Guidance on review of promotion decisions in the Australian Public Service

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# Guidance on review of promotion decisions in the Australian Public Service

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## Purpose

This document has been developed to support implementation of the regulatory framework for the review of promotion processes in the Australian Public Service (APS) that are set out in the *Public Service Regulations 2023* (Regulations) and the *Australian Public Service Commissioner’s Directions 2022* (Directions). This information provides general guidance to HR Practitioners and Senior Managers and is not legal advice.

## Overview

The APS is a career based service that makes fair employment decisions with a fair system of review. APS employees and certain Parliamentary Service employees who apply for a role within the APS can apply for a review of certain APS actions. The Regulations set out the framework for review of actions, which includes promotion review as a type of reviewable action. This Guidance sets out information on the way in which promotion reviews and reviews initiated by the Merit Protection Commissioner (MPC) ensure decisions made within the APS are merit-based and applies to those recruitment processes notified in the Public Service Gazette (PS Gazette) from 1 April 2025.[[1]](#footnote-2) These are decisions made within the APS and do not relate to decisions made within the Parliamentary Services. For further information on the terms used in this Guidance please refer to the [Glossary of Key Terms](#_Glossary_of_key).

## Applications for Promotion Review

### Eligibility for promotion review

To be eligible to make an application for a promotion review, an applicant must be:

* an ongoing APS employee *or*
* an ongoing Parliamentary Service employee *and*

have applied for promotion to a role at a higher classification, between APS classification levels 2-6 or equivalent, which are set out in Schedule 1 to the *Public Service Classification Rules 2000* (the Classification Rules).

The promotion must also have been notified in the PS Gazette. An applicant who has applied for a promotion to Executive Level 1-2 or the Senior Executive Service (SES) cannot apply for promotion review.

#### Applicant must believe promotion decision not merit-based

An applicant for promotion may apply to the MPC for a review where they believe the decision to promote another APS employee or to engage an ongoing Parliamentary Service employee to a higher classification:

* was not based on merit (within the meaning of subsection 10A(2) of the [*Public Service Act 1999*](https://www.legislation.gov.au/Series/C2004A00538)(PS Act) or
* was not undertaken in accordance with the requirements for conducting a merit-based selection process set out in Subdivision B of Part 4 of the [*Australian Public Service Commissioner's Directions 2022*](https://www.legislation.gov.au/Series/F2022L00088) (the Directions).

This includes the decision to engage an ongoing Parliamentary Service employee or promote an APS employee from a merit pool, ranked merit pool or ranked merit list that was created.

#### Other circumstances affecting an application

There are some promotion decisions that are *not* reviewable, this includes:

* engagement or promotion decisions that occur on the recommendation of an Independent Selection Advisory Committee
* where the engagement or promotion decision is the result of a selection process that the MPC has determined meets the requirements of merit, or would not have been materially different if it had (for more information see *Outcomes of a promotion review application* below) or
* where the other person was engaged from a new merit pool, ranked merit pool or ranked merit list created on the recommendation of the MPC as the result of a review conducted by the MPC in which it was found that the selection process was not merit-based.

However, an applicant may be eligible to seek review of a promotion decision if an agency continues to use the merit list or merit pool to promote an APS employee or engage an ongoing Parliamentary Service employee even though the MPC has already conducted a review and recommended that the agency cease using the merit list or pool because the process was not merit-based.

### Making an application for promotion review

An application to the MPC must:

* be made in writing
* state the applicant’s reasons why they consider that the selection process was not merit-based and
* be made by 5pm within fourteen (14) calendar days of the date after the decision was notified in the PS Gazette.

It is important that an applicant include reasons why they consider that the selection process was not merit-based. An example of this is where the applicant may be concerned that the selection panel did not assess all of the candidates against each other or that the selection process was not applied fairly in relation to all candidates. This does not require the applicant to have knowledge of how the selection process was applied to all candidates involved in the process, but a concern that at least one candidate did not have the selection process applied fairly to them.

The time limit for applications is 5pm local time in the state or territory in which the application is made. Applications made overseas must be lodged by 5pm Australian Eastern Standard Time. The MPC may agree to a longer period within the fourteen (14) day time limit, in which case the application must be submitted by 5pm on the last day of that agreed longer period.

