



# Parliamentary Service Commissioner's SES Guidelines 2009

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I, LYNELLE JANN BRIGGS, Parliamentary Service Commissioner,  
issue these Guidelines under section 36 of the *Parliamentary Service Act*  
1999.

Date 24<sup>th</sup> February 2009.

  
Parliamentary Service Commissioner

Registered on the Federal Register of Legislative Instruments on 5 March 2009;  
effective from 6 March 2009.



# **Parliamentary Service Commissioner's SES Guidelines 2009**

made under the

*Parliamentary Service Act 1999*

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# Parliamentary Service Commissioner's SES Guidelines 2009

## 1 Name of Guidelines

These Guidelines are the Parliamentary Service Commissioner's SES Guidelines 2009.

## 2 Commencement

These Guidelines commence on the day after they are registered on the Federal Register of Legislative Instruments.

## 3 Repeal

The *Parliamentary Service Commissioner's SES Guidelines* made on 9 June 2000 under Section 36 of the *Parliamentary Service Act 1999* are repealed.

## 4 Definitions

Terms used in these Guidelines have the meaning given to them in the *Parliamentary Service Act 1999*.

## 5 SES employment matters — general

- (1) A Secretary must exercise his or her employer powers in relation to the SES in a way that seeks to maintain and develop the leadership role and capabilities of the SES.
- (2) A Secretary must put in place measures:
  - (a) to ensure that SES employees are effectively deployed in the Department; and
  - (b) to monitor the skills required at the SES level in the Department.

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**6 Minimum requirements in relation to decisions made about SES employees**

- (1) This clause applies to any of the following decisions made by a Secretary:
  - (a) promoting or engaging a person as an SES employee;
  - (b) in relation to the mobility of an SES employee;
  - (c) redeploying an SES employee with the employee's agreement;
  - (d) assigning to an SES employee duties at a lower classification (whether or not in the SES) without the employee's agreement;
  - (e) giving a notice to an SES employee under section 37 of the Act;
  - (f) terminating the employment of an SES employee under section 29 of the Act.
- (2) The Secretary must ensure that the decision meets the minimum requirements.

*Note* Clauses 7 to 12 set out the minimum requirements.

**7 Minimum requirements — promotion and engagement**

- (1) A decision promoting or engaging a person as an SES employee meets the minimum requirements if:
  - (a) the requirements of provisions of Determinations made by the Presiding Officers under section 71 of the Act relating to merit are satisfied in relation to the promotion or engagement; and
  - (b) unless the Commissioner decides otherwise, the opportunity to apply for the relevant employment, or similar employment, in the Department has been advertised externally:
    - (i) during the period of 12 months before the decision to promote or engage the person is made; and
    - (ii) as open to all eligible members of the community; and

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- (c) a representative of the Commissioner is a full participant in the selection process; and
  - (d) the representative has certified that the selection process complied with the Act and these Guidelines; and
  - (e) the Commissioner has endorsed the representative's certification of the process.
- (2) A decision engaging a person as an SES employee also meets the minimum requirements if:
- (a) the engagement is for a specified term; and
  - (b) in the case of a person who is an ongoing Parliamentary Service employee:
    - (i) the person has resigned, or is to resign, from Parliamentary Service employment for the sole purpose of taking up the engagement; and
    - (ii) the person is to perform duties at the same classification as the person's current classification.
- (3) A decision engaging a person as an SES employee also meets the minimum requirements if:
- (a) the engagement of the SES employee is for a specified term of no more than 12 months; and
  - (b) the requirements of Division 3.5 of Parliamentary Service Determination 2003/2 have been satisfied.

## **8 Minimum requirements — mobility**

A decision in relation to the mobility of an SES employee, either in a Department or to another Department, meets the minimum requirements if:

- (a) in the case of an employee who is to be moved in the Department:
  - (i) the Secretary has consulted with the employee about possible options for mobility; and
  - (ii) the Secretary informs the Commissioner of the movement; and

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- (b) in the case of an employee who is to be moved to another Department:
    - (i) the Secretary of the Department from which the employee is to be moved has been consulted about, and agrees to, the movement; and
    - (ii) the Secretary informs the Commissioner of the movement.

**9 Minimum requirements — redeployment**

A decision redeploying an SES employee with the employee's agreement meets the minimum requirements if the employee has been given information about available options for reassignment, including the assignment of duties at a lower classification.

**10 Minimum requirements — involuntary assignment at lower classification**

- (1) A decision assigning to an SES employee duties at a lower classification without the employee's agreement meets the minimum requirements if an assessment has been made, having due regard to procedural fairness, that the assignment is justified on the basis of one or more of the circumstances set out in subsection 23 (4) of the Act.

**Note about reduction of an employee's classification**

Subsection 23 (4) of the Act provides that a Secretary cannot reduce the classification of a Parliamentary Service employee without the employee's consent, except in the following circumstances:

- (a) as a sanction under section 15 of the Act;
- (b) on the ground that the employee is excess to the requirements of the Department at the higher classification;
- (c) on the ground that the employee lacks, or has lost, an essential qualification for performing duties at the higher classification;

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| <ul style="list-style-type: none"><li>(d) on the ground of non-performance, or unsatisfactory performance, of duties at the higher classification;</li><li>(e) on the ground that the employee is unable to perform duties at the higher classification because of physical or mental incapacity;</li><li>(f) in other circumstances prescribed by Determinations made under the Act by the Presiding Officers.</li></ul> |
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- (2) A decision assigning to an SES employee duties at a lower classification without the employee's agreement also meets the minimum requirements if:
  - (a) the duties are to be assigned because of a change in the Department's operational needs; and
  - (b) reasonable steps have been taken to identify duties in the Department, at the employee's current classification, which could be assigned to the employee; and
  - (c) an assessment has been made, having due regard to procedural fairness, that the employee is not suitable to be assigned any of the duties identified.

## **11 Minimum requirements — retirement**

A decision to give a notice to an SES employee under section 37 of the Act meets the minimum requirements if:

- (a) the employee was engaged as an ongoing SES employee; and
- (b) the employee has been given information about available options for reassignment, including the assignment of duties at a lower classification; and
- (c) the employee has been given access to independent financial advice and career counselling; and
- (d) the Commissioner has agreed to the amount to be paid to the employee if the employee retires within the period specified in the notice.

*Note* A notice given to an SES employee under subsection 37 (1) of the Act must be in writing and must state that the employee will become entitled to a payment of a specified amount if the employee retires within a period specified in the notice.

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## 12 Minimum requirements — termination of employment

A decision terminating the employment of an SES employee under section 29 of the Act meets the minimum requirements if:

- (a) an assessment has been made, having due regard to procedural fairness, that the termination is justified on the basis of one or more of the grounds mentioned in subsection 29 (3) of the Act; and
- (b) the employee has been given full information about other employment in the Department that the Secretary, having regard to the assessment, considered could be made available to the employee.

*Note 1* A notice terminating the employment of a Parliamentary Service employee under s 29 of the Act must be in writing and must specify the ground or grounds that are relied on for the termination.

*Note 2* Under s 38 of the Act, a Secretary cannot terminate the employment of an SES employee unless the Commissioner has issued a certificate stating that the requirements of the Commissioner's Guidelines have been satisfied in respect of the proposed termination and that the Commissioner is of the opinion that the termination is in the public interest.

