

PUBLIC ADMINISTRATION ACT 2004

DELEGATION OF SECRETARY'S FUNCTIONS, DUTIES AND POWERS

INSTRUMENT OF DELEGATION NO. 2021/D06

1. AUTHORITY

I, JENNY ATTA, Secretary to the Department of Education and Training, make this instrument of delegation under section 18 of the **Public Administration Act 2004**.

2. COMMENCEMENT

This instrument takes effect on the day it is made.

3. DEFINITIONS

In this Delegation:

- (a) words and phrases have the same meaning as in the Act unless otherwise stated;
- (b) **Act** means the **Public Administration Act 2004**;
- (c) **action** means a decision and includes refusal to take an action;
- (d) **delegate** means a person to whom a power, function or duty is delegated under clause 4(1) of this Delegation;
- (e) **delegated power** means a power delegated by the Secretary under clause 4(1);
- (f) **delegation** means this instrument of delegation including the Schedules to this instrument;
- (g) **Department** means the Department of Education and Training; and
- (h) **Secretary** means the Secretary to the Department.

4. DELEGATION

- (1) The Secretary delegates the powers and functions set out in columns 2 and 3 of Schedule 1 to a person occupying or acting in a position that is captured by the delegate level described in column 4 of Schedule 1.

- (2) Prior to the exercise of any power or function, the delegate must consider whether the matter –
- (i) is of such importance that it should be submitted to; or
 - (ii) possesses special features which should be considered by, a delegate at a higher level or the Secretary.
- (3) If the delegate considers, pursuant to subclause (2)(i) or (ii), that a matter should be considered by or submitted to the Secretary, the delegate must first refer the matter to the Executive Director, People Division.
- (4) The delegates must observe and comply with the limitations and conditions in clause 6 of this instrument and in column 4 of Schedule 1.
- (5) Any delegation involving the expenditure of funds is also subject to the delegate having the relevant financial delegation to approve that level of expenditure under the *Financial Management Act 1994*.

5. POSITION TITLE

A change in the position title of a delegate does not, in and of itself, affect the operation of this delegation in respect of the delegate.

6. GENERAL LIMITATIONS AND CONDITIONS

- (1) This delegation does not include the power to sub-delegate any of the delegated powers, functions or duties.
- (2) This delegation does not prevent the exercise, performance or discharge by the Secretary of a delegated power.
- (3) In any particular case, where notice is given to a delegate by the Secretary that the Secretary intends to exercise, perform or discharge a delegated power, the delegate must not commence, or must immediately cease, to exercise, discharge or perform the delegated power.
- (4) The delegate must:
- (a) act in a manner consistent with the general duties and functions of the Secretary to the Department under the Act and consistent with the objects and purposes of the Act;
 - (b) conform with any specific limitations imposed by the Secretary on the exercise of a delegated power or function, including those published on the Department's human resources website;
 - (c) not take any action inconsistent with:
 - i. the Act;
 - ii. any applicable Commonwealth legislation, including any applicable Federal Award or Enterprise Agreement;

- iii. any applicable Victorian legislation, including any regulations or standards made under the Act;
- (d) comply with the law on the exercise of delegated functions (in particular, with the rules of administrative law);
- (e) only exercise the delegation in respect of persons other than the delegate; and
- (f) except in the case of a Level 2 delegate, only exercise a delegated power for purposes that are directly related to the delegate's functions and duties within the Department.

7. REVOCATION

All previous instruments of delegation made by the Secretary that delegate any powers and functions are revoked to the extent that they delegate powers or functions delegated under clause 4(1) of this instrument, including Instrument of Delegation No. 2020/D07.

