end of that period, the Merit Protection Commissioner agrees to a longer period—5 pm of the last day of that longer period.
- (3) The making of an application under this section operates to stay:
 - (a) the decision; and
 - (b) if the decision involves the engagement or promotion of a person from a merit pool, a ranked merit pool or a ranked merit list—the engagement or promotion of any other person from the merit pool, ranked merit pool or ranked merit list;
 until the decision takes effect in accordance with Part 4 of the Commissioner's Directions.

- (4) The Merit Protection Commissioner may decide that the applicant is not entitled to a review of the decision if:
- (a) the application is misconceived, lacking in substance, frivolous or vexatious; or
 - (b) the applicant has previously applied for:
 - (i) a review of the same decision; or
 - (ii) a review of a decision relating to the same selection process; or
 - (c) the Merit Protection Commissioner considers that, in all the circumstances, a review of the decision is not justified.

Note: For paragraph (4)(b), an example of a decision relating to the same selection process is a decision to promote a person to a similar vacancy from a merit pool created as a result of that selection process.

- (5) If the Merit Protection Commissioner makes a decision under subsection (4), the Merit Protection Commissioner must notify the applicant, by written notice, of the reasons for the decision.

22 Review of decision on application by affected person—requirements for conducting reviews

- (1) This section applies if the Merit Protection Commissioner considers that an applicant is entitled to a review of a decision under this Subdivision.

Reviewers

- (2) The Merit Protection Commissioner must provide for the review to be conducted by:
- (a) the Merit Protection Commissioner; or
 - (b) one or more persons nominated by the Merit Protection Commissioner.
- The person or persons conducting the review is the **reviewer**.

- (3) The Merit Protection Commissioner may nominate a person under paragraph (2)(b) only if the Merit Protection Commissioner is satisfied that the person has the necessary skills and personal qualities to perform the duties as a reviewer independently and impartially.

Requirements for review

- (4) The Merit Protection Commissioner must notify the Agency Head of the Agency, in writing, of the review.
- (5) The reviewer may, by written notice, require the Agency Head to give the reviewer information or documents specified in the notice that are relevant to the review.
- (6) The Agency Head must give the information or documents to the reviewer in the manner, and at or within the time, required by the notice.

23 Review of decision on application by affected person—conduct of reviews

Review of decision

- (1) The reviewer of a decision under this Subdivision must consider whether the selection process resulting in the decision:

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- (a) resulted in one or more decisions that are based on merit (within the meaning of subsection 10A(2) of the Act); and
 - (b) was undertaken in accordance with the requirements for conducting merit-based selection processes specified by the Commissioner's Directions.
 - (2) Subject to this section, the reviewer may conduct the review in any manner the reviewer thinks fit.
 - (3) In conducting the review, the reviewer may consider information in relation to the decision only if the information was, before or at the time of the selection process:
 - (a) available to the decision-maker; or
 - (b) known to the Agency, but not provided to the decision-maker.
 - (4) The reviewer must make:
 - (a) one or more findings; and
 - (b) the recommendations required for the purposes of making a determination under section 24; and
 - (c) any other recommendations the reviewer considers suitable to include in such a determination.

Merit Protection Commissioner must take into account findings or recommendations made by other reviewers

- (5) In the case that the reviewer is not the Merit Protection Commissioner, the Merit Protection Commissioner must take into account any findings or recommendations made by the reviewer under subsection (4).

24 Review of decision on application by affected person—outcomes of reviews

Merit Protection Commissioner to determine outcome of review

- (1) The Merit Protection Commissioner must determine whether a selection process resulting in a decision reviewed under this Subdivision:
 - (a) meets the requirements in subsection 23(1); or
 - (b) does not meet those requirements.

