

## Special Measures in NTPS Recruitment and Selection

### Frequently Asked Questions

#### 1. What is a Special Measure?

A Special Measure is a plan, program or arrangement designed to promote equal employment opportunity (EEO) for a group of people who have not yet achieved employment equality. Also known as “affirmative action”, essentially, a special measure is a form of more favourable treatment of certain EEO groups, such as Persons with a Disability, or Aboriginal and Torres Strait Islander persons (Aboriginal).

The current *Public Sector Employment and Management Act* permits special measures to be used in the NTPS, as long as the plan is approved by the Commissioner for Public Employment (CPE). A number of Agencies have implemented such plans to support increased workplace diversity and to address inequality of employment opportunity.

#### 2. Do Special Measures Recruitment and Selection Plans apply across all NTPS agencies?

**No.** It is at the discretion of each Agency to decide if they wish to implement a Special Measures plan, and what the terms of their plan will be. All agencies are eligible, and encouraged, to seek approval for Special Measures plans from the CPE, which will be given if the plans meet the five conditions for approval.

#### 3. What are the 5 absolute conditions for an approved NTPS Special Measures Plan?

The Commissioner for Public Employment has set strict conditions for any Special Measures recruitment plans. These are that:

1. The intention to use a Special Measures plan must be clearly stated in the Job Description and when advertising the vacancy;
2. Successful applicants (including those in EEO groups) must meet all the essential selection criteria and be suitable to perform the duties at a level commensurate with that of the position;
3. Applicants selected under a Special Measures Plan must provide proof of their EEO status
4. If there is more than one applicant from the EEO group then the selection decision between those applicants is based on who is the most suitable.
5. A finding in a selection process that no EEO applicant is suitable must be approved by the CPE.

#### 6. How will Special Measures Plans Work?

There are two main types of Special Measures plans used in NTPS selections:

1. Designated Positions – The Agency specifically designates a vacancy for a person from an EEO group and it cannot be filled by any person from outside that group
2. Priority Consideration and Preference in Selection – Plans under which applicants from the EEO target group will be considered first before all other applicants, and given preference in selection if they meet all the criteria and are suitable at level. In the discretion of the agency, priority plans can apply to specific vacancies or to all vacancies (“blanket plans”). Under priority plans applicants who belong to the plan’s EEO group will be considered for employment before other applicants, and, if suitable at the level required, will be selected, and the selection process finalised at that stage without assessment of other applicants being required.

#### 7. Which vacancies does the plan apply to?

This depends on the Special Measures plan approved for the Agency. Some plans designate specific positions for EEO applicants only, others have particular positions, or work units or levels which utilise the plan, and some Agencies apply a priority consideration and preference plan to all advertised vacancies. The intention is to increase employment of EEO group employees across all mainstream NTPS jobs, not just jobs which have a unique occupational requirement which makes EEO applicants more suitable.

**8. Are redeployees still considered first in all selections?**

**Yes.** The same rules as already exist continue to apply for redeployees. That is, vacancies will still, as a first step, be offered to any redeployee who would be suitable with a reasonable period of training. Only if there are no suitable redeployees will the selection process continue.

Note however, that if the position is specifically designated for an EEO applicant, then only a redeployee from that EEO group can be considered for suitability for the vacancy.

**9. Will evidence of EEO status be required?**

**Yes.** Any applicant selected under a special measures plan will be required, prior to commencing, to make a sworn declaration of their eligibility on a Statutory Declaration form (available from OCPE) or to provide another form of proof such as a statement from an appropriate Aboriginal body.

The test for eligibility for Aboriginal applicants is: being of Aboriginal or Torres Strait Islander descent and having previously identified as Aboriginal in day to day dealings in the community.

For Persons with a Disability the test is: having a significant disability that has impaired equality of employment opportunity and may require reasonable adjustment in the workplace.

**10. What happens if there is more than one EEO applicant who meets the essential criteria and is suitable at the level of the position?**

In these cases, panels will then select the most suitable candidate from the EEO group, having regard to knowledge, skill, qualifications and experience, and potential for future development.

**11. Is it my responsibility as a panel member to find out if any applicants fit into an EEO group?**

**No.** If applicants have not advised in their application that they are part of the target EEO group, and it does not become apparent during the selection process that any applicants fit those groups, then the panel is not required to find out, and would instead simply proceed to assess all applicants.

