




# Recruitment and selection in the Australian Public Service



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recruitment

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# Introduction

Under the *Public Service Act 1999* (the Act), Australian Public Service (APS) agency heads have responsibility for employment decisions, including recruitment and selection decisions, affecting their agency.

These decisions must comply with the Act, the Public Service Regulations 1999 (the Regulations) and the Public Service Commissioner's Directions 1999 (the Commissioner's Directions).

Merit is a fundamental element of (APS) employment and is underpinned by legislation. The APS value requiring all employment decisions to be based on merit is complemented by the value requiring that all eligible members of the Australian community have a reasonable opportunity to apply for APS employment.

Merit is about getting the best available person for the job.

Merit-based decisions are required, at a minimum, to be based on an assessment of a person's work-related qualities and the work-related qualities required for efficient and effective organisational performance.

Decisions relating to engagement and promotion require a competitive assessment of the relative suitability of the candidates against the genuine requirements of the duties, focusing on the capacity of candidates to achieve outcomes related to the duties.

In summary:

- employment decisions in the Australian Public Service (APS) are based on merit
- the APS provides a reasonable opportunity to eligible members of the community to apply for employment
- engagement and promotion decisions are made using a competitive selection processes
- other employment decisions are made on the basis of an assessment of the person's work-related qualities and the work-related qualities required for efficient and effective organisational performance
- agency heads must develop selection processes that are fair and transparent
- the Regulations set out limitations on non-ongoing (temporary) employment.

It is ultimately up to agency heads to put in place measures in their agency that uphold and promote the APS values relevant to recruitment and selection. This does not mean, however, that the process needs to be cumbersome and drawn out—there is nothing in the legislation to suggest that a recruitment process has to be slow in order to meet the requirement of merit.

The Australian Public Service Commission (the Commission's) publication *Better, Faster: streamlining recruitment in the APS* discusses a range of approaches and provides a tool for the focused evaluation of agency recruitment processes to ensure that they are as efficient and effective as they can possibly be. *Better, Faster* promotes the following four keys to efficient recruitment outcomes:

- strip away unnecessary steps from the recruitment process
- provide managers with structure and support to complete the task quickly and effectively.
- encourage managers to recognise that recruitment is a priority in its own right and not something that is 'fitted in' after finishing their regular work
- clearly communicate organisational expectations (and measures) in respect to recruitment activity and ensure they are understood.

## Scope of guide

This guide provides general advice on non-Senior Executive (SES) recruitment and selection issues. It replaces the booklet *Ongoing Employment Recruitment and related issues* and should be read in conjunction with other relevant advice provided by the Commission, including:

- [The Senior Executive Service \(SES\): Selection, mobility and separation](#)
- [Ongoing employment](#)
- [Non-ongoing employment](#)
- [Training and traineeships](#)
- [Conditions of engagement](#)
- [Citizenship](#)
- [Probation](#)
- [Delegations](#)
- [Termination of Employment](#)

A reference in this booklet to the agency head is to be read as also meaning a delegate of the agency head. See the document [Delegations](#) for additional information.

### Format

Part one and Appendix A cover the legislative framework related to recruitment in the APS.

Part two covers planning the recruitment and selection process including identifying an employment opportunity, deciding on the method for filling a vacancy, developing supporting documentation, essential qualifications, conditions of engagement and advertising.

Part three covers action not requiring competitive merit selection, including transfers within an agency, transfers between agencies, and higher duties.

Part four covers employment activities requiring competitive merit-based selection, including promotion, engagement of ongoing employees and non-ongoing employees.

Part five covers the processes for a competitive merit-based selection such as collecting relevant information, including referee reports, using selection committees, assessing the relative suitability of candidates, making recommendations and decisions.

Part six covers implementing selection decisions including review rights, release dates and cancelling a decision.

The Glossary at Appendix B explains terminology used in this guide.

Appendix C covers secondary considerations.

Appendix D provides a sample letter and notice of engagement.

# Part one—The legislative framework

The legislative framework which applies to non-SES staffing activities arising from the *Public Service Act 1999* is contained in:

- the Public Service Act
- the Public Service Regulations (the Regulations)
- the Commissioner's Directions (the Directions)
- the Classification Rules
- the Prime Minister's Public Service Directions.

## 1.1 Public Service Act 1999

An agency's recruitment and selection policies and processes must be consistent with all the APS Values. An agency head must uphold and promote the APS Values (section 12) and every APS employee must behave in a way that upholds the APS Values (section 13(11)). In addition, Senior Executive Service employees are required to promote the APS Values by personal example and other appropriate means (section 35(2)).

The Act contains the following provisions related to recruitment and selection:

### APS Values (section 10 of the Act)

10(1)(b) the APS is a public service in which employment decisions are based on merit.

10(1)(m) the APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment.

10(2) a decision relating to engagement or promotion is based on merit if:

- (a) an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process; and
- (b) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
- (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
- (d) the assessment is the primary consideration in making the decision.

Other relevant Values and the Code of Conduct established under the Act are at contained in Appendix A.

### Prohibition on patronage and favouritism (section 17 of the Act)

17(1) A person exercising powers under this Act or the regulations:

- (a) in relation to the engagement of APS employees; or
  - (b) otherwise in relation to APS employees;
- must do so without patronage or favouritism.

## 1.2 Public Service Regulations 1999

Division 3.1 of the Regulations sets out the employer powers of APS agency heads including the circumstances for:

- engagement of SES employees (Regulation 3.4)
- engagement of non-SES employees (Regulation 3.5)
- extension of specified terms of engagement of certain non-SES employees (Regulation 3.6)

- promotion of ongoing APS employees (Regulation 3.8)
- ongoing moves between agencies (Regulation 3.9)
- other moves between agencies (Regulation 3.9A)
- notification in the APS Employment *Gazette* of certain employment decisions (Regulation 3.12).

## 1.3 Public Service Commissioner's Directions 1999

### Clause 2.3

Clause 2.3 of the Commissioner's Directions states that, in upholding and promoting the Value that the APS is a public service in which employment decisions are based on merit, an agency head must put in place measures in the agency directed at ensuring that:

- (a) for an employment decision relating to the engagement or promotion of a person in the agency:
  - (i) the aim and purpose of the selection process is determined in advance and information about the process is readily available to applicants; and
  - (ii) the selection process is transparent and applied fairly in relation to each eligible applicant; and
  - (iii) the matters mentioned in subsection 10 (2) of the Act are taken into account; and
- (b) for any other employment decision in the agency—the decision is made on the basis of an assessment of a person's work-related qualities and the work-related qualities required for efficient and effective organisational performance.

An APS employee must, taking into account the employee's duties and responsibilities in the agency, help to ensure that this occurs.

### Clause 2.14

Clause 2.14 of the Commissioner's Directions states that, in upholding and promoting the Value that the APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment, an agency head must put in place measures in the agency directed at ensuring that, taking into account agency goals, resources and skills requirements, opportunities for employment in the agency are brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for them.

## 1.4 Public Service Classification Rules 2000

An agency head must allocate an approved APS classification to each employee, and to each group of duties to be performed in the agency, as outlined in the Public Service Classification Rules 2000 (Classification Rules). The most common classifications include:

- APS Level 1
- APS Level 2
- APS Level 3
- APS Level 4
- APS Level 5
- APS Level 6
- Executive Level 1
- Executive Level 2
- Senior Executive Band 1
- Senior Executive Band 2
- Senior Executive Band 3

The complete list of approved classifications is contained in the Schedules to the Classification Rules.

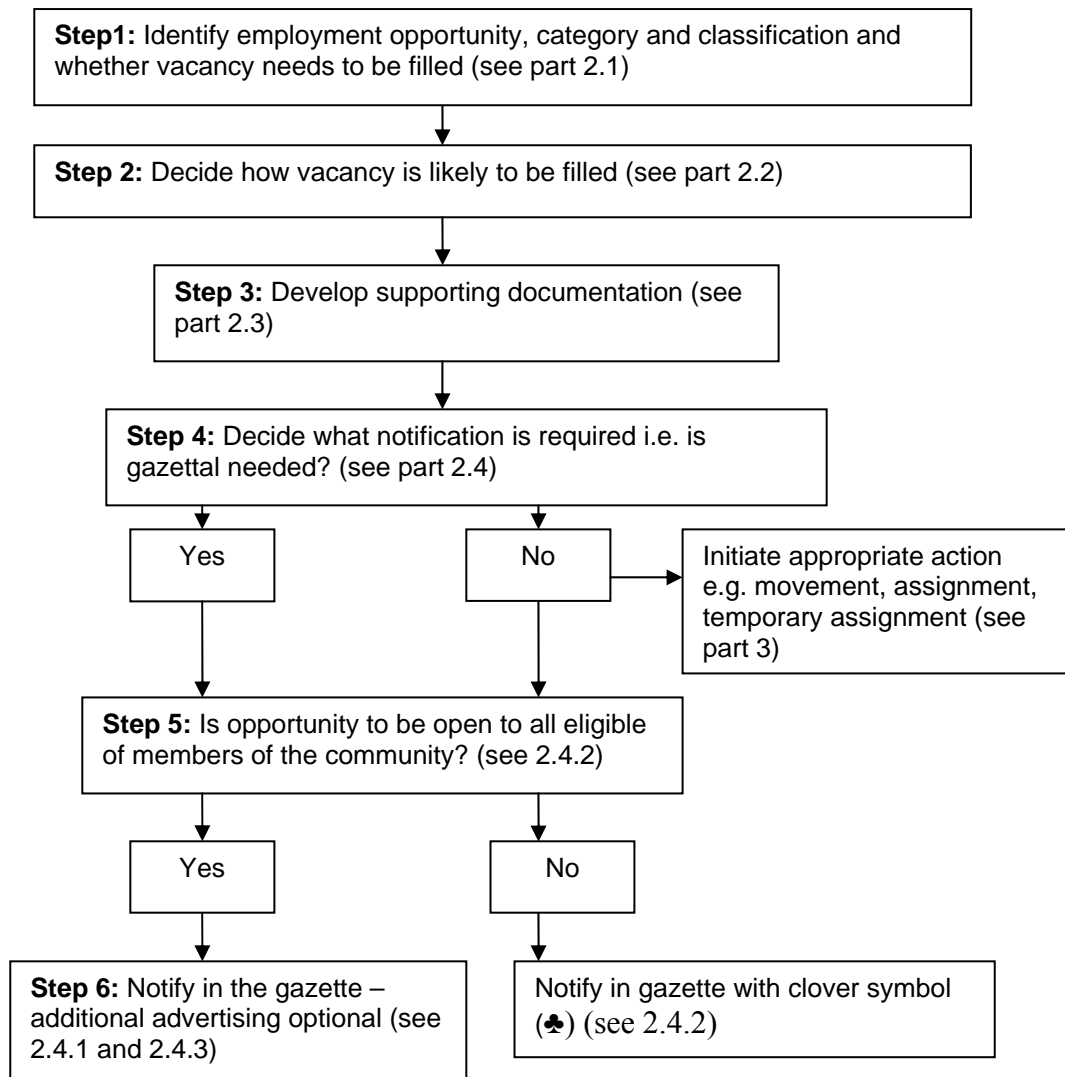
## 1.5 Other relevant legislation

Other legislation relevant to recruitment and selection includes the:

- *Administrative Decisions (Judicial Review) Act 1977*
- *Age Discrimination Act 2004*
- *Australian Human Rights Commission Act 1986*
- *Disability Discrimination Act 1992*
- *Fair Work Act 2009*
- *Freedom of Information Act 1982*
- *Privacy Act 1988*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- Spent Convictions Provisions in Part VIIC of the *Crimes Act 1914*

Agencies are also bound by the provisions of their industrial instruments (but not if inconsistent with APS legislation). These may contain terms that affect the recruitment and selection of employees.

## Part two—Planning



### 2.1 Identify employment opportunity, category and classification

When an employment opportunity arises, steps should be taken to determine:

- in a case where the duties have been previously performed by another employee, whether there is a continuing need for the duties to be performed
- if the duties are new or have changed, the scope of the duties
- the appropriate classification for the new, changed or existing duties and where necessary take action under the Classification Rules (a group of duties must be allocated an approved classification) having regard to the agency's work level standards
- whether to assign the duties to an existing employee on an ongoing or temporary basis.

Note: When examining staffing needs, an agency head should also consider the requirement in the Classification Rules to allocate an operational classification to any ongoing trainee who successfully completes a specified course of training (Classification Rule 11(1)). See [Trainees and traineeships](#).

## 2.2 Decide how vacancy is likely to be filled

An agency head may, on behalf of the Commonwealth, engage a person from outside the APS in one of the following categories of employment:

- as an ongoing employee (section 22(2)(a) of the Act)
- as a non-ongoing employee for a specified term for a period of more than 12 months (section 22(2)(b) of the Act)
- as a non-ongoing employee for a specified task for a period of more than 12 months (section 22(2)(b) of the Act)
- as a non-ongoing employee for a specified term or specified task for a period of up to 12 months (section 22(2)(b) of the Act)
- for duties that are irregular or intermittent (section 22(2)(c) of the Act).

The usual basis for engagement in the APS is as an ongoing employee (section 22(3) of the Act).

An agency head may also:

- promote an existing APS employee (either within their agency or involving a movement between agencies)
- assign duties on an ongoing basis within their agency (excluding promotion or engagement)
- assign duties on an ongoing basis (excluding promotion or engagement) in association with movement between agencies
- assign duties on a temporary basis within an agency—this can be above, at or below level
- temporarily move an employee between agencies.

Agencies should also consider the aims of the particular selection exercise. Is it intended to:

- be a one-off exercise to fill a single employment opportunity
- fill similar employment opportunities as they arise
- be a bulk exercise to select several applicants for employment in different work areas
- select candidates for employment opportunities at different classifications within a work area?

The answer to this question will affect decisions about advertising, the relative suitability of applicants and the development of an order(s) of merit.

### 2.2.1 Bulk selection exercises

An agency can choose to conduct a single selection exercise for engagement or promotion to employment opportunities at a number of different classifications or a single classification. This would usually only be done if the selection criteria are similar (e.g. the duties at the levels are similar but vary in the level of supervision or degree of complexity of the duties). The duties may also require similar skills by may be in different subject or work areas.

If a short-listed applicant has not applied for both or all levels, that applicant can only be considered for the employment opportunity at the classification for which they have applied.

