

Appointment to a higher classification level FAQs

The following questions relate to appointing a public servant to a higher classification level, per [Appointing a public service employee to a higher classification level directive](#).

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What priority should be given to the different conversion reviews when they are undertaken at the same time? Can we use a closed merit process in these circumstances?

There is no specified priority for considering reviews for multiple fixed term temporary or casual employees and/or requests for appointment to a higher classification level. Each review must be considered individually and in accordance with the criteria and timeframes that apply under the relevant directive and provisions of the *Public Service Act 2008* (PS Act).

The directives do not allow for an agency to use a closed merit process where there are multiple employees eligible for review.

It is important to note that conversion of a fixed term temporary or casual employee to permanent employment is not dependent on the existence of a substantive vacancy.

Having regard to the merit principle, how is an employee's eligibility for appointment to the higher classification level determined? Does there need to have been a selection process?

The phrase 'having regard to the merit principle' in section 149C of the *Public Service Act 2008* (PS Act) does not mean that the employee must have been through (or need to go through) an open recruitment and selection (R&S) process. When considering merit, the decision maker should reflect on the employee's merit in the context that they have been acting in the higher duties position for at least 12 months. The R&S directive does not apply to the appointment of an employee to a higher classification level made under section 149C.

To determine whether or not the employee is eligible for appointment to the position at the higher classification level, having regard to the merit principle, refer to section 28 of the PS Act:

- the extent to which the person has abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the duties in question
- if relevant:
 - the way in which the person carried out any previous employment or occupational duties; and
 - the extent to which the person has potential for development.

When determining eligibility, the directive relating to appointment at a higher classification level requires the decision maker to also consider whether the employee has any performance concerns that have been put to the employee and documented and remain unresolved.

Does the Supporting employees affected by workplace change directive apply when appointing an employee to the higher classification level under section 149C?



Depending on the specific circumstances, agencies will need to consider employees registered under the Supporting employees affected by workplace change (SEAWC) directive prior to appointing an employee to a position in the higher classification level.

The requirement to clear a role through SEAWC is vacancy driven. A decision under section 149C of the PS Act does not specifically require a vacancy as a pre-condition to appointment. However, if a vacancy exists, the requirement to consider employees affected by workplace change may be a genuine operational requirement of the agency.

The rule of thumb is if there is a vacancy an agency would have otherwise advertised, the agency must clear it through SEAWC – where it is a role identified as requiring SEAWC clearance – prior to making an appointment to the position.

There will be limited circumstances, where there is a vacancy and the role would not be required to be cleared through SEAWC. For example, where placing an affected (displaced) employee would create another displaced employee. An example of this scenario would be where an employee performing higher duties is eligible for appointment to the higher classification level, and their substantive position no longer exists as it was identified as being surplus to agency requirements.

What is the same role? Does it mean the same position number? Can it be the same role at different classification levels?

‘Same role’ is not defined in the directive relating to appointing a public service employee to a position at a higher classification level, and it is intended that the ordinary meaning of the term applies.

Determining an employee’s eligibility to request appointment to the position at the higher classification level based only on their position number should be treated with caution. For example, an employee may have performed the same role but have been allocated against different position numbers.


However, in conducting a review, the department is only required to determine whether a person should be permanently appointed to the position held at the time of requesting the review as identified by the title and classification and the position number. There is no requirement or expectation for an agency to identify similar positions to the role the employee is currently engaged in.

What does ‘continuous period’ mean? What is an authorised leave or absence?

‘Continuous period’ is defined in the directive relating to appointment to a higher classification level as ‘a period of unbroken engagement, including periods of authorised leave or absence, at the higher classification level in the same role, in the same agency.’

Authorised leave includes any period of leave that has been approved by the agency, including leave without pay for any period, where it is intended that the employee will return to the higher duties role following the period of leave.





Periods of approved leave (including parental leave and leave without pay), or periods of absence, (including the performance of alternative higher duties), where it was always intended that the employee would return to the higher duties role, may be considered an authorised leave or absence and not break the continuous period.