The timeframe for submitting a review ensures that applications are made promptly. A review application that is lodged out of time is not eligible for review unless the applicant can demonstrate exceptional circumstances, supported by evidence, to explain the delay. If the MPC accepts that exceptional circumstances have been demonstrated, the MPC may approve the lodgement of a late application. However, this is a high threshold and the employee must demonstrate circumstances that significantly prevented them from making the application on time.

#### MPC can decide an applicant is not entitled to review

In some circumstances the MPC may decide that the applicant is not entitled to a review. This may occur if:

* the application is misconceived, lacking in substance or is frivolous or vexatious
* the applicant has previously applied for a review of the same decision or selection process, or
* the MPC considers that in all the circumstances a review of the promotion decision is not justified.

For example, if an applicant makes multiple applications about trivial matters that have no reasonable prospects of success or is made in a way that is intended to tie up the resources of the MPC.

The MPC will provide an applicant with written reasons if it decides not to review a matter. The MPC will also provide further guidance on their website on the circumstances in which the MPC may decide that an applicant is not entitled to a review.

#### Effect of an application

Where an application is made for a promotion review, the decision to engage or promote cannot take effect. This includes the decision to use the merit pool or list to engage or promote a person. This is until the MPC either:

* determines that the applicant is not entitled to a review or
* has completed the review and found the selection process to be merit-based or
* has completed the review and found the selection process was not merit-based but that the outcome would not have been materially different if the process was merit-based.

Merit pools or lists should not be shared between agencies to fill similar vacancies during the review process. If an agency has shared a merit list or pool that is subject to review the agency will need to advise the other agency. Agencies should be aware that a review can occur regardless of whether a merit list has been shared or not. There is no legislative obligation for an agency to advise candidates that a selection process is subject to review, although agencies may wish to do so.

### Conducting a promotion review

#### MPC to nominate reviewer/s

If the application meets the eligibility criteria, the MPC will nominate one or more people to conduct the review. The purpose of nominating a reviewer is to allow the MPC to process a higher volume of applications, increasing efficiency and effectiveness.  The person/s who conduct the review are called the reviewers. It is not a requirement to have more than one reviewer and the MPC will determine the number of reviewers. The MPC will select reviewers who have the necessary skills and personal qualities required to perform their duties as a reviewer independently and impartially. Reviewers will be drawn from outside of the agency that conducted the selection process under review. The MPC may nominate an MPC employee, an APS employee or any other person that has the necessary skills and qualities to conduct the review.

#### Notification, timeframes and providing information

The MPC will notify the agency head in writing that a review is being conducted and ensure that the review is completed within the timeframe set in guidelines that are made and published on the MPC website.

During the review the MPC may require the agency head in writing to provide information or documents to the reviewer that are relevant to the review. This information or documents must be provided within the timeframe stated in the written notice. For example, the MPC may request a copy of the selection report, evidence of the assessment tasks used, candidate applications or further information about the way in which a selection panel has conducted an assessment.

#### What is considered during a review

The reviewer must consider whether the selection process that resulted in the promotion decision was merit-based. This means that the reviewer will consider whether the selection process resulting in the decision to promote another APS employee or to engage an ongoing Parliamentary Service employee to a higher classification was based on merit within the meaning of section 10A(2) of the PS Act or whether the process meets the requirements for conducting a merit-based selection process set out in Subdivision B of Part 4 of the Directions. Further information on the meaning of ‘merit-based’ is set out in the [Glossary of Key Terms](#_Glossary_of_key_1) below.

#### Conducting the review

The reviewer may conduct the review in any manner the reviewer thinks fit and can only consider information in relation to the decision if that information was available to the person within the agency who made the decision (or known to the agency but not provided to the decision-maker) before or at the time of the selection process. This means that the reviewer cannot consider information that becomes available after the decision was made. Any new information (or information not available to the decision-maker) is not relevant to whether the selection process conducted was merit-based and therefore is not relevant to the review.

An example of information that *cannot* be considered would be information about a candidate’s work-related qualities or additional qualifications or experience gained by a candidate after the selection process is completed. This ensures fairness for candidates. An example of information known to the agency but not provided to the decision-maker that *can* be considered could include where a referee report was conducted but not included in the selection report for consideration by the delegate.