Agencies should avoid the situation where a candidate's application for a lower classification is assessed against the criteria for a higher classification. If the applicant has not applied for the higher classification, they cannot be engaged or promoted to it. Applicants could be asked if they wish to be considered for selection at all classifications before any assessment is undertaken. This action is not considered patronage or favouritism as long as there are no expectations given to applicants and they are assessed fairly with other applicants (i.e. all applicants are given the same opportunity). Both the request and the answer should be documented.

## 2.2.2 Generic selection criteria

An agency can develop generic selection criteria that apply for selection for particular sets of duties in the agency. Duty or job specific criteria may also be developed. Applicants can be asked to address the specific criteria relating to their preferred work area in addition to the generic criteria. The two most common ways of applying generic and specific criteria are:

- during the selection process applicants are required to meet both the generic and specific criteria. Orders of merit are developed based on assessment against the generic and specific criteria for each work area (e.g. a Human Resources order of merit, a Finance order of merit, a Policy order of merit etc). Applicants are then selected according to their relative suitability. Subsequent similar opportunities that arise within the 12 month life of the selection exercise can then be filled from the appropriate work area's order of merit.
- the initial selection process is conducted against the generic selection criteria. Applicants may be ranked or grouped according to assessment (e.g. 'exceptional', 'highly suitable', 'suitable' or any appropriate nomenclature). If an opportunity arises, the applicants in the group rated most highly against the generic criteria can then be assessed against specific criteria and an order of merit developed.

Agencies will need to determine the approach to the use of generic criteria which best meets their individual operating requirements. These needs may vary across the organisation depending on the nature of the employment opportunities that arise.

## 2.3 Develop supporting documentation

When an employment opportunity is to be filled, the nature of the duties (and any position title/description if used) should be examined to ensure they meet the current or future organisational requirements of the agency. Existing documentation might need to be revised. For assistance in developing selection documentation, see the Commission publication: [Get it Right—a recruitment kit for managers](#).

The extent of selection documentation will depend on how an opportunity is to be filled. Documentation, particularly in the case of an open competitive selection process, should clearly detail the duties to be performed and identify matters such as the selection criteria, the skills, experience, capabilities and personal qualities the agency is seeking in candidates for the employment opportunity. This will assist an agency to target the field of candidates it is trying to attract and to work out the best selection options for the particular opportunity.

Good selection documentation should also assist potential candidates to decide whether they should apply. This documentation should also include information on the selection process, requirements to undertake security checks, medical examinations or other pre-employment checks and any specific requirements such as declaring a redundancy benefit from an APS agency.

If a selection exercise might result in an engagement or promotion, an agency head must put measures in place to ensure that the purpose of the process is decided in advance and information about the process is readily available to applicants (Direction 2.3(1)(a)(i)).

### 2.3.1 Essential qualifications

Section 29(3)(c) of the Act recognises that in some cases it may be essential for an employee to hold particular qualifications in order to perform their duties. An agency head can impose essential qualifications in relation to a set of duties that must be met before an employee can be assigned those particular duties.

Essential qualifications for performing particular duties are not limited to formal educational or professional qualifications. They are usually relevant during the selection process but it may also be a requirement for an employee to maintain a particular qualification on an ongoing basis.

Examples of qualifications that may be essential for performing particular duties include:

- relevant tertiary, professional or trade qualifications
- membership of, or recognition by, a professional body
- obtaining and maintaining a specified security clearance
- meeting and maintaining a specified level of physical fitness above any general health clearance
- having a valid visa with appropriate work rights.

A qualification should be specified as essential only where it is genuinely essential, whether in order to perform specific duties or tasks or as a generic requirement applying to all duties in a particular work area. For example a particular level of security clearance may be a requirement for performing any duties in a particular part of an agency or across the agency as a whole. Specifying essential qualifications that are not genuinely required for performing the relevant duties, may be incompatible with the merit Value and, in some cases, anti-discrimination law.

Consistent with the Value relating to providing a fair workplace, the agency head should specify in advance any essential qualifications required for performing particular duties and make applicants/employees performing such duties aware of the potential consequences, including termination, should the employee lose or lack an essential qualification. In addition to qualifications specified by the agency head, there are other requirements that apply by force of law, whether or not they are explicitly mentioned, (e.g. being above any statutory minimum age to enter the workforce under State legislation or, in the case of a non-Australian citizen, having a valid visa with appropriate work rights).

There are wider issues involved should an agency head want to impose new or different essential qualifications on sets of duties which are already assigned to ongoing employees (this is outside the scope of this guide).

### **2.3.2 Conditions of engagement**

When planning a selection process where the engagement of an employee is a possible outcome, an agency should consider whether it wishes to impose any conditions on the engagement relating to probation, citizenship, formal qualifications, security and character clearances or health clearances (section 22(6)). Other conditions of engagement (section 22(7)) can also be imposed but those conditions must be consistent with the merit Value and the other APS Values. For example, an agency may wish to impose as a condition of engagement a requirement that a new employee sign a declaration, shortly after they are engaged, that they did not provide any false information in their recruitment or pre-employment clearances. A person engaged as an employee must be an Australian citizen unless the agency head considers it appropriate to engage a non-citizen (section 22(8)).

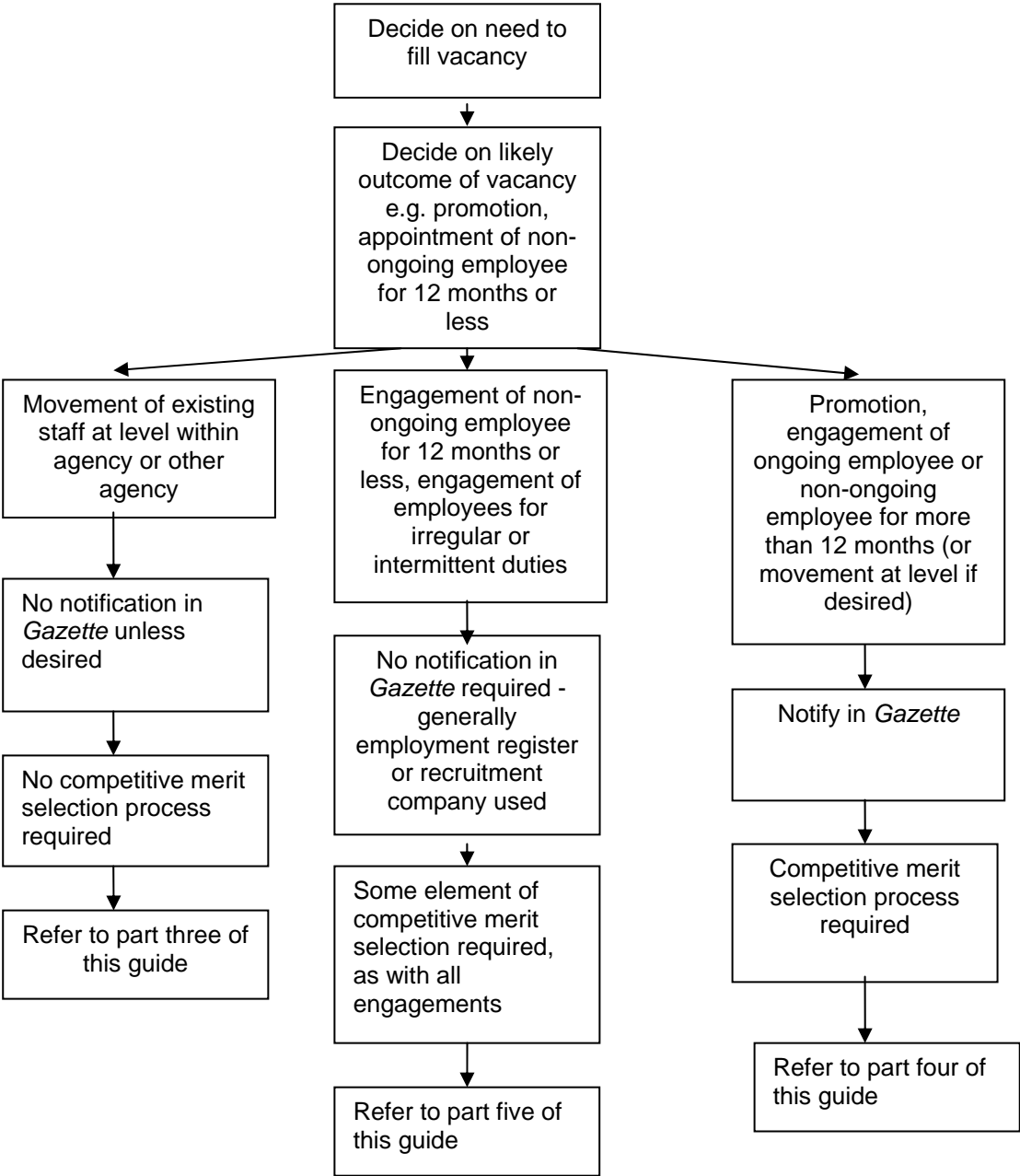
A person engaged subject to conditions of engagement must be notified of any conditions before engagement. It may be appropriate for the agency to mention any conditions in the APS Employment *Gazette* notification of the employment opportunity or in any additional advertising but full details should be included in any selection documentation provided to candidates. Failure to do this does not preclude other conditions being imposed at a later stage of the selection process, but conditions cannot be imposed after engagement.

Conditions of engagement are discussed in the information pages [Conditions of Engagement](#), [Probation](#) and [Citizenship in the Australian Public Service](#). Agencies should take care in the

wording of any conditions of engagement imposed. The wording becomes important should an agency head wish to terminate the employment of an employee for failure to meet a condition of engagement. For example, it would be difficult to terminate a person’s employment because they could not drive a large vehicle if the condition of their engagement required only a driver’s licence without specifying the type of licence. Agencies should also refer to the information page *Termination of Employment*.

## 2.4 Decide what notification is required

The following flow chart depicts the minimum requirements for notifying the employment opportunity.



### **2.4.1 The APS Employment Gazette**

The electronic APS Employment *Gazette* contains notices required to be published under the *Public Service Act 1999* and associated legislation. These notices include administrative matters as well as employment opportunities, movements to APS employment opportunities and promotions within the Australian Public Service.

The *Gazette* is published weekly. The site at [www.apsjobs.gov.au](http://www.apsjobs.gov.au) enables people to search for employment opportunities, movements and other notices and is also the electronic lodgement system for agencies to place notices in the *Gazette*.

Certain employment decisions are required by the legislation to have been preceded by certain processes. A person can only be promoted or engaged from outside the APS as an ongoing employee, or a non-ongoing employee for a specified term or specified task for more than 12 months, if the opportunity was notified in the APS Employment *Gazette*. An agency should notify an employment opportunity in the APS Employment *Gazette* if there is any possibility that it may be filled in that way. Clause 4.2 of the Commissioner's Directions requires that the employment opportunity (or similar employment opportunity in the agency) must have been notified in the APS Employment *Gazette* during the period of 12 months before the decision to engage the person is made.

### **2.4.2 Is the opportunity to be open to all members of the community?**

Clause 4.2 of the Commissioner's Directions requires that, subject to considerations of cost and operational efficiency, the employment opportunity must have been open to all eligible members of the community, whether or not they were APS employees.

If, because of considerations of cost or operational efficiency, the agency head decides not to provide a promotion opportunity to all eligible members of the community, as a minimum, the opportunity must have been notified as open to all APS employees. Such opportunities are marked in the *Gazette* with a clover symbol (♣). These provisions do not apply to non-ongoing opportunities, which must be open to all eligible members of the community.

In general, an employment opportunity that may result in an engagement, or promotion of an ongoing APS employee, should be open to all eligible members of the community.

In deciding whether to restrict access, an agency must take into account the APS Value which requires reasonable opportunity for all eligible members of the community to apply for APS employment opportunities (section 10(1)(m)).

There are two other circumstances in which an agency head can restrict community access—an employment opportunity may be identified as open only to Aboriginal and Torres Strait Islander applicants or to people with an intellectual disability where this is consistent with Commonwealth discrimination legislation (Directions 4.2(1), 4.2(6) and 4.6A(7)). Agencies should refer to [Identified positions and special measures for employing indigenous Australians](#) and [Special measures for employing people with intellectual disability](#) for more information.

Agencies should note that if the employment opportunity is a training classification or an APS1 or similar classification, access cannot be restricted to APS employees.

When an agency head decides to restrict access to an employment opportunity to APS employees on the basis of cost or operational efficiency, there are groups of people who are still eligible to apply. These groups include:

- employees in certain non-APS agencies
- staff in the Parliamentary Service
- parents seeking engagement after resigning for child-rearing purposes
- certain people formerly covered by the Part IV mobility provisions of the repealed *Public Service Act 1922*
- a non-ongoing APS employee employed at the time of the *Gazette* notification.

Details of eligibility of these groups can be found at Schedule 2 to the Commissioner's Directions.

### **2.4.3 Supplementary advertising**

An agency can supplement the gazette notification through external advertising in order to attract a larger field of appropriate candidates or to target candidates with particular skills, attributes or formal qualifications (for example in the press, on the agency's website or in professional magazines). Supplementary advertising can occur before, or no later than 4 weeks after, the opportunity is notified in the *Gazette*.

It is good practice for this advertising to occur as close as possible to the *Gazette* notification in order to ensure compliance with the APS Value requiring reasonable community access to APS employment (under section 10(1)(m) of the *Public Service Act 1999*).

Where an agency has notified an employment opportunity as being only open to APS employees and later decides to provide the opportunity to all eligible members of the community, or where the original *Gazette* notification does not result in a suitable field of applicants, the agency can place a subsequent press or other form of advertisement, without the need for a further *Gazette* notice. However, the advertising (including overseas advertising) must be done within 4 weeks after the date of the *Gazette* notice.

An agency cannot use any other form of advertising after this 4 week period without placing a new notification in the *Gazette*.

Should an agency find it necessary to advertise outside Australia, there may be certain requirements to be met under migration legislation. Any agency intending to engage a person from outside Australia should refer to the Commission's information page [Citizenship in the Australian Public Service](#) for further information.

## Part three—Action not requiring competitive merit selection

This Part covers the minimum requirements for merit in relation to the movement, other than promotion or engagement.

