This document must be read in conjunction with *Employment Direction No 17 (ED 17)* and also the supporting document Guidelines: Senior Executive Recruitment*.*

The Office of the Solicitor General has advised that where an office created under Section 29 of the *State Service Act 2000* has duties, obligations, rights or powers derived from either the State Service Act or any other Act, a direction under Section 21A of the *Acts Interpretation Act 1931* (s21A) is required to enable a person who is not appointed to that office to discharge those duties, obligations, rights and/or powers.

Therefore in these circumstances:

* + an employee is temporarily required to undertake the duties of an office
	+ an officer is temporarily required to undertake the duties of an office other than the one they are appointed to, whether it is at the same or a higher level than their appointment

the direction to that employee or officer to perform the duties must reference s21A of the Acts Interpretation Act. This applies regardless of how the employee or officer has been chosen to temporarily undertake the duties (commonly called ‘acting’).

Where an existing officer is transferred between agencies to undertake a different office through an Instrument of Transfer signed by the Head of the State Service (HoSS), s21A does not apply. However if the transfer is to a dual appointment[[1]](#footnote-1) where powers are derived from an Act other than the State Service Act, a s21A executed by the appointing person under that Act will be required in addition to the Instrument of Transfer.

#### *Senior Executive levels 1 and 2 or equivalent specialist offices*

In these instances, either a full 21A Direction or transfer can be issued or a letter can be addressed to the employee or officer, signed and dated by the Head of Agency (HoA) prior to the temporary arrangement starting, citing the giving of a Direction with the wording that would be in a Direction, as below:

I, [name], being and as the person appointed as [HoA title and agency] as delegate of the Premier under the Act and thus in the exercise of the powers conferred upon me by Section 21A of the *Acts Interpretation Act 1931*, direct you, [name of employee or officer], to perform or exercise the duties, obligations, rights and powers of the [senior executive / equivalent specialist] office of [insert office name] from [start date] to [end date or terminating event and/or ‘whichever first occurs’ statement].

The period defined must be compliant with ED 17. The letter can incorporate any other matters considered relevant such as remuneration, reference to a Statement of Duties, reporting lines etc.

***Senior Executive Levels 3 and 4***

Where the temporary arrangement relates to an office classified at SES level 3 or level 4, s21A requests or transfers for HoSS signature are only required if it is proposed that an employee (i.e. not an appointed officer) is to undertake the duties of an SES 3 or 4 office **OR** if the proposed arrangement is for longer than six months in duration. Again, this can be done as a stand alone 21A Direction or incorporated in a letter or memo using the same wording.

Requests that require HoSS signature need to be sent to ssmo@dpac.tas.gov.au at least **five clear working** **days** before the proposed start date of the temporary arrangement to ensure there is adequate time to review and process the request. Acting arrangements for Heads of Agencies should be sent directly to the Office of the Secretary, DPAC at secretary@dpac.tas.gov.au as SSMO does not manage these arrangements.

The request for HoSS signature should come from the HoA, their office or the Director Human Resources/People and Culture, and include the reason for the temporary arrangement (illness, other leave, ‘flow-on’ from other approved temporary arrangements etc). A template is provided at Attachment 1.

Please remember that the HoSS may not always be immediately available due to other commitments and therefore short turnaround times cannot be guaranteed.

***General considerations***

In preparing Directions, carefully consider the ending provisions to reduce re-work, the need to revoke a direction, or extensions required – for example, if the arrangement is to cover personal leave that may not yet have a clear end date: *From 2 April 2018 until 2 June 2018 or until the appointed officer returns to the office, whichever is the earlier.*

Or if there could be a ‘rotation’ of people undertaking the duties and the rotation periods are not yet finalised: *From 2 April 2018 until 4 November 2018 or until I direct another person to undertake the duties, whichever is the earlier.*

If the office is being advertised or put through mobility, wording could be: *from 2 April 2018 until 4 November 2018 or until the office is filled by appointment or transfer, whichever is the earliest.*

For some offices, the office is also referred to in other legislation and when a person is appointed to that office, there may be an appointing authority such as the Premier, Minister administering that other Act or the Governor. These are often called ‘dual appointments[[2]](#footnote-2)’ and any temporary arrangement for filling such an office will require a direction under s21A from BOTH authorities. When this is required, the same wording should be used. The agency is responsible for identifying where a dual appointment exists, and for organising the appropriate signature for the second direction.

***Definitions***

*Office* – any office created under Section 29 of the State Service Act – i.e. a senior executive or equivalent specialist office

*Officer* – a person who holds an Instrument of Appointment to an office

*Employee* – a person appointed under Section 37 of the State Service Act – note however only a **permanent** employee may be temporarily assigned senior executive or equivalent specialist duties if an More Responsible Duties Allowance (MRDA) is payable.

*Dual appointment* – where an officer is appointed under the State Service Act, but there is a requirement under another Act for a specific person to appoint to the role as defined under that other Act

eg – the Valuer General is an office created under section 29 of the State Service Act, and as such the Premier (or delegate) appoints a person to that office. However, under the *Valuation of Land Act 2001*, the Minister administering that Act also appoints a person to be the Valuer General in conjunction with their State Service employment (appointment).

***Quick guide***

Refer to the table below for a quick guide on who is required to sign directions for employees versus officers when they are temporarily undertaking SES level 1, 2, 3 or 4 duties.

|  |  |  |
| --- | --- | --- |
| **Acting** | **Employee** | **Officer** |
| **Senior Executive Levels 1 and 2****Equivalent Specialists** | HoA (or Associate Secretary) can sign the Direction | HoA (or Associate Secretary) can sign the Direction  |
| **Senior Executive Levels 3 and 4** | Requests must be sent to the HoSS for signature no matter how long the acting arrangement is for | **Less than 6 months:** HoA or Associate Secretary can sign the Direction**More than 6 months:** Requests must be sent to the HoSS for signature |
| **Prescribed Office** | Premier must sign the Direction | Premier must sign the Direction |

**DIRECTION PURSUANT TO SECTION 21A OF
THE *ACTS INTERPRETATION ACT 1931***

I, JENNY GALE, being and as the person appointed as the Head of the State Service
in accordance with Section 20(1) of the *State Service Act 2000* (the Act), as delegate
of the Premier under the Act and thus in the exercise of the powers conferred upon me by Section 21A of the *Acts Interpretation Act 1931,* hereby direct that (NAME) shall perform and exercise all of the duties, obligations, rights and powers imposed or conferred upon the holder of the office of (TITLE OF OFFICE) in the (NAME OF AGENCY) for the period (START AND END DETAILS).

Dated at HOBART this day of (MONTH YEAR)

……………………………………………..

Jenny Gale

**Head of the State Service**

1. Refer to Definitions [↑](#footnote-ref-1)
2. See definitions [↑](#footnote-ref-2)