

EXPLANATORY STATEMENT

Issued by the authority of the Australian Public Service Commissioner

Public Service Act 1999

Public Service Classification Amendment (2025 Measures No. 1) Rules 2025

Background

The *Public Service Act 1999* (PS Act) provides for the establishment and management of the APS.

The *Public Service Classification Rules 2000* (the Classification Rules) made under subsection 23(1) of the PS Act provide a systematic, APS-wide approach to the classification of duties (or jobs) in the APS with work value as the underlying basis. The Classification Rules are integral to the structure of the APS workforce and facilitate mobility in the APS.

The Classification Rules require an Agency Head to allocate an approved classification to each group of duties to be performed in the Agency and to allocate an approved classification to each APS employee based on the group of duties to be performed by the employee. Allocation of a classification to a group of duties is based on the work value of the duties. Work value is assessed by reference to work level standards.

Purpose of these amendments

The main purpose of the *Public Service Classification Amendment (2025 Measures No. 1) Rules 2025* (the Amendment Rules) is to make technical and consequential amendments to the Classification Rules following:

- amendments to the PS Act, and
- the repeal of the *Public Service Regulations 1999* (Repealed Regulations).

Consultation

Consultation was not undertaken specifically for the Amendment Rules as this instrument is consequential to amendments made to the PS Act by the *Public Service Amendment Act 2024* and in relation to:

- the repeal of the Repealed Regulations, and
- the making of the *Australian Public Service Commissioner's Directions 2022* (the Directions) and the *Public Service Regulations 2023* (the Current Regulations).

The Amendment Rules are necessary for the effective operation of the PS Act, the Current Regulations, the Directions and the Classification Rules.

The Department of Defence was consulted on the amendment to the definition of 'outsider' which carves out members from the Australian Defence Force in the making of the Current Regulations.

Impact Analysis

As these regulatory changes relate to intra-governmental public sector employment and have no effect on business or the not-for-profit sector no impact analysis consultation process is required. The Office of Impact Analysis has granted a 'carve out' from the requirement to undertake preliminary assessments in these circumstances (reference OIA23-06204).

Exemption from disallowance and sunseting

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). A note under subsection 23(1) of the PS Act confirms the disallowance and sunseting provisions of the Legislation Act do not apply to the Classification Rules.

Item 27(b) in the table at section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (Legislation Regulations) provides the Classification Rules are not subject to disallowance. The Explanatory Statement for the Legislation Regulations provide that instruments made under this provision are internal management tools for Government and should continue to be exempt from disallowance.

Item 54(b) in the table at section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides the Classification Rules are not subject to sunseting. The Explanatory Statement for the Legislation Regulations provide that instruments made under this provision are internal management tools for Government, intended to have ongoing effect, and should continue to be exempt from sunseting.

It is essential that the Classification Rules remain exempt from disallowance and sunseting to maintain certainty for APS employees regarding their classifications throughout their career with the APS. If, for example, the Classification Rules were subject to disallowance, there is a risk employees would not have a classification. It is essential for an APS employee to be assigned a classification for a number of reasons, including in order to determine an employee's rate of pay.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights, prepared under section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required, as paragraph 15J(2)(f) of the Legislation Act only requires a Statement to be prepared for disallowable legislative instruments.

Commencement

The Amendment Rules commence on the day after the instrument is registered.

Authority

The Amendment Rules are made under subsection 23(1) of the PS Act which provides that the Australian Public Service Commissioner (the Commissioner) may, by legislative instrument, make rules about classifications of Australian Public Service (APS) employees.

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.

Notes on clauses

Section 1 Name

This section provides that the title of the instrument is the *Public Service Classification Amendment (2025 Measures No. 1) Rules 2025*.

Section 2 Commencement

This section provides that the whole of the instrument commences on the start of the day after it is registered.

Section 3 Authority

The section provides that the instrument is made under subsection 23(1) of the PS Act.