In addition to engaging an ongoing or non-ongoing employee or promoting an existing APS employee as described in Part four an employment opportunity may be filled by:

- ongoing assignment of duties within an agency (excluding promotion or engagement) at or below level
- ongoing assignment of duties (excluding promotion or engagement) in association with movement between agencies at or below level
- temporary assignment with an agency, which can be above, at or below level
- temporary movement between APS agencies which can be above, at or below level.

A decision to assign duties to a person at a similar or lower classification, or to assign duties temporarily at a higher classification must be based on an assessment of the person's work-related qualities and the work-related qualities required for efficient and effective organisational performance. An agency head must put in place measures to ensure that these decisions are based on an assessment of these factors (Direction 2.3).

If the assignment of duties is a temporary assignment at a higher classification, consideration must also be given to the efficiency of the employee, the importance of the duties, the length and cost of the assignment and the opportunity to gain experience (Direction 4.7). An agency head is responsible for ensuring measures are in place to ensure that these additional factors are taken into account in decisions to temporarily assign duties at a higher classification (often referred to as 'higher duties').

### 3.1 Ongoing assignment of duties within an agency

An agency head can assign duties (section 25) on an ongoing basis at a similar classification to an ongoing employee within the agency. This can be done without an open competitive selection process and without notifying the employment opportunity in the *Gazette*. However, it still involves the application of the merit Value and agency-specific policies may, in some circumstances, require notification of employment opportunities within the agency and impose other requirements for selection exercises involving ongoing assignment of duties.

The agency head must put in place measures to ensure that a decision to assign duties is made on the basis of an assessment of the employee's work-related qualities and the work-related qualities

While section 25 allows an agency head to determine duties of an employee (and the location at which those duties are performed) at any time, such an action must also comply with the APS Values.

Particular provisions exist in relation to reducing an ongoing employee's classification—see part 3.1.1 below.

When an assignment of duties involves a relocation to another place, a reduction in classification, or is to duties which the employee could not reasonably be expected to perform, it is a reviewable action (Schedule 1 Item 10, of the Regulations). This means that an employee

can lodge an application for review of the decision under the Regulations to the Merit Protection Commissioner.

### **3.1.1 Limitations on assigning different duties to an employee**

Section 25 allows an agency head to determine duties of an employee (and the location at which those duties are performed) from time to time on either an ongoing or temporary basis. Although this power appears to give an agency head an unfettered right to assign new duties to an ongoing employee or change the place where duties are performed, actions taken under the Act must be consistent with the formal framework set out in Part one of this guide. In particular:

- an agency head cannot reduce an employee's classification without written consent except in the circumstances specified in section 23(4). These circumstances include breach by the employee of the Code of Conduct and where an employee is excess, loses an essential qualification, or is underperforming or unable to perform duties at the higher classification
- APS Value (b) requires that employment decisions be based on merit and section 10(2), together with Direction 2.3(1)(a), requires that merit for promotion and engagement decisions involve a fair and transparent competitive selection process that assesses the relative suitability of applicants for the duties
- APS Value (d) requires the APS to have the highest ethical standards
- APS Value (i) requires the establishment of workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace
- APS Value (j) requires the APS to provide a fair, flexible safe and rewarding workplace
- Direction 2.3(1)(b) requires employment decisions other than those for promotion and engagement to be based on an assessment of the employee's work-related qualities and the work-related qualities required for efficient and effective performance
- Direction 2.4 requires, among other things, that measures be in place directed to ensuring that APS employees are helped to balance their work, family and other caring responsibilities effectively
- Direction 2.11 requires that measures be in place directed at ensuring that employment and workplace arrangements take appropriate account of APS employees who are seeking to balance individual needs and the achievement of organisational goals, and also take account of the agency's need to comply with Commonwealth occupational health and safety legislation.
- there must be compliance with anti-discrimination legislation.
- there may be relevant provisions included in an industrial agreement relating to relocation.

Agencies should also note that assigning new duties to an employee should not be seen as a substitute for taking other more appropriate action e.g. an agency should not assign new duties:

- to a person who has been the victim of harassment, without addressing the harassment itself
- as a means of moving employees to staff undesirable areas without addressing the underlying causes of discontent, lack of interest, poor management etc.

If a proposed change of duties or relocation has not been sought by the employee, to ensure compliance with the APS Values it is advisable that the employee be consulted before a final decision is made. An assignment of different duties and/or relocation may raise significant issues for the employee concerned including impact on family responsibilities, OHS considerations (e.g. a person recovering from an injury) or a potential conflict of interest. These issues may significantly affect their capacity, availability and enthusiasm to accept the new assignment or to perform the duties effectively.

The extent of consultation and the degree to which an agency takes into account the needs of the employee must be balanced against the operational efficiency of the agency. In the end, while an agency head is required to act fairly and have regard to individual needs, the agency head has the prerogative to make the final decision regarding any assignment of duties, with limited review rights for the employee.

The prescribed circumstances where an employee assigned duties under section 25 has a right of review are set out in Schedule 1, item 10 of the Regulations. These are if the assignment of duties involves:

- a reduction in classification
- a relocation to another place
- asking an employee to perform duties that they cannot be reasonably be expected to perform.

The former Australian Industrial Relations Commission (AIRC)<sup>1</sup> has effectively upheld an agency head's right to redeploy staff according to operational and financial considerations and has acknowledged that while personal responsibilities are important matters to be considered by employers, they are not the only matters that need to be considered. In that case the AIRC found that the employer had considered competing interests and provided a balance and that the employee was unreasonable in refusing what was a fair and reasonable final offer by management. The subsequent termination of the employee for failing to attend for duty in a new location as directed was considered reasonable by the AIRC in view of the circumstances of the case.

## **3.2 Ongoing assignment of duties and movement between agencies**

The agency head of an agency can enter into a written agreement with an employee in another agency, to move to that agency (section 26). If the ongoing move is to duties with a similar or a lower classification then there is no requirement for an open competitive selection process to be held. However, it still involves the application of the merit Value.

An agency head must put in place measures to ensure that a decision to move an employee other than on promotion from another agency, is based on an assessment of the employee's work-related qualities and the work-related qualities required for efficient and effective organisational performance (Direction 2.3(1)(b)).

## **3.3 Temporary assignment within an agency**

An agency head must put in place measures to ensure that a temporary assignment decision is made on the basis of an assessment of the employee's work-related qualities and the work-related qualities required for efficient and effective organisational performance (Direction 2.3). This can be done without an open competitive selection process and without notifying the employment opportunity in the *Gazette*. However, agency-specific policies may set out procedures for notifying temporary assignment opportunities within the agency and specify other requirements.

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<sup>1</sup> PR948530 AS Webb and Australian Customs Service 28 June 2004, Commissioner Bacon.

If the temporary assignment of duties is at a higher classification (higher duties), the agency head must have in place measures to ensure that the following additional factors are considered (Direction 4.7):

- the ongoing employee's efficiency
- the relative importance to the agency of the duties and other duties in the agency
- the length of the assignment
- the expected cost
- the need for career development opportunities.

While section 25 allows an agency head to determine duties of an employee (and the location at which those duties are performed) at any time, such an action must also comply with the APS Values.

If a temporary assignment of duties or relocation has not been sought by the employee, it is advisable that the employee be consulted—see part 3.1.1 of this guide.

### **3.4 Temporary movement of an ongoing APS employee between agencies**

An agency head can enter into a written agreement with an ongoing employee from another agency to move to their agency on a temporary basis under section 26 of the Act. This can be done without an open competitive selection process and without notifying the employment opportunity in the *Gazette*. However, agency-specific policies may set out procedures for notifying temporary assignment opportunities within the agency and specify other requirements.

If the temporary assignment of duties is to duties of a similar or lower classification, an agency head must put in place measures to ensure that a temporary assignment decision is made on the basis of an assessment of a person's work-related qualities and the work-related qualities required for efficient and effective organisational performance (Direction 2.3).

If the temporary assignment of duties is to duties of a higher classification (higher duties), the agency head must also have in place measures to ensure that the following additional factors are considered (Direction 4.7):

- the ongoing employee's efficiency
- the relative importance to the agency of the duties and other duties in the agency
- the length of the assignment
- the expected cost
- the need for career development opportunities.

The requirement to seek the approval of the pre-move agency head for a temporary move is discussed at part 6.8 of this guide.

## Part four—Actions requiring competitive merit-based selection

This Part outlines the main legislative basis for competitive merit-based selection processes and the basic stages of recruitment and selection exercises.

### 4.1 Promotion of existing APS employee

A promotion is the ongoing movement of an ongoing APS employee to a job at a higher classification level in their existing agency or in another agency.

The following actions are not promotions (Direction 4.6):

- allocation to an employee of a higher approved classification within the broadband already applying to that employee
- allocation of an operational classification to a trainee on completion of training
- temporary assignment of duties at a higher classification
- reversion to a higher classification on cessation of a temporary assignment at a lower classification.

A promotion is made under the assignment of duties provisions in section 25 of the Act. Should the successful applicant be an employee of another agency it will also require an agreement with the employee to move to the agency (section 26).

A competitive merit selection process following gazettal of an employment opportunity is required before an existing APS employee can be promoted.

In accordance with section 10(2) of the Act, this requires involves an assessment of:

- the relative suitability of the candidates for the duties, using a competitive selection process
- the relationship between the candidate's work-related qualities and those work-related qualities genuinely required for the duties
- the relative capacity of the candidates to achieve outcomes related to the duties.

The assessment must be the primary consideration in making the promotion decision. (See Appendix C regarding secondary considerations)

Clause 4.2 of the Commissioner's Directions requires that the employment opportunity (or similar employment opportunity in the agency) must have been notified in the APS Employment *Gazette* during the period of 12 months before the decision to promote the person is made.

Clause 2.3 of the Commissioner's Directions requires each agency head to put in place measures ensuring that the selection process is transparent and applied fairly in relation to each eligible applicant and that information about the process is readily available to applicants.

Clause 4.6A of the Commissioner's Directions requires that, subject to considerations of cost and operational efficiency, the employment opportunity must have been open to all eligible members of the community, whether or not they were APS employees.

If, because of considerations of cost or operational efficiency, the agency head decides not to provide the opportunity to all eligible members of the community, as a minimum, the opportunity must have been notified as open to all APS employees.

#### **4.1.1 Promotion using an existing order of merit**

A promotion may be made from an existing order of merit that is the result of an open competitive selection process. The decision to promote a person to a similar employment opportunity must be made within 12 months of the date of the APS Employment *Gazette* notification of the original employment opportunity.

### **4.2 Engagement as an ongoing employee**

A competitive merit selection process (following gazettal of an employment opportunity) is required before a person can be engaged as an ongoing APS employee.

In accordance with section 10(2) of the Act, this requires involves an assessment of:

- the relative suitability of the candidates for the duties, using a competitive selection process
- the relationship between the candidate's work-related qualities and those work-related qualities genuinely required for the duties
- the relative capacity of the candidates to achieve outcomes related to the duties.

The assessment must be the primary consideration in making the engagement decision. (See Appendix C re secondary considerations.)

Clause 4.2 of the Commissioner's Directions requires that the employment opportunity (or similar employment opportunity in the agency) must have been notified in the APS Employment *Gazette* during the period of 12 months before the decision to engage the person is made.

Clause 2.3 of the Commissioner's Directions requires each agency head to put in place measures ensuring that the selection process is transparent and applied fairly in relation to each eligible applicant and that information about the process is readily available to applicants.

An agency head may decide to engage an employee for a similar opportunity from an existing selection exercise within 12 months of the original opportunity being notified in the APS Employment *Gazette*. The procedures to be followed are outlined in part 5.3.1 of this guide.

#### **4.2.1 Engagement following redundancy**

There are arrangements in place in the Australian Public Service (APS) which limit the subsequent employment of APS employees who have received a redundancy benefit (a 'redundancy benefit recipient'). The circumstances where the restrictions apply are set out in clauses 4.4 and 4.4A of the Commissioner's Directions.

The arrangements apply to persons who have received a redundancy benefit from an APS agency or the Australian Parliamentary Service, and their 'redundancy benefit period' has not expired. Detailed information is provided in [Engagement of people who have received a redundancy benefit](#) on the Commission's website.

### **4.3 Engagement of a non-ongoing employee for a specified term or specified task of more than 12 months**

Non-ongoing employees may be engaged for a specified term or for the duration of a specified task.

A competitive merit selection process (following gazettal of an employment opportunity) must be conducted before an employment opportunity can be filled by the engagement of a non-ongoing APS employee for a specified term of more than 12 months or for the duration of a specified task that is reasonably estimated to take more than 12 months.

This involves an assessment of:

- the relative suitability of the candidates for the duties, using a competitive selection process
- the relationship between the candidate's work-related qualities and those work-related qualities genuinely required for the duties
- the relative capacity of the candidates to achieve outcomes related to the duties.

The assessment must be the primary consideration in making the decision.

Clause 4.3 of the Commissioner's Directions requires that the employment opportunity (or similar employment opportunity in the agency) must have been notified in the APS Employment *Gazette* during the period of 12 months before the decision to engage the person is made.

The Directions also require that the employment opportunity must have been open to all eligible members of the community, whether or not they were APS employees.

Clause 2.3 of the Commissioner's Directions requires each agency head to put in place measures ensuring that the selection process is transparent and applied fairly in relation to each eligible applicant and that information about the process is readily available to applicants.

#### **4.3.1 Specified term**

Regulation 3.5 provides that a person may be engaged as a non-SES employee for a specified term not exceeding 18 months in the following circumstances:

- to enable the agency to meet a temporary increase in the workload of the agency, or of a component of the agency, that the agency head does not expect to continue
- the agency has a temporary demand for employees with particular skills (provided ongoing APS employees in the agency with the skills required to undertake duties in relation to the task have been given the opportunity to express interest in, and be considered for, performance of the duties)
- to replace an ongoing APS employee who is on authorised leave
- to replace an ongoing APS employee temporarily assigned to other duties
- to replace an ongoing APS employee who moves temporarily to another agency.

The engagement can be extended in certain circumstances provided the total term does not exceed three years—these circumstances are outlined in Regulation 3.6.

As a competitive selection process and gazettal were required for the initial engagement, no further merit process is needed to extend the engagement to the limits allowed in Regulation 3.6.

If a person is recruited pending the engagement of an ongoing employee, the maximum term is six months. If a person was offered an ongoing engagement but prefers to be engaged for a specified term, the maximum term is three years.

