



Public Service (Secretary of Department of Defence) Delegations and Authorisations 2017

I, Greg Moriarty, Secretary of the Department of Defence,

- (1) make the following delegations using powers vested in me under:
- (a) subsection 78(7) of the *Public Service Act 1999*; and
 - (b) subregulation 9.3(3) of the *Public Service Regulations 1999*; and
 - (c) subrule 13(1) of the *Public Service Classification Rules 2000*; and
 - (d) subsection 52(1) of the *Australian Public Service Commissioner's Directions 2016*; and
 - (e) subsection 11(1) of the *Maternity Leave (Commonwealth Employees) Act 1973*; and
 - (f) subclause 9(1) of the *Long Service Leave (Commonwealth Employees) Act 1976*.
- (2) make the following authorisations under:
- (a) section 15 of the *Public Service Act 1999*; and
 - (b) section 20 of the *Public Service Act 1999*; and
 - (c) section 30 of the *Public Service Act 1999*.

Dated 25 September 2017

Greg Moriarty
Secretary of the Department of Defence

- 1 Name**
This instrument is the Public Service (Secretary of the Department of Defence) Delegation and Authorisation 2017.
- 2 Commencement**
The delegations and authorisations in this instrument commence on the date of signature.
- 3 Definition**
In this delegation:

APS means Australian Public Service.

SES means Senior Executive Service.
- 4 Revocation**
I revoke the delegations and authorisations made by Defence Public Service Delegation and Authorisation Instrument No. 9 of 2015 on 30 June 2015.
- 5 Delegations**
I delegate my powers and functions under the provisions mentioned in Schedule 1 to the person occupying or performing the duties of the following positions:
- a. Associate Secretary of the Department of Defence; and
 - b. Deputy Secretary Defence People; and
 - c. First Assistant Secretary People Policy and Culture; and
 - d. Assistant Secretary People Policy and Employment Conditions.
- Note:** Schedule 1 identifies the provision to which the delegation relates and includes a summary of the provision for information.
- 6 Directions**
1. Any power or function delegated in this instrument must be exercised subject to relevant direction mentioned for the power or function in Schedule 1.
 2. Delegates must notify me of each decision relevant to engagement, movement or termination of an SES employee.

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Authorisation

The powers or functions mentioned in Schedule 2 are authorised to each of the following to exercise, for and on my behalf.

- a. Positions listed in the schedule for the purpose of determining a breach of the code of conduct in accordance with procedures made under section 15 of the *Public Service Act 1999*.
- b. Positions listed in the schedule for the purpose of accepting a written notice of intention to retire from an APS employee who has reached 55 years or another minimum retirement age in accordance with section 30 of the *Public Service Act 1999*.

Schedule 1 Delegations for section 5 of this Instrument

(section 5)

| Item | Source of power or function | Description of power or function | Directions |
|--------------------------------|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Public Service Act 1999 | | | |
| 1.1 | subsection 15(1) <i>Public Service Act 1999</i> | Impose one or more sanctions from the following list when it is found that an employee has breached the Code of Conduct: (a) termination of employment; (b) reduction in classification; (c) reassignment of duties; (d) reduction in salary; (e) deduction from salary, by way of fine; and (f) a reprimand. | |
| 1.2 | paragraph 15(3) <i>Public Service Act 1999</i> | Establish written procedures for determining whether an employee has breached the Code of Conduct and the sanctions (if any) to be imposed. | |
| 1.3 | section 18 of the <i>Public Service Act 1999</i> | Establish a workplace diversity program. | |
| 1.4 | section 22 <i>Public Service Act 1999</i> | Decide to engage a person as an APS employee for the purposes of the Department of Defence. | 1. The delegate must consult with Defence Security and Vetting Service before engaging a person who is not an Australian citizen. |
| 1.5 | subsection 23(4) <i>Public Service Act 1999</i> | Reduce an employee's classification. Note: A reduction in classification for an employee with consent may occur as a result of movement under section 25 of the <i>Public Service Act 1999</i> . | |
| 1.6 | subsection 24(1) <i>Public Service Act 1999</i> | Determine in writing the terms and conditions of employment applying to an employee or employees in the Department of Defence. | |
| 1.7 | section 25 <i>Public Service Act 1999</i> | Determine the duties of an APS employee in the Department of Defence, and the place or places at which the duties are to be performed. | |
| 1.8 | section 26 <i>Public Service Act 1999</i> | Agree, in writing, with an ongoing APS employee for the employee to move <i>into</i> the Department of Defence from another APS Agency. Note: Section 37 of the <i>Australian Public Service Commissioner's Directions 2016</i> affects the date on which the section 26 movement occurs. | |

