

Commissioner's Instruction 39: Interim Arrangements to Fill Public Sector Vacancies

Questions and Answers

1 Do the new arrangements apply to Senior Executive Service (SES) positions?

Yes, as long as they do not override [Commissioner's Instruction 32: Financial and Classification Management of Senior Executive Service and Other Management Executives](#).

2 Is redeployment clearance still required?

Redeployment clearance is required for all vacancies filled for more than 6 months. Refer to [Commissioner's Instruction 12: Redeployment and Redundancy](#) for more information.

3 Can staff on fixed term contracts be permanently appointed?

Agencies can directly appoint *some* fixed term contract staff to permanent vacancies. For certain public service officers, direct appointment is not available unless the vacancy has been previously advertised. Refer to the [Public Sector Management Act 1994](#) (PSM Act) and [Commissioner's Instruction 2: Filling a Public Sector Vacancy](#) for more information.

4 Does direct appointment in regional locations only apply to 12 month fixed term contracts?

Agencies can directly appoint a person to a regional vacancy permanently or on a fixed term contract following an individual assessment of merit at any time during the period the instruction is in place.

5 What is a genuine occupational qualification?

The [Equal Opportunity Act 1984](#) (EO Act) allows agencies to nominate race, sex, disability or age as a genuine qualification for a position that provides services to the same diversity group. Genuine occupational qualifications must be stated in the job description and considered essential criteria. [How to use the exceptions in the EO Act](#) has detailed information.

6 What is a measure intended to achieve equality?

The [EO Act](#) allows agencies to make employment decisions on the grounds of race, sex, sexual orientation, disability and age to achieve equality and improve representation in employment. Measures can be used for recruitment and other opportunities – such as training and development. [How to use the exceptions in the EO Act](#) has detailed information.

7 Can a direct appointment be made if an agency has already met the relevant aspirational target?

Yes, agencies can continue to make direct appointments to achieve equality and improve representation in employment for diversity groups. Refer to the [Workforce Diversification and Inclusion Strategy](#) for more information.

8 When seeking redeployment clearance, can an agency indicate that the appointment will assist it to meet an aspirational target in the [Workforce Diversity and Inclusion Strategy](#)?

Yes, in the details of a vacancy submitted for redeployment clearance an agency can state its preference to prioritise a diversity group to meet an aspirational target. Refer to [How to use the exceptions in the EO Act](#) for more information.

9 Can an agency fill a subsequent vacancy using a recruitment process that was endorsed more than 6 months but less than 12 months ago?

Yes, an agency can use a previous recruitment process to appoint a person who was deemed suitable to subsequent vacancies for 12 months from when that process was endorsed. For example, a recruitment process endorsed on 1 March 2022 can be used to fill subsequent vacancies until 28 February 2023.

10 Can a suitability list of another agency that is more than 6 months old but less than 12 months be used?

Yes, an agency can use the suitability list of another agency to appoint a person from that list to subsequent vacancies for 12 months from when that process was endorsed. For example, a suitability list from a recruitment process endorsed on 1 March 2022 can be used to fill subsequent vacancies until 28 February 2023.

11 Can an agency introduce a retention allowance to retain experienced staff?

Yes, refer to [Commissioner's Instruction 35: Attraction and Retention Incentives](#) and [Commissioner's Instruction 38: Temporary Regional Attraction and Retention Incentives](#).

12 Can advertising occur before redeployment clearance is completed?

Redeployment clearance is required before advertising any vacancy for more than 6 months. Refer to [Commissioner's Instruction 12: Redeployment and Redundancy](#) for more information.

13 Are reference checks required before the selection report is signed off?

Agencies can decide whether reference checks are required. If they are required, they can be done at any stage of the process but must occur before the recruitment decision is endorsed. Refer to the [Hiring Managers' Toolkit](#) for more information.

14 An agency has multiple staff at the same classification level on fixed term contracts. Can it decide who is directly appointed to a vacancy?

Agencies can decide who to appoint to a vacancy following an individual assessment of merit.

15 Can a person lodge a breach of standard claim against the direct appointment of a person to a vacancy permanently or on a fixed term contract for more than 6 months?

Anyone who has applied unsuccessfully for a vacancy can submit a breach of standard claim against the recruitment process (regulation 6(3) of the Public Sector Management (Breaches of Public Sector Standards) Regulations 2005). The [Employment Standard](#) also applies when filling vacancies through direct appointment and agencies need to be mindful of their capacity to resolve potential grievances by staff. Refer to the [Grievance Resolution Standard](#) for more information.