#### **4.3.2 Specified task**

Regulation 3.5(3) provides that a person may be engaged as a non-SES employee for the duration of a specified task if:

- the agency head can reasonably estimate the duration of the task at the time of engagement,
- at that time, the agency head reasonably considers that the services of the person are unlikely to be required after completion of the task, and
- ongoing APS employees in the agency with the skills required to undertake duties in relation to the task are given the opportunity to express interest in performing those duties, and are considered for performance of the duties.

There are no time constraints for specified task engagements—they can go beyond the three year limits that apply to specified term employment.

The merit Value requires an open competitive selection exercise following gazettal for engagement of a non-ongoing employee for more than 12 months (section 10(2)(a)) unless a current order of merit from an earlier open competitive selection exercise for a similar employment opportunity is available and is considered appropriate (see below).

If a selection exercise might result in a non-ongoing engagement for more than 12 months, an agency head must have measures in place to ensure that the purpose of the process is decided in advance and information about the process is readily available to applicants (Direction 2.3(1)(a)(i)).

#### **4.3.3 Engagement using an existing order of merit**

An engagement may be made from an existing order of merit that is the result of an open competitive selection process. The decision to engage a person to a similar employment opportunity must be made within 12 months of the date of the APS Employment *Gazette* notification of the original employment opportunity.

### **4.4 Engagement of a non-ongoing employee for a specified term or specified task of 12 months or less**

A competitive merit selection process must be conducted before a person can be engaged as a non-ongoing APS employee for a specified term or specified task for a period of up to 12 months. Gazettal of an employment opportunity is not required.

Clause 2.14 of the Commissioner's Directions requires the agency head to put in place measures ensuring that, taking into account agency goals, resources and skills requirements, employment opportunities are brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for them.

There is no requirement to notify the employment opportunity in the APS Employment *Gazette* or on the agency's website, to establish a temporary employment register or advertise a register in the campaign section of APSjobs. However, these are considered good practices, supporting the APS Value about reasonable opportunity to apply for employment, and providing the competitive selection process required by section 10(2) of the Act.

Agencies might also wish to consider using the *Ready Now* temporary employment register facility on the APSjobs website which is specifically aimed at former APS employees—see <http://www.apsjobs.gov.au/ApsRegisterHomePage.aspx?mn=ReadyNow>.

Clause 2.3 of the Commissioner's Directions requires each agency head to put in place measures ensuring that the matters referred to in subsection 10(2) of the Act are taken into account, the selection process is transparent and applied fairly in relation to each eligible applicant and that information about the process is readily available to applicants.

This involves an assessment of:

- the relative suitability of the candidates for the duties, using a competitive selection process
- the relationship between the candidate's work-related qualities and those work-related qualities genuinely required for the duties
- the relative capacity of the candidates to achieve outcomes related to the duties.

The assessment must be the primary consideration in making the decision.

Agencies will need to develop selection policies that encompass a competitive assessment of candidates, such as a comparison of candidates on a temporary employment register or those referred by a recruitment agency.

#### **4.4.1 Extension**

The engagement can be extended for a total term of more than 12 months only where the initial employment opportunity had been notified in the APS Employment *Gazette*.

If an agency head considers that the engagement of a person for the duration of a specified task or for a specified term is likely to go close to or beyond 12 months, it may be sensible to notify the employment opportunity in the APS Employment *Gazette*. Gazettal will allow the agency head to extend the engagement beyond 12 months, provided the existing employee was the preferred applicant.

See also Part 3.5 regarding a non-going opportunity than may become ongoing.

### **4.5 Non-ongoing opportunities that may become ongoing**

If there is a possibility that a non-ongoing employment opportunity may become ongoing within 12 months, it is sensible to notify the employment opportunity in the APS Employment *Gazette* at the outset as one that may be filled on either an ongoing or non-ongoing basis. Care must be taken not to mislead potential candidates and to be clear that the opportunity is not an ongoing employment opportunity at the time it is filled.

If the employment opportunity subsequently becomes ongoing (or a similar ongoing vacancy arises), the agency head can decide to engage a person as an ongoing employee from an order of merit generated from such a notification. However, the decision to do so must be made within 12 months of the original notification in the APS Employment *Gazette*. The first offer of employment must be made to the person on the top of the order of merit, even where that person is already employed as a non-ongoing employee (as a result of this or another selection exercise).

### **4.6 Engagement for irregular or intermittent duties**

The types of duties covered by this category of employment include:

- one-off short term tasks/duties that do not fit within either the specified term or duration of a specified task categories
- circumstances when duties need to be performed on an intermittent basis but where there is no regular pattern of work and part time work is therefore inappropriate
- people on call or on a relief roster.

A competitive merit selection process must be conducted before a person can be engaged as an APS employee for duties that are irregular or intermittent. Gazettal of an employment opportunity is not required.

In accordance with section 10(2) of the PS Act, this requires an assessment based on:

- the relative suitability of the candidates for the duties, using a competitive selection process
- the relationship between the candidate's work-related qualities and those work-related qualities genuinely required for the duties
- the relative capacity of the candidates to achieve outcomes related to the duties.

The assessment must be the primary consideration in making the decision.

Clause 2.14 of the Commissioner's Directions requires the agency head to put in place measures ensuring that, taking into account agency goals, resources and skills requirements, employment

opportunities are brought to the notice of the community in a way that gives eligible members of the community a reasonable opportunity to apply for them.

There is no requirement to notify the employment opportunity in the APS Employment *Gazette* or on the agency's website, to establish a temporary employment register or advertise a register in the campaign section of APSjobs. However, these are considered good practices, supporting the APS Value about reasonable opportunity to apply for employment, and providing the competitive selection process required by section 10(2) of the Act.

Agencies might also wish to consider using the Ready Now temporary employment register facility on the APSjobs website which is specifically aimed at former APS employees—see <http://www.apsjobs.gov.au/>.

Clause 2.3 of the Commissioner's Directions requires each agency head to put in place measures ensuring that the selection process is transparent and applied fairly in relation to each eligible applicant and that information about the process is readily available to applicants.

Agencies will need to develop selection policies that encompass a competitive assessment of candidates, such as a comparison of candidates on a temporary employment register or those referred by a recruitment agency.

## **4.7 Identified positions and special measures**

Agencies may notify ongoing or non-ongoing or promotional opportunities as identified positions or those where special measures provisions apply. Commissioner's Directions clauses 4.2(6), 4.3(3) and 4.6A(7) provide that the agency head can put in place measures that are consistent with Commonwealth law, and identify employment opportunities as only open to an Aboriginal or a Torres Strait Islander, or only open to a person with an intellectual disability.

### **4.7.1 Aboriginal and Torres Strait Islanders**

'Identified positions' are jobs that are open to Indigenous and non-Indigenous people who meet the selection criteria, which require:

- specific knowledge and understanding of Indigenous Australian cultures and issues
- the ability to communicate sensitively and effectively with Indigenous communities.

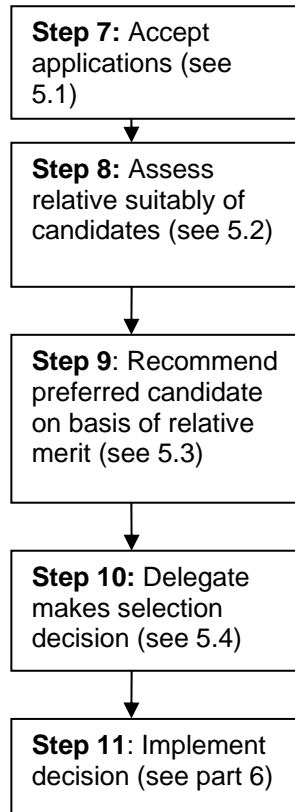
'Special measures provisions' identify jobs that are restricted to Aboriginal and Torres Strait Islander applicants. These are to provide job opportunities for Indigenous people.

Apart from the specific selection criteria or the restrictions about who may apply, all other minimum requirements for merit-based selection remain the same as those described in Part two of this publication.

### **4.7.2 People with intellectual disability**

'Special measures provisions' may also be used to identify jobs open only to people with intellectual disabilities to provide job opportunities for this particular group. Apart from this restriction about who may apply, all other minimum requirements remain the same as those described in Part two of this publication.

## Part five—Competitive merit-based selection processes



### 5.1 Accept applications

It is up to the agency concerned to decide on the closing date for applications for any employment opportunity. However, consistent with APS Value 10(1)(m), this decision should take account of the need to give potential applicants a reasonable opportunity to develop and lodge an application.

#### 5.1.1 Late applications

Each agency should develop policies which cover the receipt of applications after the closing date for a selection exercise. If a late application is accepted, the candidate must be assessed on the same basis as all other candidates. This might involve giving other applicants the opportunity to provide other information, particularly if the time frame means that their claims against the selection criteria could be strengthened by activities undertaken since their application was submitted (e.g. since making the application a person may have undertaken a relevant training course).

Accepting late applications where there has been a long delay (for whatever reason) between the *Gazette* notification and undertaking the selection exercise, may raise perceptions of patronage or favouritism.

Inappropriate use of 'late applications' includes:

- allowing a candidate to lodge a 'late application' and adding their name to an existing order of merit that has been previously approved by the agency head in order to fill the same or a

similar employment opportunity. Even if the candidate may be considered suitable, the action could be seen as patronage or favouritism. It could also be seen as a failure to meet the Value of reasonable access for all eligible members of the community, as other potential suitable applicants have not been given a similar chance to compete on merit.

- conducting a selection exercise following a *Gazette* notification, making a decision not to proceed with the exercise and then reactivating the process within the 12 month period and inviting selected persons to submit 'late applications'. This action could conflict with the APS Values of merit, reasonable access, fairness and equity.

### **5.1.2 Expressions of interest**

The question of who has applied for a promotion or engagement is important for review purposes and for establishing orders of merit. Only a person who submitted an application for an employment opportunity notified in the APS Employment *Gazette* can be considered as a candidate for engagement or promotion. An expression of interest would not normally have the status of an application but may be accepted depending on individual agency practice.

The only people entitled to a review of a reviewable promotion decision are ongoing APS employees who have applied for promotion to the relevant employment (Regulation 5.7).

## **5.2 Assess relative suitability of candidates**

### **5.2.1 Collecting employment information**

The selection process is a key means by which an agency gains relevant information regarding eligibility and suitability from applicants.

Agencies should specifically ask for any relevant information (e.g. any reasons for prior separation, any performance issues, relevant criminal convictions and pending charges, health problems that may prevent someone performing all the duties etc.). A candidate or referee is not bound to identify any problems if not specifically asked. While it may not be possible to ensure that all information provided by applicants is accurate, agencies need to be aware of the risks in not checking information provided. However, having regard to the Information Privacy Principles, and the need to minimise the risk of discrimination, it may be desirable not to collect information on sensitive topics until relatively late in the process when it is clear that the candidate is a serious contender (unless raised by the candidate). If issues arise (e.g. health or an adverse referee comment), fairness will require the candidate to be given an opportunity to comment.

Agencies should note that, while the Code of Conduct requires honesty and integrity in the course of employment and specifically prohibits an APS employee from providing false or misleading information in connection with employment, the Code does not apply to prospective APS employees.

Agencies may wish to advise prospective employees that the *Criminal Code Act 1995* creates offences relating to the provision of false or misleading information or documents. Agencies may also wish to require new employees to sign a declaration to the effect that all of the statements they made in the course of completing their recruitment and clearance processes (both before and after engagement) are true.

Information on imposing character and security clearances is contained in the *Conditions of Engagement* information page.

## **5.2.2 Assessing merit**

The methods available to an agency head to assess the relative suitability of candidates for engagement or promotion using a competitive selection process are not prescribed by legislation. As well, there are no legislative provisions relating to selection committees, referee reports, orders of merit or secondary selection considerations.

Commissioner's Direction 2.3 does, however, require agency heads to put in place measures to ensure that:

- the aim and purpose of any selection process is determined in advance,
- information about the process is readily available to applicants, and
- the selection process is transparent and applied fairly in relation to each eligible applicant.

The most common assessment method adopted by agencies is to establish a selection committee (also known by other terms such as a selection panel, selection advisory committee, assessment panel or selection team).

This committee typically makes an initial assessment of the relative suitability of candidates based on consideration of written applications, which may then lead to interviews of those regarded as being worthy of further consideration. This may then be followed by obtaining referee reports about those applicants regarded as being in contention, with the committee making a final judgement on which applicant/s warrant being recommended for engagement, promotion or movement. The actual decision is made by the agency head or delegate.

Additional or alternative means of assessment are available, including assessment centre methodologies, structured application forms, self-selection tools and occupational testing. All assessment processes would normally be overseen by the selection committee, including any processes conducted by a recruitment company (for example initial shortlisting of applicants) and the committee should advise applicants of the proposed assessment arrangements in advance.

Clause 4.1 of the Commissioner's Directions gives the following examples of work-related qualities that may be taken into account in making an assessment:

- skills and abilities
- qualifications, training and competencies
- standard of work performance
- capacity to produce outcomes from effective performance at the level required
- relevant personal qualities
- demonstrated potential for further development
- ability to contribute to team performance.

## **5.2.3 Selection committees**

There are no specific requirements relating to the composition of a selection committee should an agency decide to use one. It is good practice for any committee used to assess applicants to reflect diverse backgrounds and experience in order to select the most suitable applicant.

If committee members are not APS employees, they must be aware of the legislative framework governing recruitment and selection in the APS, in particular the APS Values and the need to avoid patronage and favouritism.

The delegate may be on the selection committee. This can save time and reduce communication and reporting costs.

The following issues could be considered when establishing agency policies relating to selection committees:

- the diversity of committee members (e.g. in terms of gender balance)
- the classification level of committee members (in particular, whether they should be at the classification level above the vacancy)
- whether a person independent of the agency or area should be included
- the level of training undertaken by committee members
- strategies to address perceived or actual conflicts of interest.

Where recruitment companies are used to assist in any part of the advertising, shortlisting or assessment process, the selection panel remains responsible for overseeing those processes and ensuring that they are undertaken in accordance with the APS Values and other legislative requirements.

While the selection committee might be assisted by a person performing duties as a scribe, that person is not regarded as a member of the committee.

If a committee member has a relationship outside of the immediate work environment with an applicant or is supervising, or providing information on, an applicant, care needs to be taken that there is no conflict of interest, perceived bias (negative or positive) or patronage or favouritism.

If a committee member has a relationship with an applicant that might give rise to a conflict of interest, it should be declared to all committee members (or to the delegate if the chair is making the declaration). It should then be decided whether the committee member should stand aside from the whole process or from consideration of the particular candidate.