Examples:

1. A substantive AO3 employee is appointed to perform higher duties for a period of 13 months at the AO5 classification level. At 10 months, the employee is appointed to perform higher duties at AO6 for 3 weeks. At the end of the 3-week period, the employee returns to their AO5 higher duties for the remainder of the 13-month period.

The 3-week period may be considered an authorised absence because it was always intended for the employee to return to the higher duties role following the absence.

2. A substantive AO7 employee is appointed to perform higher duties in an AO8 role (role 1) for a period of 6 months. At 6 months, the employee is appointed to perform another AO8 role (role 2) for a period of 3 months. At 9 months, a new appointment is made to return to perform higher duties in role 1 for a period of 6 months.

The 3-month period in role 2 is not considered an 'authorised absence' for the purpose of the continuous period, as role 2 was not the same as and did not intersect role 1, rather there were 3 separate appointments.

3. A substantive PO4 employee is appointed to perform higher duties at PO5 for a period of 5 months. At 5 months, the employee's higher duties is extended for a further period of 5 months. At 10 months, the employee is appointed to perform higher duties in a different PO5 role.

The employee has not been employed for a continuous period as they have not performed duties in the same role.

Note that chief executives also have discretion to consider direct appointment under the directive relating to recruitment and selection where an employee has been performing at a higher classification level for extended periods.

Can an employee acting at the SO or SES level apply to be appointed to that higher classification level?

No. Section 149C of the PS Act states that it does not apply to an employee who is seconded to or acting in a position that is ordinarily held by a non-industrial instrument employee.

Senior officers (SO), senior executives (SES) and chief executives (CEO) are non-industrial instrument employees. This means that a public service employee who has been seconded to, or who is acting in, a position that is ordinarily held by a SO, SES or CEO is not eligible to request appointment to that higher classification level under section 149C of the PS Act or directive.



When is an employee eligible to appeal a decision not to appoint them to the role at the higher classification level?

A decision not to appoint an employee to a higher classification level can be appealed if the employee has been engaged at the same higher classification level for a continuous period of at least two years as per section 194(e)(iii) of the PS Act. This section of the PS Act does not reference the definition of continuous period as defined in the directive.

This means that to be eligible to appeal a decision not to appoint an employee to a higher classification level, an employee does not have to be continuously employed in the same role. Rather, the employee is to be continuously employed at the same higher classification level and in the same agency for at least two years.

Note that the requirement to request appointment at the higher classification level remains the same. The employee must have been seconded to or assuming the duties and responsibilities of the higher classification level in the same role, in the same agency for a continuous period of at least one year.

Can an agency undertake a SEAWC clearance at the same time as considering an employee's application for appointment to a higher classification level?

Yes. A SEAWC clearance can be undertaken for a role at the same time an assessment is being made on an application to appoint an employee to the role at a higher classification level.

How do SEAWC clearances interact with a review to appoint to the higher classification level?


When considering an appointment to a higher classification level under section 149C of the PS Act, a SEAWC clearance is only required when there is a permanent vacancy that may be filled by the appointment.

Prior to commencing a SEAWC clearance, the agency should determine whether there is a continuing need for someone to be employed in the role at the higher classification level on a permanent basis and there are no genuine operational requirements prohibiting the role from being filled at that time.

If it is determined a vacancy exists but is not to be filled because of the genuine operational requirements of the agency, a SEAWC clearance will not be required as the agency is not seeking to permanently fill the vacant position.

Where there is a permanent vacancy and a SEAWC clearance identifies an employee affected by workplace change as being suitable for the role, the appointment of the affected employee to the role is considered a genuine operational requirement of the agency. The appointment of an employee affected by workplace change to the role would support a decision not to approve an employee's request to be appointed to the higher classification role.





Does the term ‘having regard to the merit principle’ mean that the employee making the application must have been appointed to the role following an advertised recruitment process?

No. The term ‘having regard to the merit principle’ does not mean that an employee was appointed to the higher duties role following an advertised or comparative merit process. Rather, the term refers to whether the employee has merit for the role, having regard to the merit principle in the PS Act and the consideration of any performance concerns as outlined in clause 6.1 of the directive relating to appointing a public service employee to a higher classification level.