Dated this **26th** day of **April 2021**

JENNY ATTA
Secretary
Department of Education and Training

SCHEDULE 1

PUBLIC ADMINISTRATION ACT 2004

DELEGATION OF POWERS, FUNCTIONS AND DUTIES OF THE SECRETARY TO THE DEPARTMENT OF EDUCATION AND TRAINING

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POWERS AND FUNCTIONS

Source of authority/power	<i>Public Administration Act 2004, Part 3 – Public Service Employment</i>		
Holder of power/function	Secretary (Department of Education and Training)		
Authority type	Delegation		
Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.1	Division 4-Employees Section 20(1)-Employment & retirement	Create positions and determine classifications, or abolish a position.	Level 2
PS 1.2	Division 4-Employees Section 20(1)-Employment & retirement	Approve the reclassification of a position on vacancy.	Level 1 Level 2
PS 1.3	Division 4-Employees Section 20(1)-Employment & retirement	Approve movement between a value range within an employee's current classification following a job resizing review.	Level 1 Level 2 Level 3
PS 1.4	Division 4-Employees Section 20(1)-Employment & retirement	Approve the advertisement of a vacant position internal to the Public Service.	Level 1 Level 2 Level 3
PS 1.5	Division 4-Employees Section 20(1)-Employment & retirement	Approve the advertisement of a vacant position external to the public service.	Level 1 Level 2 Note: Requests to advertise vacancies externally must be endorsed by the Level 2 delegate.

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.6	Division 4-Employees Section 20(1)-Employment & retirement	Employ a person in an advertised position.	Level 1 Level 2 Level 3
PS 1.7	Division 4-Employees Section 20(1)-Employment & retirement	Approve the employment of fixed term employees for a period of six months or less without advertisement.	Level 1 Level 2 Note: Delegates must comply with the whole of government Job and Skills Exchange Recruitment policy.
PS 1.8	Division 4-Employees Section 20(1)-Employment & retirement	Approve employment of casual employees.	Level 1 Level 2 Level 3
PS 1.9	Division 4-Employees Section 20(1)-Employment & retirement	Transfer or promote an employee to an advertised position following a merit-based recruitment process.	Level 1 Level 2 Level 3 Note: Delegates must comply with any Public Sector Employment Principles and Standards employment standards issued by the Public Sector Standards Commissioner.
PS 1.10	Division 4-Employees Section 20(1)-Employment & retirement	Conduct pre-employment screening checks and determine whether a preferred applicant is suitable or unsuitable for employment, transfer or promotion.	Level 2 Level 7

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.11	Division 4-Employees Section 20(1)-Employment & retirement	Enter into secondment arrangements with other bodies.	Level 1 Level 2 Level 3
PS 1.12	Division 6-Transfer of employees Section 28(1)-Transfer directed by public service body Head or public entity	Transfer an employee to another public service body or to a public entity with the approval of the Head of the other public service body, or of the public entity concerned, on terms and conditions of employment that are no less favourable overall.	Level 1
PS 1.13	Division 6-Transfer of employees Section 28(1A)-Transfer directed by public service body Head or public entity	Approve the transfer of an employee of a public entity to the Department, if a public entity considers it appropriate to do so, on terms and conditions of employment that are no less favourable overall.	Level 1

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.14	Division 4-Employees Section 20(1)-Employment & retirement	Administratively transfer an employee within the Department.	<p>Level 1 Level 2 Level 3</p> <p>The administrative transfer of an employee requires the endorsement of the Level 2 delegate.</p> <p>An administrative transfer to a lower classified position cannot occur without the consent of the employee.</p> <p>Where an employee transfers to another Division within the Department:</p> <ul style="list-style-type: none"> • a Level 3 delegate from the receiving Division must approve the transfer; and • the Level 3 delegate in the Division from which the employee is being transferred must endorse the transfer. <p>Note: Delegates must comply with any Public Sector Employment Principles and Standards issued by the Victorian Public Sector Commissioner.</p>
PS 1.15	Division 4-Employees Section 20(1)-Employment & retirement	Unattach an employee from their position.	<p>Level 2</p> <p>Note: An employee must not be unattached on terms and conditions that are less favourable overall.</p>