#### The reviewer must make a finding or findings

The reviewer must make one or more findings as a result of the review and a recommendation to the MPC, so that the MPC can make a determination about the outcome of the review. The finding may be that the decision or process was or was not based on merit. The recommendation to the MPC may be, for example, that as a result of the findings the decision does not take effect or that the merit list or pool is not used to fill a vacancy.

### Outcomes of a promotion review application

The MPC must issue an outcome that either the decision meets the requirements of a merit-based selection process or does not meet those requirements. The MPC will issue an outcome report to the agency with a finding and recommendation, including reasons for the decision.

The following table sets out the possible outcomes of a review.

Table of Outcomes

|  |  |
| --- | --- |
| MPC Finding | Outcome |
| Selection process meets the requirements of merit | No further action. The promotion or engagement decision can proceed.  Any merit pool or list that has been created will continue to operate and can continue to be used for future appointments. |
| Selection process does not meet requirements of merit, but outcome would not be materially different | The promotion or engagement decision can proceed.  Any merit pool or list that has been created will continue to operate and can continue to be used for future appointments.  Feedback and advice may be provided to the agency. |
| Selection process does not meet the requirements of merit and there is sufficient information to make a recommendation in relation to a new merit pool or list | If the applicant is an APS employee, the promotion or engagement decision is overturned and does not take effect.  If the applicant is a Parliamentary Service employee, a recommendation is made that the promotion or engagement decision should not take effect.  An earlier decision to promote or engage an employee *that has taken effect* in accordance with Division 2A of Part 4 of the Directions will not be overturned.  Any merit pool or list arising from the selection process should not be used to fill any future vacancies.  The MPC must recommend a new merit pool, ranked merit pool or ranked merit list from which the agency may engage or promote a person if it has sufficient information to do so. |
| Selection process does not meet the requirements but there is insufficient information to make a recommendation in relation to a new merit pool or list | If the applicant is an APS employee, the promotion or engagement decision is overturned and does not take effect.  If the applicant is a Parliamentary Service employee, a recommendation is made that the promotion or engagement decision should not take effect.  Any earlier decision to promote or engage an employee that has taken effect will not be overturned. MPC must inform the agency and may recommend that the merit pool or list should not be used to fill a vacancy, except a vacancy that has already been filled.  MPC will recommend, where appropriate that a new selection process be undertaken. |

#### Outcome of review when decision not based on merit

If the MPC determines that the selection process did not meet the requirements of a merit-based selection process the MPC must:

* if the applicant is an APS employee, make a binding determination that the decision to engage a Parliamentary Service employee or promote another APS employee to the vacancy does not take effect, or
* if the applicant is a Parliamentary Service employee the MPC must recommend that the decision to engage or promote a person to the vacancy should not take effect, and
* if a merit pool, ranked merit pool or ranked merit list is created as a result of the selection process, recommend that it should not be used to fill a vacancy.

Agencies will be unable to fill vacancies using the merit list or pool for candidates who, for example, have been made a verbal offer but are still undergoing pre-employment checks.

#### Effect on the merit list or pool where not merit-based

If the MPC has sufficient information and:

* the selection process resulted in the creation of a merit pool, ranked merit pool or ranked merit list then the MPC must recommend a new merit pool, ranked merit pool or ranked merit list from which the agency may engage or promote a person
* the selection process did not result in the creation of any pool or list then the MPC must recommend a ranking of all candidates for the vacancy which the agency may use to determine who should be engaged or promoted.

If there is sufficient information to establish a new merit pool, ranked merit pool or ranked merit list, the agency should follow this recommendation.

Sufficient information is information that would reasonably support the making of the recommendation by the MPC and includes relevant information considered during the review process.

If the MPC does not have sufficient information to make a recommendation then they must inform the agency and recommend that the selection process should not be used to fill a vacancy, other than a vacancy that has already been filled. An appointment decision may not, for example, be overturned where a person has been initially appointed to a role and the review timeframe has passed, then a second review occurs at a later time when a further appointment is made from the merit pool or list. The MPC may recommend, where appropriate, that a new selection process be undertaken.

#### Applicant to be notified

The applicant for review will also be notified in writing of the outcome of the review by the MPC within a reasonable timeframe after the conclusion of the review. The disclosure of information regarding individuals is governed by section 72B of the PS Act. Agencies will also need to ensure that strategies are in place to manage the impact on individuals.