If a committee member needs to provide referee comments on an applicant, it may be possible for that member to provide those comments before accessing information on other applicants, and making other committee members aware of the particular circumstances.

#### **5.2.4 Referee reports**

There is no legislative requirement to obtain referee reports, and they are simply one of a wide range of tools available to assist in the assessment process. They can be, however, a prime source of information about an applicant's on the job performance. It is common practice for selection committees to obtain at least one referee report for each of those applicants in contention following assessment of written applications and other assessments such as interview.

As with all other assessment methods, referee reports should focus on establishing whether the candidate possesses the work-related qualities genuinely required and the capacity to achieve outcomes related to the duties.

Where an applicant is from outside the APS (or indeed, from within the APS), the committee will need to consider if and when referee comments are required.

If the candidate is in contention and the committee needs further information to be able to make a judgement on suitability or to separate candidates, referee comment from the current supervisor/manager may be important. In a situation where the applicant has not nominated the person as a referee, the committee should advise the candidate that they will need to obtain referee comment in order to assess suitability. Where the candidate disagrees to the person being contacted and there is no alternative arrangement agreed which is acceptable to the committee, the candidate should be advised that it may leave the committee unable to reach a final judgement about suitability or may affect their relative ranking.

Referee comments are subject to relevant considerations under the *Privacy Act 1999*.

To maintain transparency and procedural fairness, applicants should be given the opportunity to address any adverse comments that are made by referees.

For some applicants (especially those not currently employed in the APS), there may be sensitivities involved in approaching current employers for referee reports. Typically, selection committees would not pursue such reports unless the applicant concerned is in contention for selection, and would advise the applicant prior to contacting the referee and obtain their agreement.

If verbal referee comments are sought, the comments should be documented and, ideally, a copy given to the referee to verify that information has been accurately recorded.

While referee reports may be obtained at any stage during the selection process, it may be most effective to obtain them during the last stage of the process. The selection committee can then interview referees to explore an applicant's previous work performance in relation to specific capabilities of the role, and to confirm claims that the applicant has made during the selection process.

### **5.3 Recommend preferred candidate**

An agency head must put in place measures to ensure that every selection process conforms with the legislative framework, including the APS Values, as well as meeting the agency's operational requirements.

The selection method(s) chosen must be fair, reasonable and able to assess the work-related qualities of candidates against the work-related qualities required for the duties in a way which meets the requirements for engagement or promotion (Direction 2.3(1)(b)) or for other employment decisions (Direction 2.3(1)(b)).

Apart from the requirement that powers under the Act must be exercised without patronage or favouritism (section 17) and the requirement for an agency head to uphold and promote the APS Values (section 12), there is no specific prescription of the method(s) or selection techniques to be used for selecting people for an employment opportunity. Minimum recording requirements for staff selection decisions.

It is important to document the recruitment process properly in any recommendation to the agency head. This is important not only to provide the agency head with a sound basis for making a decision but also to demonstrate compliance with the Values, legal framework and administrative law requirements and have a proper basis for counselling unsuccessful applicants.

The record for decisions involving a promotion or engagement should:

- describe how the employment opportunity was notified (and advertised if relevant)
- refer to, and provide copies of, selection documentation used
- include a list of the applicants (to determine any future review rights)
- describe the process used for selection including any criteria used for shortlisting
- describe and include, if appropriate, the evidence used in making the decision e.g. work based test, application, presentation, referee comment
- demonstrate consideration of any relevant procedural fairness issues
- provide a rationale for the decision e.g. comparative comments on competitive candidates, or those included in an order of merit.

The aim should be to keep the record as succinct as possible while covering the information required by the delegate.

### **5.3.1 Orders of merit**

Orders of merit (or merit lists) may be formed to indicate the relative suitability of candidates. Additionally, Chapter 4 of the Commissioner's Directions allows engagements and promotions to be made provided that the opportunity to apply for the relevant employment, or similar employment in the agency, was notified in the APS Employment *Gazette* during the period of 12 months before the decision to engage or promote the person is made.

An agency head may establish an order of merit that can be used to fill the same or similar vacancies in their agency for 12 months from the date the initial employment opportunity was advertised in the APS Employment *Gazette*.

The Commissioner's Directions define similar employment as employment that:

- comprises similar duties to, and
- is at the same classification as, and
- is to be performed in a similar location as

the employment that has been notified.

An agency head is not bound to use an existing order of merit and may choose to notify an individual employment opportunity.

There is no requirement to rank candidates in a particular order—they can be grouped, for example, as 'highly suitable' and 'suitable' for similar opportunities that may arise. It would not, however, be useful in all circumstances to group candidates rather than ranking them, for example when there are only two or three suitable candidates and only a single vacancy expected over a 12 month period. In that situation it would be more useful to rank the candidates.

Grouping can be most useful if there are a lot of similar jobs across an agency that may be filled by a single process. When using the 'grouping' approach, as a specific vacancy occurs a decision still needs to be made by the agency head (or delegate) about the relative merits of the candidates in the highest ranked group having regard to the requirements of the particular duties to be undertaken.

Placing people in a 'suitable' group rather than on a ranked list means that each delegate or manager using the merit list can offer their position to the person who best meets their particular requirements (which may be slightly different from the requirements of other positions), rather than taking the next person on the list.

Generally, an applicant for an employment opportunity who declines an offer of employment remains on the order of merit while it remains in use unless the applicant formally advises that they wish to withdraw from any further consideration.

For merit-based decision making in regard to engagement and promotion, the Act requires an assessment of the relative suitability of the candidates for the duties (section 10(2)(a)). Declining an offer at a particular point of time, does not affect the relative suitability of candidates.

## **5.4 Delegate makes decision**

While the usual selection outcome will be the selection of the candidate assessed as most suitable in terms of work-related qualities, there will be limited circumstances where that candidate is not offered the opportunity. The Act gives an agency head the discretion to apply secondary selection considerations (section 10(2)(d)) as part of a merit-based decision. Secondary selection considerations are discussed in Appendix C.

Once a preferred candidate has been identified, the steps required by the legislation to implement the decision will vary, depending on the outcome decided on. The different selection outcomes and their legislative requirements are discussed in detail at Part six.

#### **5.4.1 Exercising powers under the Act**

Implementing a selection outcome will usually involve the simultaneous exercise by the agency head of various powers under the legal framework. For example, it may involve a combination of engagement, along with the imposition of one or more conditions of engagement (section 22), assignment of duties (section 25), allocation of an approved classification (rule 6 of the Classification Rules) and nomination to occupy a position (section 77) if relevant<sup>2</sup>. A promotion involves the assignment of duties (section 25) and allocation of a new approved classification i.e. the higher classification (rule 6 of the Classification Rules) and may involve a move between agencies (section 26).

In general, the Act does not require that the record of the exercise of these powers take a particular form—except in the case of movement under section 26, which requires that there be an agreement in writing between the agency head and the employee. Where the decision-maker holds all the relevant delegations, it is possible to use a single instrument, for example, to engage an employee, determine duties, allocate a classification and nominate a position. However, it is not appropriate to include in an agreement to move, the exercise of other powers such as assignment of duties and an approved classification. These should be dealt with in a separate instrument.

#### **5.4.2 Timeframe for decision making**

The decision to promote an ongoing employee or engage a person must be made during the 12 months after the employment opportunity was notified in the APS Employment *Gazette* (Direction 4.2, Direction 4.6A).

If the same, or a similar employment opportunity, arises during 12 months from the date of the original *Gazette* notification, an agency head can decide to promote or engage a candidate from the order of merit generated by an earlier selection exercise.

#### **5.4.3 Keeping records**

It is important to retain documentary evidence on an employee's personnel file of the exercise by an agency head of powers under the Act and their date of effect. It is also important to retain documentation of the *Gazette* notification of the advertisement, and the terms of any offer of engagement or movement. This may be important later in calculating the employee's entitlements or if there is a challenge by that employee to the validity of an exercise of power or any dispute as to the terms of the engagement or movement.

As an employee can only be reduced in classification with the employee's written consent or on one of the grounds in section 23(4), evidence should be kept of the employee's consent, or the basis for the decision.

Under the Administrative Functions Disposal Authority (2000) issued by the National Archives of Australia there are minimum retention periods for recruitment records—these are outlined briefly below:

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<sup>2</sup> An agency may choose to formally create positions under section 77 for particular individuals or all employees. Positions are usually created when there is a need to define who holds a delegation.

Description of Records	Disposal Action
<p>Records documenting the consolidated employment history of all ongoing employees from initial engagement and subsequent promotions and details of higher duties undertaken. Includes:</p> <ul style="list-style-type: none"> <li>• letters of engagement and conditions of engagement</li> <li>• letter of acceptance</li> <li>• details of assigned duties (initial and subsequent variations)</li> <li>• probation reports</li> <li>• evidence of educational qualifications</li> <li>• medical examinations/health declarations</li> </ul>	<p>Destroy 75 years after date of birth of the employee or 7 years after last action whichever is later</p>
<p>Records documenting the reduction in the classification of an APS employee either with or without the employee's consent</p>	<p>Destroy 75 years after date of birth of the employee or 7 years after last action whichever is later</p>
<p>Records documenting the filling of vacancies in an agency. Includes both ongoing and non-ongoing APS employees.</p> <p>Includes:</p> <ul style="list-style-type: none"> <li>• advertisements</li> <li>• applications</li> <li>• referee reports</li> <li>• interview reports</li> <li>• gazette notices</li> <li>• notification to unsuccessful applicants</li> </ul>	<p>Destroy 1 year after recruitment has been finalised</p> <p>NB The Commission would consider that recruitment is only finalised 1 year after the original <i>Gazette</i> notification as an order of merit can be used at any time during that period if it is not superseded by a new selection exercise.</p>
<p>Records documenting reviews of promotion decisions</p>	<p>Destroy 1 year after recruitment has been finalised.</p>

Agencies should seek further information from the National Archives of Australia when developing policies regarding information management and records disposal. The above advice is intended as general guidance only.

#### **5.4.4 Providing feedback to unsuccessful applicants and releasing selection documentation**

The agency head is responsible for developing policies to apply to provision of feedback to unsuccessful applicants and the release of documentation relating to selection decisions to interested parties in accordance with the *Freedom of Information Act 1982* (FOI), the *Privacy Act 1988* and other relevant legislation. Decisions relating to assignment of duties, moves between agencies, promotions and engagements are exempt from the requirement under section 13 of the *Administrative Decisions (Judicial Review) Act 1977* to give statements of reasons—see Schedule 2 items (q) and (t).

Given the APS Values and Directions require a fair workplace, transparency in selection processes and a career-based service, it is good practice to notify unsuccessful applicants and offer them feedback. This has benefits in terms of the individual's development and provides accountability in the selection process. In addition, provision of feedback may assist in reducing the number of promotion reviews that are instigated in order to obtain information on performance.

If an unsuccessful applicant requests access to a selection report under FOI, he or she usually will be entitled to see the material about himself/herself plus the successful applicant (subject to the possibility that some exceptions may apply e.g. if an external referee report was given in confidence). The Information Privacy Principles preclude giving information regarding other applicants.

# Part six—Implementing the decision - review rights, release dates and cancelling decisions

## 6.1 Summary of review rights

The Act provides for a fair system of review of decisions taken in respect of APS employees (APS Value 10(o)).

Consistent with this, section 33 of the Act and Part 5 of the Regulations provide that a non-SES APS employee is entitled to review, under the Regulations, of an action that relates to his or her employment (which includes recruitment and selection decisions relating to that employee). This right of review is subject to certain exceptions set out in the Regulations, including:

- action relating to the engagement of an APS employee
- action taken by a Promotion Review Committee or an Independent Selection Advisory Committee
- action relating to the promotion of an ongoing APS employee as an SES employee (whether or not the employee is already an SES employee)
- action that determines under section 25 of the Act as to the duties of an APS employee, or the place or places where they are to be performed, unless the action involves one of the following—a reduction in classification; a relocation to another place; a promotion to an Executive Level 1 or 2 or equivalent classification level for which the employee was an applicant and there were serious defects in the selection process; or the assignment of the employee to duties that the employee could not be reasonably expected to perform.

The Regulations also provide for a review of certain promotion decisions involving promotion to a classification included in APS Classification Groups 2-6. Ongoing APS employees who are unsuccessful applicants for promotion to the relevant employment may apply to the Merit Protection Commissioner to have the promotion decision reviewed by a Promotion Review Committee. These promotion decisions can only be reviewed on the ground of merit.

Agencies should refer to the home page of the [Merit Protection Commissioner](#).

## 6.2 Implementing a promotion decision

In association with a promotion, the agency head must assign duties at the appropriate higher classification to the employee and allocate an approved higher APS classification. The agency head does not have to wait until the person is employed in the agency before exercising the powers under the Act to:

- assign duties at a higher classification and determine the location at which those duties are to be performed (section 25)
- allocate a higher approved APS classification (Classification Rule 6)
- if appropriate, nominate a specified position which the person is to occupy (section 77).

The above actions may be finalised before the employee commences but should be expressed to be effective on the date the promotion is to come into effect.

### **6.2.1 Promotion involving movement between agencies**

If the promotion involves a movement between agencies, the post-move or 'new' agency head will enter into an agreement with the employee under section 26 to move the employee to the agency.

While the *Gazette* notification serves as formal advice to the pre-move agency that a promotion involving an agreement to move is likely to take place, good management practice suggests that agencies should develop policies to ensure that the pre-move agency head is told of the promotion (and whether there are any applications for a promotion review) by either the new agency or the employee. This will facilitate planning and negotiation of an earlier or later starting date, if required.

The written agreement between the post-move agency head and the employee to move should be separate from the exercise of the powers under the Act discussed below. The agreement should enable cancellation of the move in circumstances including where the promotion is cancelled or the promotion decision is overturned by a Promotion Review Committee (a PRC). This is discussed further in section 6.9.3.

### **6.2.2 Date of effect and right of review**

A right of review of a promotion decision below the EL 1 classification is available to an employee who applied for promotion to an employment opportunity at APS2 to APS6 or similar classifications. See the [Merit Protection Commissioner's website](#) for more information on rights of review. There is no right of review if the selection decision was made in accordance with the recommendation of an Independent Selection Advisory Committee (ISAC).

