

Conditions of engagement

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General principles

Agencies should develop policies on conditions of engagement consistent with the legislative framework and to meet individual agency business needs.

Conditions imposed as a condition of engagement should be relevant to the duties an employee will be expected to perform or the operating environment of the agency. Imposing a condition of engagement that is not related to the requirements of a job may be inconsistent with the APS [Values](#) and [Employment Principles](#) and—in some cases—anti-discrimination laws. Potential employees must be notified of the conditions that will apply to their engagement.

It is good practice to include conditions in the relevant job advertisement and other information relating to the selection process.

Where possible, an agency should have evidence that a condition of engagement has been met *before* an offer of engagement is made.

- Where evidence that a condition has been met has not been provided before engagement, an agency may decide to employ the person, subject to the evidence being provided.
- Where a condition is not met before engagement, an agency may decide to employ the person, subject to their meeting the condition.

It is good practice for an agency's letter of offer to make clear the conditions that apply to the engagement, including:

- details of each condition and the evidence required
- a timeframe by which each condition must be met
- that employment can be ended by the agency if each condition is not met within the specified timeframe.

While it may seem impractical to impose conditions where an engagement is for a short period of time, agencies should be mindful that periods of employment can be extended in certain circumstances, and that a condition of engagement can only be imposed *at the time of engagement*.

Any condition of engagement is independent of any other condition. An employee's engagement will continue to be conditional until each separate condition attached to that engagement has been met.

The operation of a condition of engagement may affect—or be affected by—industrial instruments setting terms and conditions of employment. Any industrial instrument negotiated with an employee might note any conditions of engagement that apply.

The handling of personal information in relation to a condition of engagement must be in accordance with the *Privacy Act 1998*. More information is available from the [Office of the Australian Information Commissioner \(https://www.oaic.gov.au/privacy-law/privacy-act/\)](https://www.oaic.gov.au/privacy-law/privacy-act/).

Assignment of other duties within an agency

A condition of engagement will continue to apply if there is a change of duties, unless the agency chooses to waive the condition because it is no longer relevant to the work being performed. Once a condition is waived, it cannot be imposed again as a condition of

engagement and employment cannot be ended under 29(3)(f) of the PS Act if the condition is not met.

Movement to another agency

Where an employee moves to another APS agency, the gaining agency may decide to waive a condition of engagement—for example—in circumstances where the condition is not relevant to the duties the employee will be expected to perform.

Alternatively, a condition of engagement may continue to apply.

- Whether a condition of engagement can continue to apply when an employee moves to another agency depends upon the nature of the condition and how it was originally framed. For example, whether it related to the performance of specific duties, or whether it reflects a more general requirement such as the need for Australian citizenship.
- Where a condition continues to apply, a person's employment may be ended by the new agency if the condition is not met within the specified timeframe, under subsection 29(3)(f) of the PS Act.

Where a condition of engagement is to continue, the gaining agency is responsible for:

- confirming whether any condition of engagement applies (i.e. the condition has not been met)
- making it clear to the employee—for example in the written agreement of transfer—that:
 - the condition is continuing
 - employment can be ended by the new agency if the condition is not met within the specified timeframe.

A condition of engagement cannot be imposed by the gaining agency if it was not initially imposed by the agency that made the engagement.

Probation

[More information on probation \(/node/597\)](/node/597).

Citizenship

[More information on citizenship \(/node/599\).](#)

Formal qualifications

A person may be required to hold formal qualifications as a condition of engagement. Where possible, evidence of qualifications should be provided before an offer of engagement is made.

An agency may decide to offer engagement subject to the person providing evidence of a qualification within a specified period. This may be in circumstances where—for example—the agency engages an undergraduate who has satisfactorily completed all the requirements of a course and is waiting for the degree to be conferred.

Security clearances

A person may be required to obtain a security clearance as a condition of engagement. An agency head can determine what level of security clearance is required. The level of security clearance should be consistent with the *[Australian Government Protective Security Policy Framework](http://www.protectivesecurity.gov.au/Pages/default.aspx)* (<http://www.protectivesecurity.gov.au/Pages/default.aspx>).

Where possible, a security clearance should be completed *before* an offer of engagement is made. However, an agency may decide to engage a person subject to the person obtaining the necessary clearance within a specified period.

Security clearances and merit

Potential candidates should not be excluded from applying for a vacancy in the APS on the basis that they do not hold a security clearance.

The APS Employment Principles provide that decisions relating to engagement and promotion in the APS are based on merit. One element of merit is that all eligible members of the community are given reasonable opportunity to apply for a vacancy.

A member of the community is unable to obtain a security clearance unless he or she is likely to be engaged in a role where a clearance is required. He or she cannot reasonably be expected to hold a security clearance before being selected for such a role.

Agencies and their contracted employment service providers should not exclude job applicants who do not hold a current security clearance, where such applicants are willing to undergo a clearance process.

Recruitment and selection processes should not:

- exclude potential candidates on the basis that they do not hold a security clearance—or imply that this is the case
- make holding a security clearance at the time of application a real or implied advantage.

Also refer to Section 11.5 of the [Personnel security guidelines](https://www.protectivesecurity.gov.au/personnelsecurity/Pages/Agencypersonnelsecurityresponsibilitiesguidelines.aspx) (<https://www.protectivesecurity.gov.au/personnelsecurity/Pages/Agencypersonnelsecurityresponsibilitiesguidelines.aspx>), part of the *Australian Government Protective Security Policy Framework* (<http://www.protectivesecurity.gov.au/Pages/default.aspx>).