| Item | Source of power or function | Description of power or function | Directions |
|------|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.9 | subsection 27(2) <i>Public Service Act 1999</i> | Notify the Australian Public Service Commissioner that an employee is excess to requirements for the purpose of moving them to another agency. | |
| 1.10 | subsection 29(1) <i>Public Service Act 1999</i> | Terminate the employment of an APS employee by notice, in writing, Note: An SES employee cannot be terminated unless the Commissioner has issued a certificate under section 38 of the <i>Public Service Act 1999</i> . | |
| 1.11 | section 37 <i>Public Service Act 1999</i> | Give a written notice to an ongoing SES employee that entitles the employee to a payment if they retire within the period specified in the notice. Note: Section 48 of the <i>Australian Public Service Commissioner's Directions 2016</i> places a restriction on the exercise of this power. | 1. The delegate must observe any conditions imposed by any section 24 Public Service Act Determination or common law agreement that applies to the employee. 2. The delegate must consult with the Secretary when exercising this power. |
| 1.12 | subsection 41B (1) <i>Public Service Act 1999</i> | Request the Australian Public Service Commissioner to inquire into APS employee misconduct. | |
| 1.13 | subsection 41B(9) <i>Public Service Act 1999</i> | Request the Australian Public Service Commissioner to recommend sanctions where the Commissioner is also requested to conduct an inquiry under subsection 41B(1) of the <i>Public Service Act 1999</i> . | |
| 1.14 | subsection 50A(1) <i>Public Service Act 1999</i> | Request the Merit Protection Commissioner to inquire into and determine whether an APS employee, or former employee, has breached the Code of Conduct. | |
| 1.15 | section 74 <i>Public Service Act 1999</i> | Engage persons overseas to perform duties overseas as employees. | |
| 1.16 | subsection 77(1) <i>Public Service Act 1999</i> | Create positions in the Department of Defence. | |
| 1.17 | subsection 77(2) <i>Public Service Act 1999</i> | Nominate an employee to occupy a position in the Department of Defence. | |

| Item | Source of power or function | Description of power or function | Directions |
|----------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Public Service Regulations 1999 | | | |
| 2.1 | subregulation 3.1(3) <i>Public Service Regulations 1999</i> | Nominate a health practitioner to assess the fitness for duty of an APS employee in the Department of Defence. | |
| 2.2 | subregulation 3.1(2) <i>Public Service Regulations 1999</i> | Make any of the following directions to an employee whose engagement is subject to a condition dealing with health clearance. (a) Undergo a medical examination by a nominated medical practitioner, to assess the employee's fitness for duty. (b) Provide a report of the medical examination. | |
| 2.3 | subregulation 3.2(2) <i>Public Service Regulations 1999</i> | Make any of the following directions to an employee in relation to the state of the employee's health. (a) Undergo a medical examination by a nominated medical practitioner, to assess the employee's fitness for duty. (b) Provide a report of the medical examination. | |
| 2.4 | subparagraph 3.5(6)(a)(ii) <i>Public Service Regulations 1999</i> | Enter into an agreement with a State or Territory, or an authority of a State or Territory, to engage a person as a non-ongoing employee for a specified term. | |
| 2.5 | regulation 3.10 <i>Public Service Regulations 1999</i> | Suspend an employee from duty (with or without remuneration) if the delegate believes on reasonable grounds that: (a) the employee has, or may have, breached the Code of Conduct; and (b) the employee's suspension is in the public, or the Department of Defence's, interests. | |
| 2.6 | regulation 4.2 <i>Public Service Regulations 1999</i> | Request the Merit Protection Commissioner establish an Independent Selection Advisory Committee. | |
| 2.7 | paragraph 4.3(1)(b) <i>Public Service Regulations 1999</i> | Nominate a person to be a member of an Independent Selection Advisory Committee. | |
| 2.8 | subregulation 5.24(1) <i>Public Service Regulations 1999</i> | Receive applications for a primary review of a reviewable action. | |
| 2.9 | regulation 5.25 <i>Public Service Regulations 1999</i> | With the Merit Protection Commissioner's agreement, refer a primary review of reviewable action to the Merit Protection Commissioner and notify the employee of the referral. | |