## Own motion reviews initiated by the Merit Protection Commissioner

The MPC has broad discretion to undertake a review of any APS 2-6 level selection process, including undertaking a regular schedule of reviews or on the basis of information provided to the MPC. The capacity of the MPC to initiate a review on its own motion builds integrity into the process and drives systemic improvements to recruitment practices.  This provides the opportunity to understand and enhance recruitment practices on an APS-wide basis.

A review may be initiated by the MPC at any stage of the selection process, from the day the vacancy is notified in the PS Gazette and whether or not the selection process has resulted in a decision. This ensures that where a selection process has been finalised, but an engagement or promotion decision has not been made, the process can still be reviewed.

The MPC may initiate a review of a selection process if the selection process is conducted by an agency head or an APS employee and the selection process is to engage or promote a candidate for a vacancy and/or to create a merit pool, ranked merit pool or ranked merit list from which a candidate may be engaged or promoted. The MPC is not restricted to reviewing selection processes that involve promotions and can review selection processes that may result in the engagement of a candidate into the APS. However, the MPC cannot initiate a review of a selection process for an EL1, EL2 or SES vacancy, but can initiate a review for a selection process for a vacancy at the APS 2-6 level or equivalent.

Any review undertaken by the MPC using their own motion powers cannot overturn a decision already made by an agency, but it might result in a recommendation to the agency head to cease using the merit list or pool to fill future vacancies if the selection process was found not to be merit-based.

Circumstances where the MPC may initiate a review may include, but are not limited to:

* where the outcome of the process was not the result of a promotion decision (for example, where the outcome of the process is to engage a candidate who is not an APS employee)
* for the purpose of developing a regular schedule of reviews
* when a person who is not eligible to submit an application for review of promotion submits a complaint to the MPC and
* on the basis of the information received by the MPC from a member of the public where the MPC considers that it is necessary to initiate a review (noting that this does not require the MPC to initiate a review based on every complaint or each time information is received).

### Requirements for conducting an MPC own motion review

Own motion reviews are conducted by reviewer/s nominated by the MPC. The purpose of nominating a reviewer is to allow the MPC to process a higher volume of applications, increasing efficiency and effectiveness.

Written notification must be provided to the agency head advising them of the review. The review must be conducted within timeframes specified in guidelines made by the MPC. Agency heads must give any information or documents to the reviewer that are required.

### Conducting an MPC own motion review

An own motion review by the MPC must consider whether the selection process:

* is likely to /or has resulted in a decision or decisions based on merit or
* is being / or was undertaken in accordance with the requirements for conducting a merit-based selection process.

As with applications for review made by an APS or Parliamentary Service employee, the reviewer may conduct the review in any manner the reviewer thinks fit and may consider information in relation to the decision only if that information was available to the decision-maker (or known to the agency but not provided to the decision-maker) before or at the time of the selection process. For example, information that becomes available after the decision is made cannot be taken into consideration.

The review must make a finding (or findings) and any recommendations are to be included in a written report. If the reviewer intends to make findings or recommendations that are adverse to the agency, a summary of the findings or recommendations must be provided to the agency head who will be given the opportunity to make a submission within fourteen (14) days. The MPC must take the agency head’s submission and the findings or recommendations of the reviewer into account in determining the outcome of the review.

### Outcomes of an MPC own motion review

The MPC must prepare a written report, which is given to the agency head, and includes the findings on whether the selection process was merit-based or not. If applicable, this may include a finding that although a process was found not to be based on merit, the outcome(s) would not have been different had those requirements been met.

If the MPC determined that the selection process did not meet the requirements of merit, then the MPC must include recommendations. If a merit pool, ranked merit pool or ranked merit list was created, then this must include the recommendation that the selection process should not be used to fill a vacancy (other than any vacancies that have already been filled) and that the merit pool or list should not be used to engage or promote a candidate.

A recommendation will not need to be given if the MPC is satisfied that the outcome of the process would not have been materially different had the requirements of a merit-based process been met. This means that despite being found not to meet the requirements of merit, if the outcome would have been the same, then the MPC does not need to make a recommendation and the outcome will not be changed. However, the MPC may provide advice on how an agency may achieve an outcome that complies with merit.