**12. What should I do if it comes to my attention during the selection process that an applicant who didn't "identify" is actually a member of the EEO target group for a Special Measures selection?**

Explain to the EEO applicant that you would like to consider them for the position under the Agency's Special Measures Plan. Remember that the intention is to increase our workforce diversity, and not about red tape and technicalities, so we would not want to discount an applicant just because they forgot to 'tick the box' that they are of the target group. (This inclusive approach will work well with applicants in remote communities, who often apply in person or in handwriting, rather than online where there is a box to indicate Aboriginality. In those cases the person receiving the application could simply note for the panel that the applicant is Aboriginal, but if they forget that would still not be a reason not to consider the applicant under the Special Measures Plan).

If this is a situation where the applicant is choosing not to identify they are from the EEO target group because they don't wish to be considered in priority, then that could be honoured, but the panel should first be sure that the EEO applicant fully understands that their refusal will mean that they will not be considered at all, if another EEO applicant is found to be suitable in the priority consideration of EEO applicants. That applicant should also be reminded that the Agency genuinely values their diversity and for this reason strongly encourages the applicant to identify to allow that diversity to be counted in the assessment of the applicant as an aspect of their suitability.

**13. Do Managers have discretion to apply Special Measures to some vacancies and not others?**

**Maybe.** This will depend on the terms of the Agency's Special Measures plan. Some Agencies have plans that require all advertised vacancies to be advertised and filled under the Special Measure plans, others allow for exemptions on application to an HR panel, and some only apply their plan to certain vacancies, in the discretion of the appropriate Delegate.

**14. Do Special Measures Plans apply to Entry Level positions? How will this process work?**

**Yes.** If your agency's Special Measures Plan covers all vacancies, or specifically includes entry level positions. To facilitate this, Department of Corporate and Information Services (DCIS) has agreed to assist by flagging and forwarding all applications from EEO group applicants so that they can be considered in priority to any other entry level candidates. There will also be a further notification and information about Special Measures available to applicants through the DCIS Recruitment site.

**15. Will Special Measures Plans apply to positions where an employee has been acting in the role, especially for an extended period?**

**Yes.** The situation is no different to any other vacancy that must be advertised and filled in the usual manner, and so any Special Measures Plan that is in place will still apply as per its terms.

**16. Do Special Measures Plans apply to vacancies of less than 6 months?**

**Answer: Yes & No**

**Yes:** Special Measures Plans apply only to vacancies that are to be filled on the basis of merit, which is why applicants hired under such plans must meet all essential criteria and be suitable at the level of the position. So, if the Agency has a 'blanket' plan that applies to all vacancies, then, whether under 6 months or not, where the intention is to find the best person for the job, the Special Measure plan would apply.

**No:** Vacancies of less than 6 months may be an exception, if the vacancy is being filled to develop skills in existing employees, rather than on the basis of merit. In such cases the selected applicants do not have to meet all the essential criteria. Therefore, since this is a requirement of all Special Measures plans, the plans cannot apply. Note though, that in keeping with the intention of Special Measures, it is strongly encouraged that priority consideration is given to any EEO employee who could benefit from development in the role and this is easier to do since there is not a requirement that the applicant meet essential criteria.

**17. Is priority consideration given to all Special Measures applicants or only to those that 'opt in' to the plan?**

**Yes.** Special Measures plans will apply to any applicant who belongs to the Target EEO group. This is because the Agency has made the decision to value the diversity of the EEO applicant as a component of their merit, and seeks to employ as many EEO applicants as possible. If an EEO applicant does not wish to accept a job offered under the Special Measures plan that is, of course, their right. However in such cases the EEO applicant could be reminded that, in being selected, they have been found to meet all of the essential criteria, and to be the most suitable of all other applicants from the target EEO group. If they refuse to accept the job then that will mean that the next most suitable EEO applicant is chosen instead of the first choice, which is will be contrary to the intention of hiring the best EEO group applicants.

**18. Do NTPS rights of appeal or of lodging a grievance still apply?**

**Yes.** Nothing changes the rights employees have under PSEMA to make a promotion appeal if eligible, or to lodge a grievance under s59 asking the Commissioner for Public Employment to review any aspect of the Agency's decision. Such matters will be considered under the relevant legislation and terms of the approved Special Measures plan.

**19. What happens if we assess all the EEO group applicants as unsuitable? Can we progress the selection?**

**No.** If there are EEO group applicants but none are found suitable, then, prior to notifying the EEO applicants and progressing to assessment of non-EEO group applicants, the panel must forward the finding to the OCPE Appeals & Grievances unit for review. This is similar to the process currently followed for redeployees, that is, if a redeployee is found unsuitable, the selection process cannot proceed until OCPE has upheld the finding. Note that, to avoid undue delay, PSA&GR has committed to completing such reviews and making a finding within 5 working days of receiving the information about the unsuitable finding, unless there are very unusual circumstances.