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.16	Division 4-Employees Section 20(1)-Employment & retirement	Assign duties to employees consistent with their employment classification, skills and capabilities.	Level 1 Level 2 Level 3 Level 4
PS 1.17	Division 4-Employees Section 20(1)-Employment & retirement	Issue lawful instructions that must be observed by employees.	Level 1 Level 2 Level 3
PS 1.18	Division 4-Employees Section 20(1)-Employment & retirement	Suspend employees from duty with pay.	Level 1 Level 2
PS 1.19	Division 4-Employees Section 20(1)-Employment & retirement	Revoke the suspension of an employee from duty.	Level 1 Level 2
PS 1.20	Division 4-Employees Section 20(1)-Employment & retirement	Approve an employee's salary: <ul style="list-style-type: none"> • at the base of the applicable grade or value range or • up to 5% above the employee's current salary or the base of the applicable grade or value range. 	Level 1 Level 2 Level 3

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.21	Division 4-Employees Section 20(1)-Employment & retirement	<u>In exceptional circumstances</u> , approve an employee's salary: <ul style="list-style-type: none"> • more than 5% above the base of an applicable grade or value range • more than 5% above an employee's current salary 	Level 1 Note: an employee's salary cannot exceed the maximum salary of the classification level and value range of the applicable position.
PS 1.22	Division 4-Employees Section 20(1)-Employment & retirement	Assign higher duties to an employee for periods of five days or less.	Level 1 Level 2 Level 3 Level 4
PS 1.23	Division 4-Employees Section 20(1)-Employment & retirement	Assign higher duties to an employee for periods greater than five days and approve payment of a higher duties allowance: <ul style="list-style-type: none"> • at the base of the applicable grade or value range or • up to 5 % above the employee's current salary or the base of the applicable grade or value range. 	Level 1 Level 2 Level 3
PS 1.24	Division 4-Employees Section 20(1)-Employment & retirement	Approve payment of a higher duties allowance to an employee: <ul style="list-style-type: none"> • more than 5% above the base of an applicable grade or value range or • more than 5% above the employee's current salary. 	Level 1 Note: an employee's salary cannot exceed the maximum salary of the classification level and value range of the applicable position.

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.25	Division 4-Employees Section 20(1)-Employment & retirement	Pay a gratuity to an employee in exceptional circumstances: <ul style="list-style-type: none"> • in respect of definite special work that is demonstrably of a higher work value • in respect of definite special work that is in addition to normal duties; or • for attraction and retention purposes. 	Level 2 Note: The payment of a gratuity can only be paid for a period of up to 12 months.
PS 1.26	Division 4-Employees Section 20(1)-Employment & retirement	Authorise an employee to undertake shift work.	Level 1 Level 2 Level 3
PS 1.27	Division 4-Employees Section 20(1)-Employment & retirement	Direct an employee to stand-by duty.	Level 1 Level 2 Level 3
PS 1.28	Division 4-Employees Section 20(1)-Employment & retirement	Appoint an employee to perform first aid officer duties.	Level 1 Level 2 Level 3
PS 1.29	Division 4-Employees Section 20(1)-Employment & retirement	Approve the payment of an allowance for the permanent relocation of an employee's usual place of work.	Level 1 Level 2 Level 3

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.30	Division 4-Employees Section 20(1)-Employment & retirement	Determine that it is reasonable and necessary for an employee to move residence as a result of relocation from one work location to another arising from promotion or transfer as a result of an advertised vacancy or redeployment. Approve the reimbursement of expenses for the relocation.	Level 1 Level 2 Level 3 Note: The payment of allowances or reimbursement of expenses for relocation must be endorsed by the Level 2 delegate
PS 1.31	Division 4-Employees Section 20(1)-Employment & retirement	Approve the payment or reimbursement of personal expenses associated with work-related travel.	Level 1 Level 2 Level 3
PS 1.32	Division 4-Employees Section 20(1)-Employment & retirement	Pay allowances to employees, which are not otherwise specified in this instrument of delegation, that are specified under the <i>Victorian Public Service Agreement</i> and the <i>Nurses (Department of Education and Training) Agreement</i> .	Level 1 Level 2 Level 3
PS 1.33	Division 4-Employees Section 20(1)-Employment & retirement	Approve the payment of overtime rates or grant time in lieu of payment of overtime rates to eligible employees.	Level 1 Level 2 Level 3
PS 1.34	Division 4-Employees Section 20(1)-Employment & retirement	Approve the payment of salary progression or top of grade or value range payment.	Level 1 Level 2 Level 3