## Agency response to promotion review outcomes

An agency head is required to respond to promotion review outcomes if a determination has been made that the selection process did not meet the requirements of merit and a determination that the decision to engage or promote a person to a vacancy does not (or should not if the applicant is a Parliamentary Service employee) take effect, or if the merit list or pool should not be used.

Where the MPC has made a recommendation, the agency head must advise for each recommendation whether the recommendation is accepted, or if it is not accepted, the reasons why the recommendation is not accepted.

The agency head must provide written notice to the MPC within fourteen (14) days after the agency head is informed of the outcome of the review or on the last day of any longer period agreed to by the MPC. If the MPC is notified that a recommendation is not accepted the MPC will provide the APS Commissioner a copy of the notice and the reasons included in the notice as to why the recommendation is not accepted.

It is important that agency heads give genuine consideration to the observations and findings of the MPC and have an opportunity to respond to any recommendations. In the event that an agency head does not agree with the MPC's recommendations, the response also provides an opportunity for the MPC to understand these reasons and for these to be presented as part of the MPC's submission to the APS Commissioner.

Where an agency head continues to use a merit pool, ranked merit pool or a ranked merit list that the MPC has determined was not merit-based, the MPC may review future engagement or promotion decisions using the merit pool, ranked merit pool or a ranked merit list.

## MPC Reporting requirements

The MPC is required to provide a report to the Australian Public Service Commissioner at least bi-annually about its promotion review functions under the Regulations. These reporting mechanisms are designed to provide greater oversight of recruitment processes. This will also support the Commissioner in exercising his functions under section 41(2)(f) of the PS Act to evaluate the extent to which agencies incorporate and uphold the APS Values and the APS Employment Principles.

## Frequently asked questions

#### Can a promotion review be sought for Executive Level 1-2 or SES roles?

No. Only an applicant for promotion who is an ongoing APS employee or Parliamentary Service employee seeking engagement at a higher classification, between APS classification levels 2-6 may submit an application.

#### Can an applicant apply for a promotion review of a selection process for a vacancy to which they did not apply but which was later used to create a merit list or pool to fill a similar vacancy?

No. The applicant can only apply for a promotion review of a selection process that they were an applicant for.

#### When will the MPC exercise its own motion powers to review a recruitment process?

There are a variety of circumstances in which the MPC may choose to initiate a review on its own motion. This includes, but is not limited to, where the outcome of the process was not the result of a promotion decision, when a complaint is submitted by a person who is not eligible for a review, where the MPC receives information that indicates that a review may be necessary or under a regular schedule of reviews that has been devised by the MPC (like an audit process).

#### If the MPC determines that a decision was not merit-based will this overturn a decision that has already taken effect?

MPC will not overturn a decision that has already taken effect. For example, if a candidate is promoted from a merit pool, no applications for review are received and the candidate commences in the position. If, six (6) months later, a second candidate is promoted from the merit pool and an application for review is made and the MPC determines that the selection process is not merit-based, the promotion of the first candidate is not overturned.

#### Can an applicant seek a second review if the selection process has been found to be merit-based?

No, if the MPC have determined that a selection process meets the requirements of merit, or that the outcome would not have been materially different if it had, then the promotion decision will not be able to reviewed a second time.

#### Can a recruitment process be reviewed multiple times?

Generally, no. There is only one opportunity for the process to be reviewed. An exception is where an agency head has not accepted a recommendation of the MPC and continues to use a merit list or pool that was found to be not merit-based. In this case, any future promotion decisions will be reviewable.

#### What happens if a selection process is subject to review and an agency has made an offer of engagement to a candidate?

The making of an application for a review means that the decision to engage or promote a person, including from the merit pool, ranked merit pool or ranked merit list cannot take effect. This includes the decision to use the merit pool or list to engage or promote a person. If an offer of engagement has been made to a candidate the engagement cannot take effect until the MPC:

* determines that the applicant is not entitled to a review or
* has completed the review and found the selection process to be merit-based or
* has completed the review and found the selection process was not merit-based but that the outcome would not have been materially different if the process was merit-based.

#### What is the effect of a decision by the MPC where a promotion review has been submitted by a Parliamentary Service employee?