Section 4 Schedules

This section provides that 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 Classification Rules 2000

Item 1 Paragraph 7(1)(b)

This item repeals paragraph 7(1)(b) of the Classification Rules and substitutes new paragraph 7(1)(b). The effect of this amendment is that rule 7 applies to an Agency Head if an ongoing APS employee moves to the Agency Head's agency in accordance with an agreement entered into under section 26 of the PS Act which is for a temporary move.

This is a consequential amendment:

- to remove a redundant reference to the Repealed Regulations; and
- to modernise drafting following the commencement of the Directions which include provisions relating to the movement of ongoing APS employees including for a 'temporary move'.

Section 26 of the PS Act provides that an agreement entered into has effect according to its terms, subject to the Commissioner's Directions issued under subsection 11A(1) of the PS Act. Section 46 of the Directions makes provision for agreements entered into under section 26 of the PS Act by ongoing APS employees, for an ongoing move or a temporary move.

The legislative framework does not make reference to regulations, so a reference to the Current Regulations is not necessary.

The application and operation of rule 7 is not substantively changed by this amendment.

Item 2 Subrule 11(2)

This item repeals subrule 11(2) of the Classification Rules and substitutes a new subrule which provides that subrule 11(1) relating to the movement of an APS employee from a training classification on finishing a training requirement does not apply to a non-SES employee who is engaged for a specified term for the purpose mentioned in subparagraph 13(4)(c)(i) of the Current Regulations.

The new subrule is not substantively changed. Rather, this is a technical amendment made to remove a reference to the Repealed Regulations and replace it with a reference to the correct provision in the Current Regulations. Under subparagraph 13(4)(c)(i) of the Current Regulations

an Agency Head may engage a person as a non-ongoing non-SES employee for a specified term if the purpose of the employment is to assist the person to gain skills and experience, by participating in the workforce under a scheme approved by the Agency Head or the Commissioner.

Under amended subrule 11(2), if an employee:

- is engaged in accordance with subparagraph 13(4)(c)(i), and
- is employed at a training classification, and
- satisfactorily finishes the training requirement

the Agency Head is not required to allocate to the employee a classification relating to the employee's training classification, in accordance with subrule (1). This is because employees are engaged under subparagraph 13(4)(c)(i) for the purpose of assisting the person to gain skills and experience, by participating in the workforce under a scheme approved by the Agency Head or the Commissioner. Those employees are not engaged for the purposes of training to take up an operational role in the APS and therefore it is not appropriate for an Agency Head to have to allocate the employee a classification mentioned in column 3 of Schedule 2 to the Rules.

The reference to engagement of an employee for a specified task is no longer required as subsection 13(4) of the Current Regulations only applies in relation to engagement of a person as a non-ongoing non-SES employee for a specified term.

Item 3 Subrule 13(2)

This item inserts the words '(within the meaning of subsection 78(8) of the Act)' after the word 'outsider' in subrule 13(2).

This amendment is consequential to the amendment of subsection 78(8) of the PS Act made by the *Public Service Amendment Act 2024*, to include 'a member of the Australian Defence Force' as a person who is not an **outsider** to whom an Agency Head cannot, under subsection 78(7) of the PS Act, delegate powers or functions without the prior written consent of the Commissioner.

This accords with paragraph 13(1)(b) of the Legislation Act which is to the effect that expressions used in a legislative instrument have the same meaning as in the enabling legislation as in force from time to time, unless a contrary intention appears.

As a result of this, any amendments to the definition of outsider in the PS Act will apply in the Classification Rules without them needing to be amended, ensuring the definition remains consistent across the legislation.

Subrule 13(2) provides that an Agency Head cannot delegate powers or functions under the Classification Rules to an outsider (within the meaning of subsection 78(8) of the PS Act) without prior written consent of the Commissioner. This has not been changed by the amendment in item 3, which is to use the meaning of the term outsider provided in the PS Act rather than to define the term in rule 13.

Item 4 Subrule 13(7)

This item repeals subrule 13(7). This amendment is consequential to the amendment in item 3 described above, which nullifies the requirement for subrule 13(7) by referring to the definition of *outsider* provided in subsection 78(8) of the PS Act.