Character checks

A person may be required to satisfy character checks or employment screening as a condition of engagement.

Character checks may be required to confirm whether a person is suitable to be engaged for a particular set of duties or in a particular agency. For example, they may be relevant where an employee will be responsible for handling public money, will have access to sensitive information or will hold a position of trust, including working with vulnerable people.

Where possible, a character check or employment screening should be completed before an offer of engagement is made. However, an agency may decide to engage a person subject to the person satisfying the necessary check within a specified timeframe.

An agency can determine what checks are appropriate. For example, checks can be made with the police, with professional licensing or registration boards, and with previous APS or other employers. Checks may be used to determine—for example—whether:

- a person has a criminal conviction or criminal charges that are pending
- an inquiry by a professional licensing or registration body is pending
- there have been any findings that the employee breached the APS Code of Conduct
- a misconduct investigation was incomplete when the person ceased employment.

Where possible, checks should be completed **before** an offer of engagement is made. However, an agency may decide to engage a person subject to the person satisfying the checks within a specified period.

Also refer to Section 7 of the Personnel security guidelines, 'Agency employment screening' (<https://www.protectivesecurity.gov.au/personnelsecurity/Pages/Agencypersonnelsecurityresponsibilitiesguidelines.aspx>) part of the Australian Government Protective Security Policy Framework (<http://www.protectivesecurity.gov.au/Pages/default.aspx>).

Criminal convictions

Refusing engagement on the basis of a criminal record might present a basis for a complaint under the Australian Human Rights Commission Act 1986 (<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/13B56413B09E6BA0CA25760700273BB0?OpenDocument&mostrecent=1>). More information is available from the Australian Human Rights Commission (<https://www.humanrights.gov.au/quick-guide/12003>).

Where there are reasonable concerns that a conviction or charge makes a person unsuitable to be employed, agencies should seek legal advice.

Previous breach of the APS Code of Conduct

When considering whether previous action in relation to the APS Code of Conduct ([/node/110](#)), affects a person's suitability for engagement, the following factors should be considered:

- the nature of the breach (or suspected breach)
- the sanction imposed
- how long ago the breach or suspected breach occurred
- the nature of the duties being performed at the time
- the duties of the current employment opportunity
- whether this was a one-off action or part of a pattern of behaviour.

Providing accurate information

An employee may be found to have breached the [APS Code of Conduct \(/node/110\)](#) if they provide false or misleading information or fail to disclose relevant information in connection with their engagement in the APS (subsection 15(2A) of the PS Act).

The [Criminal Code Act 1995 \(https://www.legislation.gov.au/Series/C2004A04868\)](https://www.legislation.gov.au/Series/C2004A04868) creates offences relating to the provision of false information or documents.

Health clearances

A person may be required to satisfy certain requirements in relation to health and fitness for duty as a condition of engagement.

Fitness for duty

An agency can determine what evidence is required to assess whether a person is fit for duty. For example, a prospective employee may be asked to

- provide a declaration of their health status, including disclosure of pre-existing medical conditions
- undertake a medical examination
- undergo an expert medical assessment (such as eyesight testing).

An agency can also require an on-the-job assessment of whether the employee can perform the duties of the role.

Decisions in relation to the suitability or fitness of a person to perform a particular set of duties must take account of:

- the [APS Values \(/node/95\)](#) and [Employment Principles \(/node/465\)](#), including that:
 - decisions relating to engagement are based on merit
 - the APS workplace is free from discrimination
- other employment legislation, including the [Disability Discrimination Act 1992](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/02E50FC08E783ED7CA257609000288E1?OpenDocument&mostrecent=1). (<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/current/bytitle/02E50FC08E783ED7CA257609000288E1?OpenDocument&mostrecent=1>) It is unlawful for an employer to discriminate against an employee or prospective employee on the grounds of disability.

Health assessment

A health assessment may be required to:

- satisfy the agency that the employee is fit for duty
- assist the agency to meet its duty of care obligations as an employer, including
 - identifying measures to avoid aggravating an existing condition or injury
 - applying any reasonable adjustments that may be required.

Where a health assessment is required as a condition of engagement, where possible the assessment should be completed *before* an offer of engagement is made.

However, an agency may decide to engage a person subject to the person undergoing the assessment—and/or meeting the fitness for duty requirement—within a specified timeframe.

Legislation

Public Service Act 1999

Subsections 22(6)

An agency head may impose conditions on the engagement of an APS employee. These conditions must be notified to the employee.

Conditions may include—but are not limited to—matters dealing with

- probation
- citizenship
- formal qualifications
- security and character clearances
- health clearances.

Subsection 29(3)(f)

An agency head may terminate the employment of an APS employee for failing to meet a condition of engagement imposed under subsection 22(6) of the PS Act.

Additional note

Subsection 22(6) of the PS Act can only be used to impose conditions at the time a person is being engaged in the APS. This subsection cannot be used to impose or vary conditions of employment after engagement.

If a condition is not imposed at the time of engagement, then subsection 29(3)(f) of the PS Act cannot be used by an agency to end employment if the condition is not met.