An ISAC is an independent three member committee that makes merit-based recommendations to an agency head about the suitability of candidates. An ISAC's decision is not binding on an agency head but if it is accepted then any promotion decision made in accordance with the ISAC's recommendation is not subject to a right of review (Part 4 of the Regulations). For more information on ISACs, see the [Merit Protection Commissioner's website](#).

The date of effect for a promotion varies depending on whether or not there is a right of review. For a promotion which does not have a right to a review, the date of effect is 4 weeks after the promotion is notified in the APS Employment *Gazette* or an earlier or later date if the employee and the agency head(s) reach an agreement.

The different dates of effect for promotions are set out in Regulations 3.8 and 3.8A (covering Parliamentary Service employees).

### **6.2.3 Notification of promotion**

An agency head must notify a promotion of an employee in the APS Employment *Gazette* (Regulation 3.12(1)(h) and (k)).

The *Gazette* notification of decision to promote a person to a similar employment opportunity must include a statement to the effect that:

"This promotion is made in accordance with the provisions of subclause 4.6A (1) of the Public Service Commissioner's Directions 1999—similar employment opportunity previously notified" (Regulation 3.12(3)).

## 6.3 Implementing an engagement decision

Where the preferred applicant is not an ongoing APS employee, the agency will need to:

- advise the preferred candidate that the agency is considering their engagement and inform the candidate of any conditions that it intends to impose on the engagement (e.g. whether the engagement is subject to a probationary period and, if so, what that involves). Agencies should note that conditions of engagement must be notified to the candidate before engagement. Conditions of engagement cannot be imposed after a person has been engaged.
- initiate any pre-engagement checks
- negotiate a suitable starting date should the proposed engagement proceed.

The agency should make it clear that an oral agreement or written statement of intent is not an agreement to engage. It is advisable for an agency to advise prospective employees that any engagement is conditional upon a formal notice of engagement being signed by the agency head.

In association with engagement, the agency head must assign duties at the appropriate classification to the employee and allocate an approved APS classification.

The agency head does not have to wait until the person is employed in the agency before exercising the powers under the Act to:

- determine duties and the location at which they are to be performed (section 25)
- allocate an approved classification (Classification Rule 6)
- if appropriate, nominate a specified position which the person is to occupy (section 77).

These actions can be finalised before the employee commences but should be expressed to be effective on the date the employee is engaged by the agency.

### 6.3.1 Pre-employment checks and conditions of engagement

The engagement of an employee may be made subject to conditions notified to the candidate before the engagement (e.g. relating to probation, citizenship, formal qualifications, security and character clearances and health clearances (section 22(6)). An agency head can also impose other conditions of engagement (section 22(7)) but those conditions must accord with merit-based decision making and the other APS Values. A person engaged as an employee must be an Australian citizen unless the agency head considers it appropriate to engage a non-citizen (section 22(8)). Conditions of engagement are discussed in the *Conditions of Engagement, Probation and Citizenship in the Australian Public Service*.

In general, agency requirements relating to conditions should have been referred to in the *Gazette* notification of the employment opportunity and in any additional advertising. Additional detail should have been included in any selection documentation provided to candidates. This does not preclude other conditions being imposed at a later stage of the selection process (e.g. after a pre-employment check) but conditions of engagement cannot be imposed after engagement.

The framing of conditions of engagement imposed will be important as an agency head may subsequently wish to terminate the employment of an employee for failure to meet a condition.

Before engagement, checks may be necessary to ensure that the proposed employee meets any other requirements such as the need for a non-citizen to have appropriate work entitlements.

### **6.3.2 Notice of engagement**

While there is no legal requirement under the Act for a written instrument of engagement to be signed by the agency head, it is advisable for agencies to adopt a practice of making engagements by a written notice of engagement that includes all conditions of the engagement. This provides a clear record of the engagement and the conditions imposed by the agency head. A suggested letter and notice of engagement developed by the APS Commission and the Australian Government Solicitor is at Appendix D.

### **6.3.3 Date of effect**

The agency head is responsible for deciding the date of effect of the ongoing engagement and may be influenced by the need to complete any relevant pre-employment checks. This will usually be done in consultation with the prospective employee. The agency should consider notifying a prospective employee that the offer of engagement will lapse if they do not commence on a certain day or unless an alternative date is agreed.

### **6.3.4 Notification of engagement**

An agency head must notify the engagement of an ongoing employee in the APS Employment *Gazette* (Regulation 3.12(1)(a)). An agency head must also notify the engagement of a non-ongoing employee where the employment opportunity was notified in the APS Employment *Gazette*.

The *Gazette* notification of decision to engage a person to a similar employment opportunity must include a statement to the effect that:

"This engagement is made in accordance with the provisions of subclause 4.2(2) of the Public Service Commissioner's Directions 1999—similar employment opportunity previously notified" (Regulation 3.12(2))"

## **6.4 Ongoing assignment of duties within an agency**

The date of effect of a decision to assign duties at a similar or lower classification is determined by the agency head but it is good management practice for the agency head to consult with the employee concerned. See also Part 3.1.1 of this guide.

The decision to assign duties should be recorded and the employee should be notified of all relevant information including the assignment of duties and the place at which the duties are to be performed, the allocation of an approved APS classification and the nomination of a position (if section 77 of the Act is used to nominate a specified position).

There is no requirement to notify the assignment of duties in the APS Employment *Gazette* if the employment opportunity was not originally notified in the *Gazette*.

## **6.5 Ongoing movement between agencies without a competitive selection process**

As it requires the written agreement of the employee, the agreement to move (required by section 26) requires a separate instrument from the exercise of other powers under the Act (which simply involve actions by the agency head).

In association with the movement, the post-move agency head must allocate a classification and assign duties appropriate to the classification to the employee. The agency head does not have to wait until the employee moves to the Agency before exercising the powers under the Act to:

- determine duties and the location at which the duties are to be performed (section 25)

- allocate an approved APS classification (Classification Rule 6)
- if appropriate, nominate a specified position which the person is to occupy (section 77).

These actions may be finalised before the employee commences but should be expressed to be effective on the date the employee moves to the agency.

### **6.5.1 Date of effect**

If an employee moves from another agency on an ongoing basis, other than on promotion, the move takes effect 4 weeks after the employee tells the pre-move agency head of the move, or at a specified date agreed between the pre-move and post-move agency heads and the employee (Regulation 3.9). The pre-move agency head's agreement to release the employee is not required. Each agency will need to have in place procedures to ensure that an ongoing employee tells the pre-move agency head of an agreement made by the employee to move to another agency.

The agreement between the post-move agency head and the employee should provide for cancellation of the move if certain circumstances arise before the move occurs. This is discussed further in Part 6.9.3.

### **6.5.2 Documentation and notification of decision**

The decision should be recorded and the employee should be notified of all relevant information including the assignment of duties and the location at which the duties are to be performed, the allocation of an approved APS classification and the nomination of a position (if section 77 is used).

There is no requirement to notify the assignment of duties in the APS Employment *Gazette* if the employment opportunity was not originally notified in the *Gazette*.

## **6.6 Assignment of duties without promotion**

If competitive selection process is held and the successful candidate is an ongoing employee with a similar or higher classification to the classification of the employment opportunity, the selection outcome will be an assignment of duties (section 25). If the employee is from another agency, the employee will also need to enter into a written agreement to move (section 26).

An open competitive selection exercise is only required for an assignment of duties that involves a promotion. Therefore, a decision can be made to stop a selection process at any stage and to assign duties at a similar or lower classification to an ongoing employee. To illustrate, an employee applies for an employment opportunity at their existing classification notified in the APS Employment *Gazette* and as part of the short-listing process the agency head is able to assess that the employee is suitable. The agency head can then choose to end the selection process and assign the duties to that employee.

Following a movement made as a result of an agreement under section 26 of the Act, the post-move agency head must allocate a classification and assign duties of the appropriate classification to the employee.

The agency head does not have to wait until the employee moves to the agency before exercising the powers under the Act to:

- determine duties and the location at which the duties are to be performed (section 25)
- allocate an approved APS classification (where relevant—see Classification Rule 6)
- if appropriate, nominate a specified position which the person is to occupy (section 77).

These actions may be finalised before the employee commences but should be expressed to be effective on the date the employee moves to the agency.

### **6.6.1 Date of effect**

The agency head will determine the date of effect of the decision to assign duties not involving a promotion to an employee within the agency. However, as discussed in Part 3.1.1 of this guide, it is good management practice for the agency head to consult with the employee concerned.

If an employee moves from another agency, the move takes effect 4 weeks after the employee tells the pre-move agency head of the agreement to move, or at a specified date agreed to by the pre-move and post-move agency heads and the employee (Regulation 3.9).

Each agency will need to have policies in place setting out the steps or procedures an employee should take to notify the pre-move agency head of an agreement to move to another agency.

### **6.6.2 Notification requirements**

The decision should be recorded and the employee notified of the assigned duties, the location at which the duties are to be performed, and the allocated approved APS classification or the nomination of a position (section 77) where relevant.

If the employment opportunity was notified in the APS Employment *Gazette*, the ongoing assignment of duties must also be notified in the *Gazette* (Regulation 3.12(1)(f)).

## **6.7 Temporary assignment within an agency**

An agency head may assign duties on a temporary basis to an ongoing employee.

If a temporary assignment of duties has not been sought by the employee, it is advisable that the employee be consulted. An assignment of different duties may raise significant issues for the employee concerned if they have not sought the temporary assignment. This issue is discussed in Part 3.1.1.

When an assignment of duties involves a relocation to another place or is to duties which the employee could not reasonably be expected to perform, it is a reviewable action (Schedule 1 Item 10, of the Regulations). This means that an employee can lodge an application for review of the decision under the Regulations.

### **6.7.1 Date of effect**

The agency head will determine the date of effect of the decision to temporarily assign duties to an employee within the agency but it is good management practice for the agency head to consult with the employee concerned.

### **6.7.2 Documentation and notification requirements**

The decision should be recorded and the employee should be notified of the assigned duties, the period of the temporary assignment and the allocation of an approved APS classification or the nomination of a position (section 77) where relevant.

There is no requirement to notify a temporary assignment decision in the APS Employment *Gazette*.

## **6.8 Temporary movement of an ongoing APS employee between agencies**

An agency head may assign duties on a temporary basis to an ongoing employee in another agency who has agreed to move on a temporary basis.

There can be no temporary movement without the approval of the pre-move agency head.

Written approval for a temporary move needs to be sought by the employee from the pre-move agency head before any agreement is finalised with the post-move or 'new' agency head (regulation 3.9A). If the pre-move agency head does not approve the temporary movement, the new agency head and the employee may decide not to proceed with the agreement. Alternatively, it is open for the new agency head and the employee to proceed with the movement which will be treated as an agreement for an ongoing move. The new agency head will be the new employer on an ongoing basis (Regulation 3.9A) and there is no right of return to the pre-move agency.

Each agency will need to have in place the procedures an employee is to follow in regard to the seeking of agreement to move to another agency on a temporary basis.

The written agreement with the employee to temporarily move (required by section 26) should be separate from the exercise of other powers under the Act.

In association with the temporary movement, the post-move agency head must allocate a classification and assign duties appropriate to the classification to the employee. The agency head does not have to wait until the employee moves to the Agency before exercising the powers under the Act to:

- assign duties and the location at which they are to be performed (section 25)
- allocate an approved APS classification. This must be either the approved classification that was allocated to the employee in the pre-move agency or one that is in the same classification group (Classification Rule 7). If necessary, the employee can then separately be assigned duties at a higher classification on a temporary basis.
- if appropriate, nominate a specified position which the person is to occupy (section 77).

These actions may be finalised before the employee commences but should be expressed to be effective on the date the employee temporarily moves to the agency.

As noted, if the employee moves to the post-move agency without the approval of the pre-move agency head, the move will be considered to be an ongoing move (Regulation 3.9A(3)) regardless of any term expressed in the agreement. A movement of this kind is subject to the relevant legislative requirements for ongoing movement and assignment of duties. For example, if the move was to take up an opportunity at a higher classification, the employee can only be assigned those duties on an ongoing basis if the employment opportunity had been notified in the APS Employment *Gazette*. If the employment opportunity was not notified in the *Gazette*, the employee is moved at the same or similar classification and may only be temporarily assigned the duties at the higher classification.

### **6.8.1 Date of effect**

If an employee moves to another agency on a temporary basis, the move takes effect 4 weeks after the employee tells the pre-move agency head of the agreement, or at a specified date agreed between the pre-move and post-move agency heads and the employee (Regulation 3.9A). In practice this means that this will be the second time the pre-move agency head has been told of the agreement to move—the first being when the employee sought approval of the proposed move.

Each agency will need to have in place the procedures an employee should follow to notify the pre-move agency head of an agreement to move to a new agency.

The agreement between the post-move agency head and the employee should provide for cancellation of the temporary move if certain circumstances arise before the move occurs. This is discussed further in Part 3.1.1 of this guide.

## **6.8.2 Documentation and notification of decision**

The decision should be recorded and the employee should be notified of all relevant information including the assignment of duties, the allocation of an approved APS classification, the period of the temporary movement and the nomination of a position (if section 77 is used).

There is no requirement to notify a temporary movement decision in the APS Employment *Gazette*.

## **6.8.3 Variation of an existing agreement**

The post-move agency head and the employee can seek to vary the terms of a temporary movement agreement once it has come into effect. The written approval of the pre-move agency head must be obtained for a variation to become effective. If the pre-move agency head does not agree to a variation of the length of the agreement, the variation cannot occur and the move will end at the original date (Regulation 3.9B). The employee automatically moves back to the pre-move agency on expiry of the temporary movement agreement.

Each agency will need to have in place the procedures an employee is to follow in regard to the seeking of a variation to an agreement to move to another agency on a temporary basis.

## **6.8.4 Expiration of a temporary movement agreement**

At the end of the period specified in a temporary movement agreement, the employee becomes employed again in their pre-move agency. While no administrative action is required to facilitate the employee's return, the pre-move agency head will need to ensure that the employee is assigned duties under section 25 at the appropriate classification.

# **6.9 Cancelling an employment decision**

## **6.9.1 Cancelling an engagement**

In the context of an engagement decision, an agency head has the power to do two things which are separated (if only briefly) in time:

- make a decision to engage a person
- actually engage a person so that, from a particular time, it can be said that the person is an APS employee (section 22).

A person is not actually engaged as an APS employee until a decision to engage them as an APS employee takes effect.