Outcome of review when decision is not based on merit

- (2) If the Merit Protection Commissioner determines that the selection process did not meet the requirements in subsection 23(1), the Merit Protection Commissioner must do the following:
 - (a) if the applicant is an APS employee, and the decision that is the subject of the review is a decision to engage or promote a person to the applicable vacancy—determine that that decision does not take effect;
 - (b) if the applicant is an ongoing Parliamentary Services employee, and the decision that is the subject of the review is a decision to engage or promote a person to the applicable vacancy—recommend that that decision should not take effect;
 - (c) subject to paragraph (5)(b), recommend that a merit pool, a ranked merit list or a ranked merit pool created as a result of the selection process should not be used to fill a vacancy;

- (d) take action under subsection (4) or (5) (as applicable).
- (3) However, subsection (2) does not apply if the Merit Protection Commissioner is satisfied that, despite the selection process not meeting those requirements, the outcomes of the selection process would not have been materially different had those requirements been met.
- (4) If the Merit Protection Commissioner has sufficient information to do so, the Merit Protection Commissioner must:
 - (a) if the selection process resulted in the creation of a merit pool or a ranked merit pool—recommend a new merit pool or a new ranked merit pool from which the Agency may engage or promote a person; or
 - (b) if the selection process resulted in the creation of a ranked merit list—recommend a new ranked merit list from which the Agency may engage or promote a person; or
 - (c) if the selection process did not result in the creation of a merit pool, a ranked merit pool or a ranked merit list—recommend a ranking of all candidates for a vacancy in respect of which the Agency may determine who should be engaged or promoted.
- (5) If the Merit Protection Commissioner does not have sufficient information to make a recommendation under subsection (4), the Merit Protection Commissioner:
 - (a) must inform the Agency of that decision and the reasons for the decision; and
 - (b) must recommend that the selection process should not be used to fill a vacancy, other than a vacancy:
 - (i) that has already been filled; and
 - (ii) in respect of which a determination has not been made under paragraph (2)(a); and
 - (c) if appropriate, may recommend that a new selection process be undertaken.
- (6) A decision by the Merit Protection Commissioner under paragraph (2)(a) in relation to an APS employee is binding on the Agency.

25 Review of decision on application by affected person—notification requirements

- (1) The Merit Protection Commissioner must notify the applicant for a review, by written notice, of the outcome of the review.
- (2) The notice must be made within a reasonable period of determining the outcome of the review.

Note: Section 72B of the Act provides the circumstances in which the Merit Protection Commissioner may or may not disclose information in relation to individuals.

Subdivision B—Reviews on own motion of Merit Protection Commissioner

26 Engagement or promotion selection processes subject to review under this Subdivision

- (1) The Merit Protection Commissioner may, at any time, cause a review of a selection process to be undertaken under this Subdivision if:

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- (a) the selection process is conducted by an Agency Head or an APS employee of an Agency; and
 - (b) the selection process is:
 - (i) to engage or promote a candidate to a vacancy in the Agency for a position with a classification mentioned in any of Groups 2 to 6 set out in Schedule 1 to the Classification Rules; or
 - (ii) to create a merit pool, a ranked merit pool or a ranked merit list from which a candidate for such a vacancy may be engaged or promoted.
 - (2) A review of a selection process may be undertaken:
 - (a) whether or not the selection process has resulted in a decision; and
 - (b) on or after the day the vacancy for which the selection process is being conducted is notified in the Public Service Gazette.

27 Own motion reviews—requirements for conducting reviews

- (1) This section applies if the Merit Protection Commissioner causes a review of a selection process to be conducted under this Subdivision.

Reviewers

- (2) The Merit Protection Commissioner must provide for the review to be conducted by:
 - (a) the Merit Protection Commissioner; or
 - (b) one or more persons nominated by the Merit Protection Commissioner.
 The person or persons conducting the review is the **reviewer**.
- (3) The Merit Protection Commissioner may nominate a person under paragraph (2)(b) only if the Merit Protection Commissioner is satisfied that the person has the necessary skills and personal qualities to perform the duties as a reviewer independently and impartially.

Requirements for review

- (4) The Merit Protection Commissioner must notify the Agency Head of the Agency, in writing, of the review.
- (5) The reviewer may, by written notice, require the Agency Head to give the reviewer information or documents specified in the notice that are relevant to the review.
- (6) The Agency Head must give the information or documents to the reviewer in the manner, and at or within the time, required by the notice.

