

COMMISSIONER'S GUIDELINE

Special Measures Recruitment and Selection Plans

This Guideline provides information to assist in the understanding and implementation of special measures recruitment and selection plans. It should be read in conjunction with Employment Instruction Number 15 - Special Measures (EI15), but does not form part of the legislation.

Definition and Application of Special Measures under PSEMA

A special measure is a program, plan or arrangement designed to promote equality of opportunity. Special measures are a form of affirmative action in favour of persons from Equal Employment Opportunity (EEO) groups which have not yet achieved equality in employment, for example Aboriginal and Torres Strait Islanders (Aboriginal) or persons with a disability.

Section 38B(1) of the *Public Sector Employment and Management Act* (PSEMA) provides that the merit principle does not prevent the use of special measures programs, plans or arrangements in the NTPS; however, all plans must first be approved by the Commissioner for Public Employment (the Commissioner).

E15 sets out the requirements for the Commissioner's approval of all special measures programs, plans and arrangements, and specific conditions for special measures recruitment and selection.

Conditions for Approval of Special Measures Recruitment and Selection Plans

All special measures recruitment and selection plans are subject to the 5 conditions set out in paragraph 3.1(a) to (e) of EI15, which are discussed below to provide further information and to clarify the requirements under EI15:

3.1(a). Advertising Special Measures Vacancies:

The intention to fill a vacancy under a special measures plan must be clearly stated on the Job Description and in advertising, using, unless the Commissioner approves otherwise, the wording set out below:

- For Priority Consideration and Preference Plans: *Under an approved special measures recruitment plan, eligible ***Insert name of the EEO Group e.g. Aboriginal*** applicants will be given priority consideration and preference in selection for this vacancy if they meet all essential selection criteria and are suitable at the level of the position.*
- For Specifically Designated Positions: *Under an approved special measures recruitment plan, this position is specifically designated only for eligible ***Insert name of the EEO Group e.g. Aboriginal ***applicants who meet all essential selection criteria and are suitable at the level of the position.*

3.1(b). Successful Applicants Must Meet all Essential Selection Criteria:

It is an absolute requirement that anyone selected to the NTPS under a special measures recruitment and selection plan must meet all the essential selection criteria, and be suitable to perform the job at the level of the position. Strict adherence to this condition is crucial to the success of special measures recruitment and selection.

Note: To enable recruitment of persons with significant disability who could not, even with reasonable adjustment, meet the essential selection criteria for a standard NTPS vacancy, designated positions may be created with essential criteria specifically designed to promote employment opportunities for persons with disability.

3.1(c). Applicants Selected under a Special Measures Plan must Provide Proof of Eligibility for the Special Measure:

It is vital to the integrity of special measures plans that selected applicants are from the targeted EEO group. This is because special measures are intended to address inequality of employment opportunity and increase the diversity of the NTPS to ensure that it is more representative of the NT population it serves.

Special Measures Eligibility Tests and Proof Required for Aboriginal Applicants

All applicants applying under a special measures plan for Aboriginal applicants **must** provide the required proof of eligibility, ideally before being considered under the special measures plan, and definitely prior to commencing in employment.

The eligibility test for applicants applying under special measures for Aboriginal applicants is:

1. being Aboriginal **and**
2. identifying as Aboriginal and being accepted as Aboriginal in the community in which the applicant lives or formerly lived

The proof required to satisfy this test is:

1. Certificate of Aboriginality (COA) from a recognised Aboriginal organisation (or other satisfactory proof of Aboriginality as approved by OCPE), **and**
2. Statutory Declaration available on the OCPE website

3.1(d). Procedure When There is more than One Suitable Special Measures Applicant:

If there are more suitable applicants from the special measures target group than there are advertised vacancies, then the suitable applicants in the special measures group must be assessed against each other to select the one most suitable for the position.

For special measures for persons with disability, “most suitable” may mean the applicant who is most in need of the benefit afforded by the special measure.

3.1(e). Review Procedures for Unsuitable Applicant Findings in Special Measures Selections:

The review procedure set out below applies to priority consideration and preference special measures selection plans for Aboriginal applicants, in situations where there are eligible special measures applicants but the selection panel finds none suitable. When this occurs the panel must not progress the selection process to consider or assess non-special measures applicants until the finding of unsuitability has been reviewed and approved by the Commissioner for Public Employment or his delegates.

The procedure for reviews of unsuitable findings is that, before notifying any applicant of the panel's initial view or moving on to assess non-special measures applicants, the unsuitable decision, including all information relating to it, must first be submitted to the Public Sector Appeals & Grievance Review unit (PSA&GR) for review. The review by PSA&GR will be completed within 5 working days of receipt, unless there are exceptional circumstances.

Following the review, the PSA&GR will either:

- approve the finding that no special measures applicant is suitable, and advise the agency that the selection can progress to assess non-special measures applicants; or
- if the finding of unsuitability is not approved, take steps as are reasonable, such as:
 - directing the panel to conduct further assessment of one or more applicants;
 - requiring a job description to be amended to comply with the Commissioner's Determination on JDs;
 - allowing the selection to proceed, subject to approval of the later selection decision to ensure the same standard has been applied to all applicants;

Exemptions from Special Measures: Agencies may apply on a case-by-case basis for exemptions from special measures, which the Commissioner may grant in appropriate circumstances where it would be fair and reasonable, for example, where the application of special measures would unfairly affect a long-term employee of outstanding merit or existing NTPS employees affected by a workplace restructure, or create an imbalance in the selection process or the relevant work area. Applications for exemptions should be made after advertising if necessary due to there being special measures applicants who appear likely to be found suitable.

Resources - Information about Special Measures Recruitment and Selection Plans

The Commissioner's Office has produced a number of resources which provide further information about special measures recruitment and selection, including:

- FAQ About Special Measures;
- Information Sheet for Special Measures Applicants;
- Statutory Declaration of Special Measures Eligibility;
- Selection Report for Findings of Unsuitability for Special Measures Applicants
- SOAFSA-SM (Selection Outcome Advice for All Applicants in a Special Measures Selection)
- Steps to Follow in Special Measures Selection

These templates and further information are available at: <https://ocpe.nt.gov.au/>