When a decision has been made to engage a person with effect from a nominated date in the future, the decision can be cancelled at any time up until the engagement takes effect.

This does not mean that the power to cancel an engagement decision is completely unfettered. The decision must conform to the usual requirements imposed by administrative law.

Agencies should note that the fact that the power exists to cancel an engagement does not mean a person has no other right of legal action, particularly if they have relied to their detriment on a representation, negligently made.

## **6.9.2 Cancelling assignment of duties (including a promotion)**

An agency head may from time to time determine the duties of an employee in the agency and the place(s) at which the duties are to be performed (section 25). Section 25 is also the source of power to promote an APS employee within the agency by assigning duties at a higher classification.

Decisions on assignment of duties ordinarily take effect from the date determined by an agency head. While it is possible to cancel an assignment of duties before it takes effect, this is not necessary as a further determination could be made which simply overtakes the earlier one.

A promotion decision within an agency under section 25 of the Act takes effect in accordance with Regulation 3.8. A promotion decision can be cancelled by the agency head before the decision takes effect. Cancellation decisions should conform to the requirements of administrative law as discussed at Appendix A.

### **6.9.3 Cancelling voluntary moves between agencies (including a promotion)**

Section 26 provides that an agency head can enter into a written agreement with an APS employee for that employee to move to the agency and that the agreement has effect according to its terms.

Generally speaking, an agency head does not have the power to unilaterally cancel an agreement entered into under section 26 unless the agreement permits this. If the agreement does not address grounds for cancelling a move, the agreement can only be cancelled or varied by further written agreement.

It is good practice, therefore, for an agreement to include a provision which enables the move to be cancelled if either party chooses to withdraw from the agreement. The agreement can either list events where cancellation is possible, or provide that the post-move agency head or the employee can withdraw from the agreement at any time before it takes effect. This may, of course, have an impact on the pre-move agency.

Examples of situations where an agency or an employee may wish to cancel a move include:

- the move involves a promotion and the promotion is overturned by a Promotion Review Committee (PRC)
- information becomes available which may have influenced the outcome had it been known during the selection process
- the agency head becomes aware of a serious defect in the selection process
- the employee has been selected for two or more opportunities that have been gazetted concurrently, or within the application period for review of the proposed promotion, and the employee opts for another promotion
- there are unanticipated changes to the employee's personal circumstances
- there is an unanticipated reorganisation within the agency.

### **6.9.4 Notification of a cancellation**

An agency head must notify in the electronic APS Employment *Gazette* the cancellation of any employment decision that has already been notified in the relevant section of the *Gazette* (Regulation 3.12A).

## Relevant provisions of the legislative framework

### APS Values

The following Values are relevant to recruitment and selection:

- 10(1)(a) the APS is apolitical, performing its functions in an impartial and professional manner.
- 10(1)(c) the APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves.
- 10(1)(d) the APS has the highest ethical standards.
- 10(1)(i) the APS establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace.
- 10(1)(j) the APS provides a fair, flexible, safe and rewarding workplace.
- 10(1)(l) the APS promotes equity in employment.
- 10(1)(n) the APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government.
- 10(1)(o) the APS provides a fair system of review of decisions taken in respect of APS employees.

### A.1 The APS Values

The minimum requirements that an agency head must meet in upholding and promoting the APS Values and the minimum requirements that an APS employee must meet in upholding the Values are set out in Chapter 2 of the Directions.

Some key points set out in the APS Values and Directions relating to recruitment and selection are:

- merit-based decision making (APS Value (b) and Direction 2.3) (discussed separately below)
- reasonable opportunity given for eligible members of the community to apply for APS employment (APS Value (m) and Direction 2.14).
- independence of staffing decisions from the political party system, political bias and political influence (APS Value (a) and Direction 2.2)
- compliance with all relevant anti-discrimination legislation and recognition, respect and utilisation of diversity including balancing of work, family and caring responsibilities (APS Value (c) and Direction 2.4)
- modelling and promoting the highest standard of ethical behaviour (APS Value (d) and Direction 2.6)
- promotion of a fair, flexible and rewarding workplace (APS Value (j) and Direction 2.11)
- promotion of equity in employment so that employment decisions are made in a transparent, equitable and procedurally fair way, while maintaining appropriate confidentiality (APS Value (l) and Direction 2.13(a))
- elimination of employment related disadvantage for specified groups (APS Value (l) and Direction 2.13(b))

Under the APS Values, an employment decision must be based on merit (section 10(1)(b)). An agency head must ensure that recruitment and selection policies and practices in their agency are

merit-based. An employee involved in recruitment and selection must act in a way that is consistent with the merit Value.

## **A.2 The APS Code of Conduct (section 13)**

In the context of recruitment and selection it is also necessary to consider the APS Code of Conduct provisions that require an APS employee to:

- behave honestly and with integrity (section 13(1))
- treat everyone with respect and courtesy and without harassment (section 13(3))
- disclose, and take reasonable steps to avoid, any real or apparent conflict of interest (section 13(7)).

Additional information on the APS Values can be found in the following APS Commission publications:

- *Values in the Australian Public Service*
- *APS Values and Code of Conduct in Practice*
- *Guidelines on Workplace Diversity*
- *Indigenous Recruitment in the APS.*

## **A.3 Relevant Commissioner's Directions**

The Commissioner's Directions also provide that agency heads must put measures in place to uphold and promote other Values relevant to merit. These include:

- in relation to the Value that the APS is apolitical, performing its functions in an impartial and professional manner—ensuring that management and staffing decisions in the agency are made on a basis that is independent from the political party system, political bias and political influence.
- in relation to the Value that the APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves—ensuring that all Commonwealth anti-discrimination laws are complied with; and engagement decisions in the agency are made taking into account the diversity of the Australian community, the organisational and business goals of the agency and the skills required to perform the relevant duties; APS employees are helped to balance their work, family and other caring responsibilities effectively.
- in relation to the Value that the APS promotes equity in employment—ensuring that employment decisions in the agency are made in a transparent, equitable and procedurally fair way and that appropriate confidentiality in relation to employment decisions is maintained. Also ensuring that measures are taken to eliminate any employment-related disadvantages in the agency on the basis of being an Aboriginal or a Torres Strait Islander, gender, race or ethnicity, or physical or mental disability.

## **A.4 Administrative law principles**

In addition to the principles set out in the Act, each staffing decision made under the Act must conform to certain principles of administrative law provided by the *Privacy Act 1988* and the *Administrative Decisions (Judicial Review) Act 1977*.

Decisions made under the Act may also be subject to review under general administrative law.

The key requirements of administrative law are:

- natural justice should be observed

- any procedures required by law in connection with the decision should be observed
- the person making the decision should be properly authorised (e.g. the agency head or a delegate)
- the decision should not be induced or affected by fraud
- there should be evidence to justify the decision
- irrelevant considerations should not be taken into account
- relevant considerations should be taken into account
- the power should be exercised for proper purposes and in good faith
- the decision should not be made at the direction or behest of another person
- the decision should not be made in accordance with a rule or policy without regard to the merits of the particular case
- the decision should not be an unreasonable decision in the sense of being 'perverse'
- the decision should not otherwise constitute an abuse of the power to make the decision.

## Glossary

The Act uses specific terminology to describe staffing activities. The terms used in this guide have the following meanings:

- 'assignment of duties' refers to the action of the agency head in determining the duties of an employee. It can occur at any time and is particularly relevant to engagements, promotions and movements. Duties may be assigned on an ongoing or temporary basis and may be at a similar classification, or at a higher or a lower classification (section 25)—section 25 also allows an agency head to determine the place or places where the duties are to be performed.
- 'higher classification' refers to a classification which is in a higher APS Group in Schedule 1 of the Classification Rules than the one held by the employee.
- 'lower classification' refers to a classification which is in a lower APS Group in Schedule 1 of the Classification Rules than the one held by the employee.
- 'movement' refers to a move of an ongoing employee within or between agencies (section 26). The move will be associated with the assignment of duties at a similar, higher or lower classification.
- 'non-ongoing employment' (or temporary employment) refers to the engagement of APS employees for either a specified term or for the duration of a specified task or for duties that are irregular or intermittent as mentioned in sections 22(2)(b) and (c) of the Act. A person engaged on a non-ongoing basis is referred to as a 'non-ongoing employee'.
- 'ongoing employment' refers to the employment of an APS employee as an ongoing employee as mentioned in section 22(2)(a) of the Act. The employee is referred to as an 'ongoing employee'.
- 'promotion' means the ongoing assignment of duties to an ongoing employee at a higher classification than the one held by the employee (Direction 4.6). The assignment of duties at a higher classification to an ongoing employee within a broadband and the allocation of an operational classification to a person in a training classification is not treated as a promotion. A promotion will also involve a 'movement' if the promotion is within or to another agency. The special provisions applying to trainees are discussed in the document *Training and traineeships*.
- 'similar classification' refers to a classification which is in the same APS Group in Schedule 1 of the Classification Rules as the classification held by the employee.
- 'similar employment opportunity' is defined by the Directions as employment that comprises similar duties to, at the same classification as, and performed in a similar location as, the vacancy that has been notified.

### Secondary selection considerations

Section 10(2) of the Act provides that the primary consideration in making a merit-based engagement or promotion decision is an assessment of the relative suitability of candidates using a competitive selection process, based on their work-related qualities and the work-related qualities genuinely required for the duties, and focused on their relative capacity to achieve outcomes.

While neither the Act nor its subordinate legislation refer to secondary considerations, agencies must ensure that any considerations are applied in accordance with the APS values of fairness, equity and free from discrimination; and that they are not applied in a way that constitutes patronage or favouritism or direct or indirect discrimination under anti-discrimination law.

Secondary considerations can also form part of a merit-based employment decision. They are not directly related to the relative suitability of a person to perform the duties or the work-related qualities needed to perform the duties (the primary consideration of merit). In practice, they are often factors that may vary over time (e.g. an applicant's availability) or are within an applicant's control (e.g. willingness to relocate or accept a particular salary).

The use of secondary considerations should be part of a transparent selection process and the considerations must be applied fairly in relation to each eligible applicant in line with Commissioner's Direction 2.3, Information about their potential use should be readily available to applicants in any selection documentation or provided as part of the selection process. This will allow potential applicants unable or unwilling to meet such considerations to decide not to apply.

The use of secondary considerations means that agencies will need to consult with applicants as appropriate during the selection process and, in particular, when making offers of employment.

Consistent with the requirement that merit-based assessment must be the primary basis for a selection decision:

- a secondary consideration cannot be given such prominence that it becomes the primary consideration
- a person who is not assessed as suitable for the duties to be performed cannot be selected on the basis of secondary considerations.

In applying secondary considerations, an agency needs to decide on the approach that best suits its operational requirements. There are two possible approaches:

- an 'holistic' one where the agency considers both primary and secondary considerations together and produces a single order of merit, or
- one where an initial assessment is made on the basis of relative suitability to establish a primary order of merit and then as a second step the secondary consideration is applied in order to develop the final order of merit. (A two step approach need not necessarily add to the length of time taken to complete the process, as the two steps can be conducted concurrently.)

These approaches tend to suit different recruitment scenarios. In cases where a single one-off selection is to be made, an holistic approach may be appropriate. A two-step approach may be

more appropriate where a selection process is used to fill multiple similar employment opportunities.

Whichever approach is taken, an agency must ensure that the assessment of both primary and secondary considerations is properly documented. In relation to the latter, this should include how the order of merit was constructed, records of any discussions with applicants about the application of secondary considerations and details of the offers made after the secondary considerations were applied. This is important, particularly should the decision be subject to review.

When making employment decisions, agencies need to exercise sound judgement in the application of primary and secondary considerations. As a matter of good decision-making, an agency should adopt and document a coherent and defensible approach to the application of primary criteria and any secondary considerations that are applied in the particular situation (e.g. whether a suitable applicant who will accept the salary on offer is offered the position over a more highly suitable applicant who has refused to accept the job unless they are offered a higher salary).

The interaction of the primary and secondary considerations will vary depending on the circumstances of the case but must be applied in the context of the APS Values. To illustrate: an agency's enterprise agreement includes provision to pay relocation costs to agency employees on promotion, but external applicants are required to pay their own relocation costs (if successful). It would not be fair or equitable to use the payment or otherwise of relocation costs as a secondary consideration, as such a condition cannot be waived by internal applicants even if they wanted to do so to take up the offer of employment.

In such a case, there is a risk that highly suitable internal applicants would be excluded from consideration on the grounds of costs to the agency so that this becomes, in effect, the primary consideration. It may be more appropriate to use relocation costs as a secondary consideration to separate very close applicants who have the flexibility to for e.g. agree to waive relocation costs. Agencies should build flexibilities into provisions such as relocation benefits, should this be a factor in selections.

If the results of a selection process are to be used at a later time to fill a similar employment opportunity, any secondary considerations will need to be applied or reapplied at that time to identify the most suitable applicant. For example, a person not selected initially because they did not accept the salary package will remain on the order of merit. If a similar employment opportunity arises, they will need to be considered again and they might be prepared to accept the lower salary on offer.

How this is done will depend on the nature of the previous selection exercise. If there is an existing order of merit based on the primary considerations, then the secondary considerations will be applied to that primary assessment. If the previous exercise only ranked the top applicants or sufficient applicants to fill vacancies and rated a group of applicants as suitable, then secondary considerations can be applied to each applicant in the group. Depending on the circumstances of the particular employment opportunity, it might also be necessary to reassess applicants against the primary considerations of merit.

Information from applicants might need to be sought at different stages of the selection process depending on the nature of the secondary considerations (e.g. candidates might be asked when they would be available to commence work during the selection process, but other questions such as salary might be left to later in the process). It will usually only be necessary to seek the relevant information from the applicants who are in contention for the employment opportunity. However, should the information be relevant to similar employment opportunities to be filled at

a later date, it may be cost-effective to seek information from all suitable applicants at the same time.

The agency should ensure that before a final decision is made, applicants who otherwise would have been selected are advised of the secondary considerations and are given an opportunity to meet the considerations or to change a previously stated view. The latter is particularly important if there are delays in making a final selection decision as the personal circumstances of an applicant can change over time.

#### **4.5.1 Employment offers**

In some situations, it will be more appropriate to deal with an issue as part of the offer of employment, rather than an issue to be addressed in the context of a secondary consideration.