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.35	Division 4-Employees Section 20(1)-Employment & retirement	Approve all leave types specified under the <i>Victorian Public Service Enterprise Agreement</i> and the <i>Nurses (Department of Education and Training) Agreement</i> .	Level 1 Level 2 Level 3
PS 1.36	Division 4-Employees Section 20(1)-Employment & retirement	Authorise periods of leave of absence for employees relating to: <ul style="list-style-type: none"> • personal/sick leave with or without certificate • carer's leave • parental absence • jury service leave • blood donation leave • an infectious disease or dangerous medical condition. 	Level 4 Note: This power is also delegated to Level 1, Level 2 and Level 3 delegates pursuant to PS 1.35.
PS 1.37	Division 4-Employees Section 20(1)-Employment & retirement	Direct an employee to take a period or periods of annual leave where leave is in excess.	Level 1 Level 2 Note: Provided such a direction does not result in an annual leave balance of less than six weeks for a full-time employee.
PS 1.38	Division 4-Employees Section 20(1)-Employment & retirement	Approve full-time study leave with pay.	Level 1 Level 2 Level 3

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.39	Division 4-Employees Section 20(1)-Employment & retirement	Approve family violence leave.	Level 2 Level 6 Note: This power is also delegated to Level 1, Level 2 and Level 3 delegates pursuant to PS 1.35.
PS 1.40	Division 4-Employees Section 20(1)-Employment & retirement	Make payments to employees in lieu of long service leave.	Level 1 Level 2 Level 3 Level 6
PS 1.41	Division 4-Employees Section 20(1)-Employment & retirement	Approve an employee's request to cash out annual leave.	Level 1 Level 2 Level 3
PS 1.42	Division 4-Employees Section 20(1)-Employment & retirement	Recognise prior service with government bodies for the purposes of long service leave and personal leave.	Level 1 Level 2 Level 6
PS 1.43	Division 4-Employees Section 20(1)-Employment & Retirement	Confirm employment on completion of a period of probation.	Level 1 Level 2 Level 3
PS 1.44	Division 8 Termination Section 33(1)-Termination of employment	Terminate the employment of an employee due to conduct or performance issues during or at the end of the probationary period.	Level 1 Level 2 Level 3

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.45	Division 7-Restriction on Employees Doing Other Work Section 32(1)	Grant express permission for a full-time employee to: <ul style="list-style-type: none"> • engage in any other employment; or • carry on any business, profession or trade. 	Level 1 Level 2 Level 3
PS 1.46	Division 7-Restriction on Employees Doing Other Work Section 32(2)	Form the opinion that a part-time employee engaged in other employment of carrying on any business, profession or trade is in conflict with the proper performance of the employee's duties.	Level 1 Level 2 Level 3
PS 1.47	Division 7-Restriction on Employees Doing Other Work Section 32(3)	Withdraw permission to an employee to: <ul style="list-style-type: none"> • engage in any other employment; or • carry on any business, profession or trade. 	Level 1 Level 2 Level 3
PS 1.48	Division 8-Termination Section 33(1)-Employment & Retirement (non-executives)	Terminate the employment of an employee: <ul style="list-style-type: none"> • If the employee refuses a transfer to other duties under PS 1.12 and PS 1.13 • If the employee is found guilty of a criminal offence punishable by imprisonment committed before, but not dealt with until after the employee became an employee • on the grounds of serious misconduct • if the employee is considered inefficient or incompetent in the discharge of his or her duties • if the employee has, in connection with his or her application for employment, given false or misleading information; or • for any other reason consistent with the terms and conditions of his or her employment. 	Level 1 Level 2