28 Own motion reviews—conduct of reviews

Review of decision

- (1) The reviewer of a selection process under this Subdivision must consider whether the selection process:
 - (a) is likely to, or has, resulted in one or more decisions based on merit (within the meaning of subsection 10A(2) of the Act); and

- (b) is being, or was, undertaken in accordance with the requirements for conducting merit-based selection processes specified by the Commissioner's Directions.
- (2) Subject to this section, the reviewer may conduct the review in any manner the reviewer thinks fit.
- (3) In conducting the review, the reviewer may consider information in relation to the decision only if the information was, before or at the time of the selection process:
 - (a) available to the decision-maker; or
 - (b) known to the Agency, but not provided to the decision-maker.
- (4) The reviewer must make:
 - (a) one or more findings; and
 - (b) the recommendations required to be included in a written report required to be prepared under section 29; and
 - (c) any other recommendations the reviewer considers suitable to include in such a report.

Agency Head to be consulted if there are adverse findings or recommendations

- (5) If the reviewer intends to make findings or recommendations that are adverse to the Agency:
 - (a) a summary of the findings or recommendations must be provided to the Agency Head of the Agency; and
 - (b) the Agency Head must be invited to make submissions on the findings or recommendations within a specified period, which must be not less than 14 days; and
 - (c) the Merit Protection Commissioner must take into account any submissions made by the Agency Head in determining the outcome of the review under section 29.

Merit Protection Commissioner must take into account findings or recommendations made by other reviewers

- (6) In the case that the reviewer is not the Merit Protection Commissioner, the Merit Protection Commissioner must take into account any findings or recommendations made by the reviewer under subsection (4).

29 Own motion reviews—outcomes of reviews

- (1) The Merit Protection Commissioner must prepare a written report of a review under this Subdivision that includes:
 - (a) one or more findings, including the following:
 - (i) whether the selection process the subject of the review meets, or does not meet, the requirements in subsection 28(1);
 - (ii) if the selection process does not meet those requirements, whether the Merit Protection Commissioner is satisfied that, despite the selection process not meeting those requirements, the outcomes of the selection process would not have been materially different had those requirements been met; and

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- (b) the recommendations required to be included in the report by this section; and
 - (c) any other recommendations the Merit Protection Commissioner considers suitable to include.
- (2) If the Merit Protection Commissioner determines that the selection process did not meet the requirements in subsection 28(1), the Merit Protection Commissioner:
- (a) must include one or more recommendations in the written report in relation to the requirements that were not met; and
 - (b) if a merit pool, a ranked merit pool or a ranked merit list were created as a result of the selection process:
 - (i) must recommend that the selection process should not be used to fill a vacancy (other than any vacancies that have already been filled); and
 - (ii) must include in the report a recommendation that, on or after the day the report is given to the Agency Head, a person should not be engaged or promoted to a vacancy from the merit pool, ranked merit pool or ranked merit list.
- (3) However, paragraph (2)(b) does not apply if the Merit Protection Commissioner is satisfied that, despite the selection process not meeting the requirements in subsection 28(1), the outcomes of the selection process would not have been materially different had those requirements been met.
- (4) The Merit Protection Commissioner must give the written report to the Agency Head of the Agency.
- (5) The Merit Protection Commissioner may publish findings or recommendations included in the written report:
- (a) in the Merit Protection Commissioner's annual report; or
 - (b) on the Merit Protection Commissioner's website.

Note: Section 72B of the Act provides the circumstances in which the Merit Protection Commissioner may or may not disclose information in relation to individuals.

Subdivision C—Other matters

30 Requirement for Agency Heads to respond to review outcomes

- (1) This section applies if a review has been conducted under this Division in relation to a selection process undertaken by an Agency.
- (2) The Agency Head must notify the Merit Protection Commissioner, by written notice, of the following in relation to the review:
 - (a) if a determination is made under paragraph 24(2)(a)—the action taken in relation to the determination;
 - (b) if one or more recommendations are made under section 24 or 29—for each recommendation:
 - (i) whether the Agency Head accepts the recommendation; and
 - (ii) if the Agency Head does not accept the recommendation, the reasons why the recommendation is not accepted.
- (3) The notice must be provided to the Merit Protection Commissioner by:

- (a) 5 pm of the 14th day after the day the Agency Head is informed of the outcomes of the review; or
- (b) if, before the end of that period, the Merit Protection Commissioner agrees to a longer period—5 pm of the last day of that longer period.