For example, an agency's collective agreement may leave the decision regarding reimbursement of location costs to the discretion of the delegate.

In that case, an offer of employment could be made to the first person on the order of merit stating that relocation costs would not be met. If that person declines the offer of employment, an offer could then be made to the next person on the order of merit on the same basis.

Any person declining an offer of employment remains on the order of merit, unless they ask to be removed from the list.

## Appendix D

### Sample letter and notice of engagement for an ongoing or non-ongoing APS employee

The use of a separate letter and notice of engagement is a straightforward way of ensuring that important issues are addressed systematically during the engagement process. While there is no requirement for formal instruments of engagement under the Act, there are advantages in having a clear record of the engagement and of any conditions of engagement. For example, a letter and notice of engagement in the form suggested below is documentary evidence if issues arise later about whether a probationary period was communicated to the employee prior to the engagement.

Agencies should make it clear to prospective employees that any oral agreement or written indication of intent made about the future employment is conditional upon a formal notice of engagement being signed by the agency head (or delegate). This will help to avoid situations where a person is told 'you've got the job' but the delegate then chooses not to fill the employment opportunity.

An example of a letter offering engagement and a notice of engagement for an ongoing employee are set out below. The sample notice of engagement covers those things which are legally essential that a delegate determine at the time of engagement. It provides for the agency head (or delegate) to exercise the power to engage under section 22 (and to impose conditions of engagement), to allocate an approved classification under the Classification Rules, to assign duties under section 25 of the Act and, if appropriate, to exercise the power under section 77 of the Act to nominate an employee to occupy a position.

It also gives an indication of the types of conditions of engagement which could be imposed under section 22(6) of the Act. Agencies will need to determine their own policies on what conditions of engagement they require to be met. In developing policies, agencies should refer to *Conditions of Engagement, Citizenship in the APS and Probation*.

Any proposed conditions of engagement should be notified to the employee before engagement. The notice of engagement that is finally signed need only impose conditions of engagement under section 22(6) in relation to those matters on which the agency still remains to be satisfied. Some conditions may need to be satisfied before the engagement takes effect; others may operate for a specified period after engagement e.g. probation, or a condition relating to obtaining Australian citizenship within a specified time.

The employee should be notified before engagement of any condition relating to probation, along with the proposed period of probation, whether probation can be extended and, if so, the maximum duration. For more details see *Probation*.

The letter can cover a variety of matters. It can provide information on the proposed terms and conditions of employment as well as any agency policies that are important that people be aware of before accepting employment in the agency. It can be used to ask for any information that the agency needs for pre-employment checking purposes and attach any forms that the prospective employee needs to complete and return. It can also ask the prospective employee to sign and return certain declarations (e.g. that he or she has not received an eligible redundancy benefit in connection with a cessation of APS employment)

The sample letter and notice instruments represent only one example of how engagement documentation could be formatted. Agencies need to consider whether these are appropriate for their agency before adapting them for their use. One example of where the notice may need to be adapted is if some of the actions require the exercise of powers by different delegates.

## **Sample letter advising candidate of a proposed offer of engagement as an ongoing or non-ongoing APS employee**

You have been selected as the preferred candidate for engagement as an [ongoing/non-ongoing] APS employee under s.22 of the *Public Service Act 1999* with [name of agency].

Details of your proposed employment and the duties on which you will be initially engaged are set out in the attached proposed Notice of Engagement.

*[It is important that all relevant parts of the Notice are completed to ensure these matters are dealt with at the time the prospective employee is engaged.]*

You will not be engaged unless you indicate your continued interest in engagement and the delegate signs a formal Notice of Engagement. You will be notified when the delegate has signed the Notice of Engagement.

It is proposed that your employment will commence on [date] unless we notify you otherwise or another date is agreed with you. You will be expected to attend for duties on that date.

If you fail to attend for work on the agreed commencement date, your engagement will lapse. Even after the delegate signs the Notice of Engagement, it may be cancelled before it takes effect, for example, if it becomes clear that you have supplied false or misleading information in connection with your application for APS employment.

*[The following paragraphs, relating to pre-employment checking and conditions of engagement are optional.]*

### **Conditions of engagement**

The Public Service Act enables an agency to impose conditions on an ongoing engagement. It is proposed that the following condition(s) be imposed on your engagement:

#### ***Probation:***

Your proposed employment will be subject to a period of probation, in the terms set out in the draft Notice of Engagement. For more information on probation please refer to...*[A copy of any agency policy on probation could be attached to the letter.]*

#### ***Citizenship:***

*[Insert a statement of agency policy relating to citizenship e.g. 'In general, consistent with s. 22(8) of the Act, proof of Australian citizenship is required before engagement in this agency, although the agency head has the discretion to engage non-citizens in some circumstances.' Specify what evidence is needed and invite the prospective employee to contact the agency if they are not able to satisfy this requirement]*

#### ***Formal qualifications:***

*[Specify whether evidence of possessing any formal qualifications must be produced before engagement. Invite the prospective employee to contact the agency if they are not able to satisfy this requirement e.g. if they have successfully completed the relevant course but are awaiting a ceremony in order for a degree to be conferred.]*

#### ***Security and character clearances:***

*[Specify whether a character clearance and/or particular level of security clearance is needed and whether these must be obtained before the engagement takes effect or within a specified period after engagement.]*

**Health clearance:**

*[Insert any condition relating to health clearances and set out what checks are necessary in order to be satisfied the condition is met e.g. to complete a health declaration and/or to undertake a medical examination.]*

*Agencies should have regard to their obligations under disability discrimination and occupational health and safety legislation. For example, they may wish to invite the prospective employee to draw attention to any condition that might require the agency to provide any special services or facilities in order for the employee to be able to carry out the inherent requirements of their duties, in accordance with the principle of reasonable adjustment. For more information on the principle of reasonable adjustment see the booklet Conditions of Engagement.]*

**Other conditions of engagement:**

*[For a discussion of other possible conditions of engagement that agencies may wish to consider imposing see the booklet Conditions of Engagement. In particular, it suggests that agencies may wish to impose a condition that new employees sign, after engagement, a declaration that they have not made any false or misleading statements in connection with their engagement. Another possible condition might be satisfactory participation in and successful completion of an entry-level training program such as the agency's Graduate APS program.]*

Details of relevant conditions are set out in the attached proposed Notice of Engagement. If the agency has not been able to satisfy itself in relation to any of these requirements before engagement, an appropriately worded condition of engagement may be included in the Notice of Engagement and your engagement will be subject to fulfillment of that condition. If it becomes evident, at any time while such a condition of engagement is in operation, that you will not be able to satisfy the condition, your employment may be terminated.

**Terms and conditions of employment**

The terms and conditions of your employment will be as set out in *[give details e.g. agency enterprise agreement or section 24 determination]* and those which apply generally to APS employees *[include information on long service and maternity leave benefits, superannuation etc. Agencies may wish to provide more details e.g. enclose copies or give web links.]*

The *Public Service Act 1999* applies to your employment and you should familiarise yourself with the provisions of that Act, in particular, sections 10 (APS Values), 13 (The APS Code of Conduct), 25 (Assignment of duties), and 29 (Termination of employment).

*[Agencies may wish to include here reference to key Service-wide and agency policies and legislation governing behaviour and obligations of agency employees, such as privacy or secrecy provisions, obligations under the Crimes Act 1914 and any other legislation particularly relevant to the duties to be performed.]*

**Information Privacy Principles**

*[Agencies may wish to include a reference to what use the personal information provided by the prospective employee may be put and to whom it may be disclosed, and may wish to refer to Information Privacy Principle 2]*

## Action required

If you wish to be engaged as a ongoing APS employee and agree to the terms of your engagement as described in this letter and its attachments, please complete the details below *[and the forms listed below]* and return the originals to *[insert contact details]* by...*[specify any deadline]*.

*[Note: Forms etc may be attached for completion by the prospective employee e.g. superannuation forms, consents for character and police checks, health declarations, declarations in relation to the receipt of voluntary redundancy benefits within the previous 12 months etc]*

*[It may be desirable to add that the Criminal Code Act 1995 creates offences relating to the provision of false or misleading information or documents]*

Should you have queries or wish to discuss any issues, please contact *[insert details]*.

*[Note: Agencies may wish to provide information on process should the candidate agree to the proposed engagement]*

Yours sincerely

## Prospective employee to complete, sign, date and return as notification of acceptance:

Family name	
Given name(s)	
Date of Birth	

Signature: \_\_\_\_\_ date \_\_\_ / \_\_\_ / \_\_\_

*[Note: Engagement does not occur unless and until the agency head or an appropriate delegate signs a formal instrument of engagement under s 22 of the Act. Also, the final Notice of Engagement may in some cases differ from the attached draft e.g. if you are not able to provide proof of Australian citizenship, a further condition may be imposed and notified.]*

## Proposed Notice of Engagement

As delegate of the *[agency head]* under the *Public Service Act 1999* (the Act), I:

- i. engage the person who is specified below as an *[ongoing/non-ongoing]* APS employee under section 22 of the Act subject to the subsection 22(6) conditions set out below;
- ii. allocate the classification specified below to that employee under the Public Service Classification Rules 2000; and
- iii. assign the duties specified below to that employee under section 25 of the Act.

This Notice of Engagement will take effect on the commencement date specified below, provided the employee takes up duty on that day, or if another day is agreed, it will take effect on that other day.

*[That other day should be recorded and attached to this notice]*

Signed  
[name]

Delegate of the [agency head]

Date

*[Where the employee is to occupy a position under section 77 of the Public Service Act, the item below may also be completed]*

As delegate of the [agency head] under subsection 77(2) of the *Public Service Act 1999*, I nominate the person who is specified below to occupy the position also specified below, from the date this Notice of Engagement takes effect.

Signed  
[Name]

Delegate of the [agency head]

Full name	
Category	Ongoing
Approved classification under the Classification Rules	
Agency classification (e.g. broadband)	
Duties	<i>[Describe/as described in the attached duties statement/job specification]</i>
Commencement Date	
Employment location on commencement	<i>[Note: Physical location at commencement of duties]</i>
Hours per week	<i>[Note: Specific details of attendance required should be included here]</i>
Local designation and/or position identifier; or Section 77 position number or other identifier, if applicable	<i>[Note: complete either local designation or position identifier, if applicable, or both. If not applicable insert 'Not Applicable']</i>
Probation condition <i>[If a probation condition is included specify the duration<sup>1</sup>, whether the period can be extended, the maximum duration of probation, criteria for assessment and the standards of performance, capacity and conduct required. For more details see</i>	<i>[If not applicable remove or insert 'Not Applicable']</i>  Your engagement is subject to a period of probation of <i>[specify period]</i> . This period can be extended up to a maximum duration of <i>[specify period]</i> . Agencies may wish to add 'for example where'...and list some examples of when the

booklet **Probation**]

*probationary period may be extended.]*

During the period of probation, you are required to satisfy a delegate of the agency head that *[insert criteria and standards against which the probationary condition will be assessed or cross reference to agency probation policy if appropriate]*

During the probationary period, unless otherwise advised, your probation will continue if you are assigned other duties within the agency at the same classification, or if your duties are affected by a machinery of government change<sup>1</sup>.

Your employment can be terminated before the end of the probation period e.g. for poor performance.

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Other conditions of engagement under s. 22(6)

*[The Notice that is signed by the delegate need only include those conditions that the agency wishes to formally impose e.g. some matters may have been satisfied before engagement.]*

*(Citizenship<sup>2</sup>—include period in which condition must be met.)*

*(Formal qualifications<sup>3</sup>—include period in which condition must be met.)*

*(Security clearance<sup>4</sup>—include period in which condition must be met.)*

*(Character clearance<sup>5</sup>—include period in which condition must be met.)*

*(Health clearances<sup>6</sup>—include period in which condition must be met.)*

*(Other<sup>7</sup>)*

*If it becomes evident at any time while this/these condition(s) is/are in operation that you will not be able to satisfy this/any of these conditions, your employment may be terminated.*

*[Agencies will need to frame their own conditions of engagement, based on legal advice. The footnotes suggest some issues that might be addressed. For more details, see the booklet **Conditions of engagement.**]*

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Essential qualifications for the performance of the employee's duties

*[State any essential requirements for the performance of the employee's duties. These are not limited to formal qualifications but may*

*include matters such as the maintenance of work rights under a visa for a non-citizen, or maintaining a certain level of security clearance or a professional accreditation or license.]*

1 This assumes that agency policy is to provide for probation to continue if a person's duties are varied during the probation period. Be aware that there may be issues of fairness if there are significant changes in the duties and performance standards against which the probationer is being assessed.

2 A suitable condition can be inserted where evidence of Australian citizenship has not been produced before engagement. For example, an agency head may choose to impose a condition that the employee obtain Australian citizenship within a specified time. This can be framed so as to enable termination before that date if the employee is refused citizenship or it becomes evident that the employee is no longer actively pursuing an application for citizenship. For a discussion of citizenship issues see the booklet [Conditions of engagement](#).

3 If relevant and formal qualifications have not already been checked before engagement.

4 Ensure this is drafted so as to require that the delegate be satisfied after any checks e.g. 'Your engagement is subject to the condition that you satisfy a delegate of the agency head within [specify time] of commencing duties that...In order to satisfy the delegate, you may be required to undergo such character and security clearances as the agency requires.'

5 For further information on imposing conditions of engagement relating to character clearances see the booklet [Conditions of engagement](#).

6 This might address issues such as the relationship between health assessments, disability legislation and occupational health and safety e.g.

'Your engagement is subject to the condition that you satisfy a delegate within [specify time] of commencing duties that you are fit to perform duties in the [Agency], subject to any reasonable adjustments required to take account of any disability you have. In order to satisfy the delegate that you meet this condition, you may be required, before or after you commence duty, to undergo a medical examination with a registered health practitioner.

While it is our duty as an employer to take all reasonably practicable steps to protect the health and safety at work of our employees, it is your responsibility to notify us of any pre-existing condition to which we need to have regard in order to enable us to meet our occupational health and safety responsibilities.'

7 For a discussion of other possible conditions of engagement that agencies may wish to consider imposing see the booklet [Conditions of engagement](#). In particular, this suggests that agencies may wish to impose a condition that new employees sign, after their engagement takes effect, a declaration that they have not made any false or misleading statements in connection with their engagement. Another example of a possible condition is satisfactory participation in and successful completion of the agency's Graduate APS program.