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.49	Division 4-Employees Section 65(1)-Employment & retirement	Decide whether or not to adopt a recommendation made in a report of a review of actions.	Level 2
PS 1.50	Division 4-Employees Section 20(1)-Employment & retirement	Implement a formal unsatisfactory work performance process.	Level 1 Level 2 Level 3 Level 4
PS 1.51	Division 4-Employees Section 20(1)-Employment & retirement	Decide to commence formal counselling for unsatisfactory work performance.	Level 1 Level 2 Level 3 Level 4
PS 1.52	Division 4-Employees Section 20(1)-Employment & retirement	Issue a formal written warning to an employee for unsatisfactory work performance.	Level 1 Level 2 Level 3 Level 4
PS 1.53	Division 4-Employees Section 20(1)-Employment & retirement	Issue a final written warning to an employee for unsatisfactory work performance.	Level 1 Level 2 Level 3
PS 1.54	Division 4-Employees Section 20(1)-Employment & retirement	Determine an unsatisfactory work performance outcome.	Level 1 Level 2
PS 1.55	Division 4-Employees Section 20(1)-Employment & retirement	Commence a formal disciplinary process for misconduct.	Level 1 Level 2 Level 3

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.56	Division 4-Employees Section 20(1)-Employment & retirement	Appoint a person to conduct an investigation in relation to a disciplinary process for misconduct, if required.	Level 1 Level 2 Level 3
PS 1.57	Division 4-Employees Section 20(1)-Employment & retirement	Advise an employee of an allegation of misconduct in writing.	Level 1 Level 2 Level 3
PS 1.58	Division 4-Employees Section 20(1)-Employment & retirement	Determine a disciplinary outcome for misconduct.	Level 1 Level 2
PS 1.59	Division 4-Employees Section 20(1)-Employment & retirement	Direct the employee to provide a medical certificate where there is a genuine concern about the employee's capacity to undertake his or her duties.	Level 1 Level 2 Level 3 Level 4
PS 1.60	Division 4-Employees Section 20(1)-Employment & retirement	Send a notice to an employee requiring production to the employer of a WWC clearance provided to the employee under the <i>Worker Screening Act 2020</i> .	Level 1 Level 2 Level 3 Level 4
PS 1.61	Division 4-Employees Section 20(1)-Employment & retirement	Determine the work location(s) of an employee.	Level 1 Level 2 Level 3
PS 1.62	Division 4-Employees Section 20(1)-Employment & retirement	Approve an employee's request for part-time employment.	Level 1 Level 2 Level 3

Column 1	Column 2	Column 3	Column 4
Delegation Reference No	Public Administration Act 2004 Reference	Description of Power/Function	Delegate Level and Limitation
PS 1.63	Division 4-Employees Section 20(1)-Employment & retirement	Approve a position being shared between two or more employees through job-sharing arrangements.	Level 1 Level 2 Level 3
PS 1.64	Division 4-Employees Section 20(1)-Employment & retirement	Approve flexible working arrangements.	Level 1 Level 2 Level 3 Level 4
PS 1.65	Division 4-Employees Section 20(1)-Employment & retirement	Consent to an employee entering into an individual flexibility arrangement.	Level 2
PS 1.66	Division 4-Employees Section 20(1)-Employment & retirement	Approve a purchased leave agreement.	Level 1 Level 2 Level 3

SCHEDULE 2

OFFICES TO WHICH THE POWERS AND FUNCTIONS ARE DELEGATED

Level 1

- Deputy Secretary in the Department of Education and Training
- Chief Executive Officer, Victorian Curriculum and Assessment Authority
- Chief Executive Officer (Director), Victorian Registration and Qualifications Authority
- Senior Chairperson, Merit Protection Boards
- Chief Executive Officer, Victorian Schools Building Authority

Level 2

- Executive Director, People Division

Level 3

- Assistant Deputy Secretaries
- Chief Financial Officer
- Chief Information Officer
- Executive Directors
- Regional Directors

Level 4

- Directors
- Executive Director, School Improvement
- Executive Director, Early Childhood and School Support
- Area Executive Directors
- Chief Accountant

Level 5

Positions in the Department of Education and Training which are classified as Victorian Public Service Grade 5 and above or equivalent, provided the delegate has direct management responsibility for other departmental employees.

Level 6

- Manager, Corporate People Services, People Division.

Level 7

- Manager, Employee Conduct, People Division