Where a promotion review is submitted by a Parliamentary Service employee, and the MPC finds that the selection process does not meet the requirements of merit the MPC may recommend that the decision to engage or promote a person to the vacancy should not take effect. Whilst this recommendation is not binding, an agency is strongly encouraged to follow the recommendation of the MPC.

#### What is the effect where the MPC conduct an own motion review and finds that a process is not merit-based?

The MPC will make a recommendation to an agency head. This can include a recommendation that a new merit list or pool is created or that the agency head does not use a merit list or pool to fill future vacancies.

The agency head will consider the recommendation and provide a response to the MPC about accepting the recommendation or not (including the reason why they are not accepting the recommendation) within fourteen (14) days. Where an agency head does not accept the recommendation, MPC must notify the APS Commissioner. Agencies are encouraged to actively engage with the MPC during the review process and follow the recommendation of the MPC.

## Further information

For more information on the Regulations please contact the Employment Policy team via [employmentpolicy@apsc.gov.au](mailto:employmentpolicy@apsc.gov.au) or call the advice line on (02) 6202 3857. For further information on the practice and procedures for promotion reviews please contact the [Merit Protection Commission](https://www.mpc.gov.au/). Employees seeking further advice should contact the HR area within their agency.

## Glossary of key terms

**Independent Selection Advisory Committee (ISAC)** means an Independent Selection Advisory Committee established under Subdivision B of Division 2 of Part 6 of the Regulations.

**Merit-based** means based on merit within the meaning of section 10A(2) of the PS Act or whether the process meets the requirements for conducting a merit-based selection process set out in Subdivision B of Part 4 of the Directions. Section 10A(2) of the PS Act, prescribes that a decision to engage or promote a person is based on merit if:

* all eligible members of the community are given a reasonable opportunity to apply to perform the relevant duties
* an assessment is made of the relative suitability of the candidates to perform the relevant duties, using a competitive selection process
* the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required to perform the relevant duties
* the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the relevant duties and
* the assessment is the primary consideration in making the employment decision.

Section 24 of the Directions outlines that a merit-based selection process for engagement or promotion must include the following elements:

* the aim and purpose of the selection process is determined in advance
* information about the selection process is readily available to candidates
* the selection process is applied fairly in relation to each eligible candidate and
* the selection process is appropriately documented.

Further information on the elements of the merit principle are set out on the APSC website at The APS merit principle.

**Merit pool** is defined in the Regulations and means a pool of candidates for a vacancy, as a result of a selection process, in respect of which each candidate included in the pool has been assessed as being equally suitable for the vacancy.

**Promotion** has the same meaning as section 6 of the Directions. A reference to a ***promotion*** is a reference to the ongoing assignment of duties to an ongoing APS employee at a classification that is in a higher classification group than the classification group that includes the employee’s current classification, in the same or another agency, other than:

1. the allocation of a higher classification within the same broadband in the same agency; or
2. the allocation of an operational classification to a trainee*.*

**Promotion decision** is the decision to promote an APS employee or engage a Parliamentary Service employee to a vacancy.

**Ranked merit list** is defined in the Regulations and means a list of candidates for a vacancy, created as a result of a selection process, in respect of which each candidate included in the list:

1. has been assessed as suitable for the vacancy; and
2. has been ranked in order of suitability.

In a ranked merit list all ten suitable candidates are ranked in order from one to ten based on suitability.

**Ranked merit pool** is defined in the Regulations and means a pool of candidates for a vacancy created as a result of a selection process in respect of which each candidate included in the pool;

1. has been assessed as suitable for the vacancy; and
2. has been included in a group of candidates that has been ranked in order of suitability.

This is a pool of candidates where each candidate included in the pool has been assessed as suitable for the vacancy and has been assigned to a group of candidates with a similar suitability for the vacancy. Each group is ranked in order of suitability. For example, in a ranked merit pool of ten suitable candidates there may be a group of four highly suitable candidates and a group of six suitable candidates.

1. In December 2024 the promotion review provisions were amended in the Regulations for any recruitment process advertised in the PS Gazette from 1 April 2025. For further information see [Circular 2024/06: Commencement of amendments to the Public Service Regulations 2023](https://www.apsc.gov.au/resources/circulars-guidance-and-advice/circular-202406-commencement-amendments-australian-public-service-regulations-2023) [↑](#footnote-ref-2)