Merit Protection Commissioner to notify Australian Public Service Commissioner if recommendations are not accepted

- (4) If the Merit Protection Commissioner is notified that a recommendation is not accepted, the Merit Protection Commissioner must provide the following to the Australian Public Service Commissioner:
 - (a) the notice;
 - (b) the reasons included with the notice as to why the recommendation is not accepted.

31 Timeframes for conducting reviews

The Merit Protection Commissioner must:

- (a) make guidelines specifying timeframes by which reviews under this Division must be conducted; and
- (b) ensure the guidelines are available on the Merit Protection Commissioner's website.

12 Subsection 37(2) (table item 9, column headed “Non-reviewable APS actions”)

Omit “PRC”, substitute “reviewer under Division 2 of Part 4”.

13 Subsection 37(5) (table item 1, column 2)

Omit “120 days”, substitute “60 days”.

14 At the end of Division 2 of Part 6

Add:

Subdivision G—Review of engagement and promotion decisions

82A Functions of the Merit Protection Commissioner to review engagement and promotion decisions

For the purposes of paragraph 50(1)(e) of the Act, it is a function of the Merit Protection Commissioner to review engagement and promotion decisions affecting APS employees and Parliamentary Service employees in accordance with Division 2 of Part 4.

82B Reporting requirements

- (1) At least twice each financial year, the Merit Protection Commissioner must give a written report to the Australian Public Service Commissioner in relation to the Merit Protection Commissioner's function under this Subdivision.
- (2) The report must state the period in the financial year that it covers.

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- (3) For the period in the financial year covered by the report, the report must include the following:
- (a) in relation to applications for review made under Subdivision A of Division 2 of Part 4:
 - (i) the number of applications made; and
 - (ii) the number of reviews completed; and
 - (iii) a summary of the outcomes of the completed reviews; and
 - (iv) for each completed review resulting in a determination that a selection process did not meet the requirements of subsection 23(1)—the requirements of that subsection that were not met and the reasons why those requirements were not met;
 - (b) in relation to own motion reviews made under Subdivision B of Division 2 of Part 4:
 - (i) the number of reviews completed; and
 - (ii) a summary of the outcomes of the completed reviews; and
 - (iii) for each completed review resulting in a determination that a selection process did not meet the requirements of subsection 28(1)—the requirements of that subsection that were not met and the reasons why those requirements were not met.
- (4) The report may include any other information the Merit Protection Commissioner considers relevant.

Note: Section 72B of the Act provides the circumstances in which the Merit Protection Commissioner may or may not disclose information in relation to individuals.

15 Subparagraph 103(6)(a)(i)

Omit “a PRC or the Merit Protection Commissioner”, substitute “the Merit Protection Commissioner, or a person nominated by the Merit Protection Commissioner as the reviewer of the action,”.

16 In the appropriate position in Part 11

Add:

Division 3—Transitional arrangements in relation to the amendments made by the Public Service Amendment (2024 Measures No. 2) Regulations 2024

114 Savings provision—saving of previous review process

Despite the repeal of Division 2 of Part 4 of these Regulations by Schedule 1 to the *Public Service Amendment (2024 Measures No. 2) Regulations 2024*:

- (a) that Division, as in force immediately before 1 April 2025; and
 - (b) any provision necessary for the effectual operation of that Division;
- continues to apply, on and after that day, in relation to a decision made in respect of a vacancy notified in the Public Service Gazette before that day.

115 Application provision—own motion reviews

Subdivision B of Division 2 of Part 4 of these Regulations, as inserted by Schedule 1 to the *Public Service Amendment (2024 Measures No. 2)*

Regulations 2024, applies in relation to a selection process for a vacancy notified in the Public Service Gazette on or after 1 April 2025.