| Item | Source of power or function | Description of power or function | Directions |
|-------------|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| 2.10 | regulation 5.27 <i>Public Service Regulations 1999</i> | Conduct a review of reviewable action, to attempt to resolve the APS employee's concerns, and advise the employee of the outcome. | |
| 2.11 | regulation 5.29 <i>Public Service Regulations 1999</i> | Receive applications for a secondary review. | |
| 2.12 | regulation 5.30 <i>Public Service Regulations 1999</i> | Give the application for secondary review and the documents relating to the primary review to the Merit Protection Commissioner. | |
| 2.13 | regulation 5.32 <i>Public Service Regulations 1999</i> | Consider a recommendation received from the Merit Protection Commissioner about a review of actions as soon as possible, and: (a) decide on the recommendations; and (b) inform the APS employee and the Merit Protection Commissioner in writing of the decision and the reason for it. | 1. The delegate must seek the views of the employee before making a decision not to act in accordance with the recommendation. |
| 2.14 | regulation 5.35 <i>Public Service Regulations 1999</i> | On receipt of a written notice from the Merit Protection Commissioner, provide to the person conducting a review under Division 5.3 of the <i>Public Service Regulations 1999</i> stated information or documents relevant to that review. | |
| 2.15 | paragraph 5.11(1)(b) <i>Public Service Regulations 1999</i> | Nominate an APS employee to be a member of a Promotion Review Committee. | |
| 2.16 | regulation 5.17 <i>Public Service Regulations 1999</i> | On receiving a written notice from a Promotion Review Committee, provide stated information and documents relevant to a review. | |
| 2.17 | Regulation 8A.4 <i>Public Service Regulations 1999</i> | After forming the belief that deductions must be made from the salary of an APS employee who owes a debt, appoint a paying officer to make the deductions. | |

| Item | Source of power or function | Description of power or function | Directions |
|--------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <i>Public Service Classification Rules 2000</i> | | | |
| 3.1 | rule 6 <i>Public Service Classification Rules 2000</i> | Allocate an approved classification to each APS employee in the Department of Defence. | |
| 3.2 | rule 7 <i>Public Service Classification Rules 2000</i> | Allocate a classification to an APS employee who moves to the Department of Defence in accordance with an agreement entered into under section 26 of the <i>Public Service Act 1999</i> that is the same or in the same classification group as they held in the losing agency. | |
| 3.3 | rule 9 <i>Public Service Classification Rules 2000</i> | Allocate an approved classification to each group of duties to be performed by APS employees in the Department of Defence. | |
| 3.4 | rule 10 <i>Public Service Classification Rules 2000</i> | Issue work level standards for each classification, other than an APS classification, Executive Level classification or SES classification, describing the work value of the group of duties to be performed in the Department of Defence at that classification. | |
| 3.5 | rule 11 <i>Public Service Classification Rules 2000</i> | Allocate an operational classification from column 3 of Schedule 2 of the <i>Public Service Classification Rules 2000</i> that relates to the training classification of an employee who satisfactorily finishes each training requirement for the training classification. | |

