

- Can a merit list be extended or used after expiry?

*If the merit pool has expired then it would not be consistent with the merit principles to make offers to candidates in that pool. Unless there is evidence of a written decision of an employment decision before the expiry of the pool, we are of the view that it would not be appropriate to make offers utilising that pool.*

*A suitable candidate may be engaged after expiry so long as there is evidence of the delegate having made a written decision to engage that person before the expiration of the Merit Pool (within 12 months of the date the vacancy was notified in the Gazette). If a written decision to engage the person was made before this time then they will be able to engage them as an employee.*

*The exact point when a decision is made will depend on what is recorded in writing. What needs to be recorded is a conclusion that a particular person is to be engaged or promoted. Such a conclusion can be recorded before the person indicates their acceptance of an offer of employment.*

- Can an agency use a non-APS agency merit list?

*The intelligence agencies (ASIO, ASIS, ASD) have provisions in their legislation allowing for employees to move from those agencies to the APS 'as if' they were moving under section 26 of the Public Service Act; however, those provisions do not affect the interpretation of section 9 of the Directions. Intelligence agency employees can move at level without a merit process, and an APS agency may use a merit list to identify a suitable candidate for such a move, but the intelligence agency may refuse a request for access to the list.*

*Section 31 of the Directions allows ongoing Parliamentary Service employees to be engaged as APS employees without a merit process, as long as it is at level. This also does not affect the interpretation of section 9, so it does not allow the use of a Parliamentary Service merit list to engage or promote a person in the APS. Again, an APS agency may seek to use a Parliamentary list to identify a candidate to engage at level.*

- Can a graduate merit list be used to fill non-graduate positions?

*Whether a merit list can be used to fill jobs in other agencies will depend on the criteria at section 9 of the Australian Public Service Commissioner's Directions 2016 being satisfied.*

*The main concern would be how the 'graduate' vacancies were notified, if for instance the positions were notified as Graduate vacancies with the intent being that the successful applicants be engaged at the 'Graduate APS' training classification as set out in Schedule 2 of the Classification Rules, then the merit pool or list could not be used to engage at a substantive APS classification in Schedule 1 as it would not satisfy section 9(b) of the Directions, as it would not be at the same classification and arguably it would not comprise similar duties.*

*If, however, the vacancy was notified at a substantive classification or in a substantive broadband it would be at the discretion of the agency to determine if the criteria at section 9 of the Directions are satisfied.*

- What is a 'similar location'?

*A 'similar location' is not defined and is largely at the discretion of the decision maker/delegate. However, we would advise agencies to consider whether relocation would be required to undertake the job if it were to be filled in the different locations. Importantly, you should consider whether advertising the vacancy as available in the different locations would attract a different field of*

*applicants and the effect this would have on any resulting comparative assessment required by the principles of merit.*

- Can an agency select lower-ranked candidates before higher-ranked ones?

*If it's a ranked merit list, the list must be utilised in that order only.*

*If it is a merit pool where candidates are grouped, the agency could select anyone in the highest category pool first. In this second instance, higher categories must be exhausted before moving to the next (i.e. you must exhaust a 'highly suitable' pool before moving to the 'suitable' pool).*

- Who can be on a selection panel?

*For non-SES selection processes there are no requirements around the composition of the selection committee.*

*If the agency head (or delegate) is confident that the chosen committee members will select the best candidate on the basis of merit, that will suffice. If committee members are not APS employees, they need to 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.*

*For SES selection panels, the Commissioner or his representative must be a full participant in the process. For a person to act as the Commissioner's representative they must meet the following criteria:*

- *be an APS employee*
- *be from an agency outside the recruiting agency's portfolio*
- *be a substantive classification above the vacancy being filled, and*
- *contribute to the gender balance of the panel.*

*A person who does not meet those criteria may act as the representative if the Commissioner approves.*