| Item | Source of power or function | Description of power or function | Directions |
|------------------------------------------------------------------------|-----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <i>Australian Public Service Commissioner's Directions 2016</i> | | | |
| 4.1 | subsections 20(1) <i>Australian Public Service Commissioner's Directions 2016</i> | Approve a shorter period for the closing date of a vacancy notified, if satisfied that there are special circumstances to do so. | |
| 4.2 | subsection 20(3) <i>Australian Public Service Commissioner's Directions 2016</i> | Decide that a non-SES vacancy, other than an APS 1 classification or training classification, is only open to APS employees for reasons of cost or operational efficiency. | |
| 4.3 | subsection 29(1) <i>Australian Public Service Commissioner's Directions 2016</i> | Request the Australian Public Service Commissioner to authorise the promotion of an ongoing APS employee where the employee was formerly appointed to a statutory office. | |
| 4.4 | section 36 <i>Australian Public Service Commissioner's Directions 2016</i> | Agree with an ongoing APS employee (or ongoing Parliamentary Service employee) the date of effect of a promotion decision. Note: Subsection 37(4) of the <i>Australian Public Service Commissioner's Directions 2016</i> places a restriction on the exercise of this power. | |
| 4.5 | section 37 <i>Australian Public Service Commissioner's Directions 2016</i> | Make decisions or receive notices as the 'original Agency Head' for the purpose of subsections 37 (2) and (3) of the <i>Australian Public Service Commissioner's Directions 2016</i> in relation to the movement of an employee <i>out</i> of the Department of Defence to another APS Agency. Note: These activities could include: (a) Agree the date of effect of an ongoing move out of the Department of Defence. (b) Receive a notice of an agreement. (c) Agree to the date of effect of a temporary move out of the Department of Defence. | |
| 4.6 | section 37(4) <i>Australian Public Service Commissioner's Directions 2016</i> | <i>In relation to an APS employee outside of the Department of Defence</i> , agree that an employee can move to the Department of Defence in accordance with an agreement entered into under section 26 of the <i>Public Service Act 1999</i> between the employee and the employee's Agency Head before the employee's suspected breach of the Code of Conduct matter has been resolved. | |
| 4.7 | section 37(4) <i>Australian Public Service Commissioner's Directions 2016</i> | <i>In relation to an APS Employee in the Department of Defence</i> , agree that an employee can move to another Agency in accordance with an agreement entered into under section 26 of the <i>Public Service Act 1999</i> between the employee and the Agency Head before the employee's suspected breach of the Code of Conduct matter has been resolved. | |

| Item | Source of power or function | Description of power or function | Directions |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | | | |
| 5.1 | paragraph 12(3)(b) <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Determine that a period of absence without pay is included as service for the purpose of granting long service leave. | |
| 5.2 | subsections 12(7) and 12(8) <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Be satisfied that a break in service does not break continuity of service for long service leave purposes. Note: The period of absence is not qualifying service for the purpose of long service leave. | |
| 5.3 | subsections 16 (2) and 17 (1) <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Grant long service leave on full salary. | |
| 5.4 | Subsection 16 (3) <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Grant long service leave on half salary. | |
| 5.5 | subsections 16(4) and 17(2) <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Authorise payment instead of long service leave to an employee who ceases to be an employee otherwise than by death. | |
| 5.6 | subsections 16(7) and 17(5) <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Authorise payment to a dependant or dependants on the death of an employee equal to the amount that would have been payable to the employee. | |
| 5.7 | paragraphs 19(2)(b) <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Determine the period of long service leave the employee would have been granted in respect of a period of employment if the employee has been granted long service leave on full salary. Note: Certain conditions must exist before this power can be exercised. | |
| 5.8 | paragraphs 19(2)(b) <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Determine a period of long service leave in relation to an employee's full-time or part-time service that is equal to the period of the employee's period employment on respect of which the payment represented full salary. Note: Certain conditions must exist before this power can be exercised. | |

| Item | Source of power or function | Description of power or function | Directions |
|------|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 5.9 | section 23 <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | Direct that the death of an employee is presumed to have occurred on a specific date. | |
| 5.10 | section 23 <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | If no payment has been made under sections 16(7) or 17(5), authorise a payment of an amount equal to what would have been paid to the employee's dependants to the employee's personal legal representative. | |
| 5.11 | section 23 <i>Long Service Leave (Commonwealth Employees) Act 1976</i> | If the employee is under a legal disability, authorise the payment of the amount that would have been paid to the employee to be paid to the trustee or trustees of the employee. | |

| Item | Source of power or function | Description of power or function | Directions |
|-----------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <i>Maternity Leave (Commonwealth Employees) Act 1973</i> | | | |
| 6.1 | section 3 <i>Maternity Leave (Commonwealth Employees) Act 1973</i> | Act as a 'leave officer' for the purpose of the <i>Maternity Leave (Commonwealth Employees) Act 1973</i> . | |
| 6.2 | subsection 6(4C) <i>Maternity Leave (Commonwealth Employees) Act 1973</i> | Determine if an unauthorised absence immediately before the start of the employee's required period of absence has occurred in extenuating circumstances, for the purpose of permitting the <i>Maternity Leave (Commonwealth Employees) Act 1973</i> to apply to the employee. | |
| 6.3 | subsection 6(4F) <i>Maternity Leave (Commonwealth Employees) Act 1973</i> | Determine that a leave officer may grant an APS employee paid maternity leave during a period that, despite her pregnancy, would have been unpaid leave if the APS employee had been granted leave without pay for a period exceeding 6 weeks and became pregnant before or after that leave commenced. | |
| 6.4 | subsections 7A(4-6) <i>Maternity Leave (Commonwealth Employees) Act 1973</i> | Review a decision of a leave officer refusing permission for an employee to resume duty from maternity leave. | |

Schedule 2 Authorisations for section 7 of this Instrument

(section 7)

| Item | Target of authorisation | Description of authorisation | Authorised persons |
|------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1 | subsection 15(3) <i>Public Service Act 1999</i> | Determine whether an employee has breached the Code of Conduct in accordance with the procedures. | <p>For decisions relating to employees in any part of the Department of Defence</p> <p>Associate Secretary of the Department of Defence Deputy Secretary Defence People First Assistant Secretary People Policy and Culture Assistant Secretary People Policy and Employment Conditions Director APS Workplace Relations Deputy Director APS Workplace Relations First Assistant Secretary People Services Assistant Secretary HR Services Director Conduct and Performance Assistant Director Conduct and Performance</p> <p>For any decisions regarding Senior Executive Service employees only</p> <p>Phillip James Prior</p> <p>For decisions about employees in the Strategic Policy and Intelligence Group</p> <p>Deputy Secretary Strategic Policy and Intelligence</p> |
| 1.2 | subsection 30(1) <i>Public Service Act 1999</i> | <p>Accept a written notice of intention to retire from an APS employee who has reached retirement age.</p> <p>Note 1: An APS employee who has reached the minimum retiring age of 55 is entitled to retire.</p> <p>Note 2: The delegate must pass the notice of retirement to the Personnel Administration Centre.</p> | <p>Associate Secretary of the Department of Defence Deputy Secretary Defence People First Assistant Secretary People Policy and Culture Assistant Secretary People Policy and Employment Conditions</p> <p>A person at the following levels who has supervisory or managerial responsibility for the employee intending to retire:</p> <ul style="list-style-type: none"> • APS 6 (E) and above • Major (E) and above |