

# **Australian Capital Territory Government Service (Consequential Provisions) Regulations 1997 No. 7**

## EXPLANATORY STATEMENT

Statutory Rules 1997 No. 7

Issued by the authority of the Prime Minister

Australian Capital Territory Government Service (Consequential Provisions) Act 1994

Australian Capital Territory Government Service (Consequential Provisions) Regulations

Section 27(3) of the Australian Capital Territory Government Service (Consequential Provisions) Act 1994 (the Act) provides that the Governor-General may make regulations providing for modifications of the Act or any other Act in its application in relation to any matter arising from or connected with or consequential on, an ACT officer becoming an employee by or under a law of the Territory of a body corporate controlled by the Territory before, on or after the commencement of that subsection.

Subsection 3(1) of the Act defines "ACT officer" as a person who is an officer within the meaning of the Public Sector Management Act 1994 of the Australian Capital Territory (the ACT legislation).

Section 6 of the Australian Capital Territory Government Service (Consequential Provisions) Act 1994 provides a mechanism to enable officers of the ACT public service to apply for any vacant office notified as a permanent vacancy in the Gazette. As part of the scheme, provision is made for any appointment of an ACT officer to the Australian Public Service (the Service) to operate as a deemed promotion and as such will be subject to appeal or review under the relevant provisions of the Public Service Act 1922.

Subsection 6(7) of the Act contains provisions which provide when and if the appointment to the Service will take effect.

Section 8 of the Act permits the delivery of personnel records between the ACT public service and the Australian Public Service where a person moves from the ACT to employment in the Service. It also permits the subsequent use and disclosure by the Commonwealth of those records.

The purpose of the Regulations is to restore the mobility rights for a period to former ACT officers, formerly employed in the ACT Electricity and Water (ACTEW) and ACT Totalizator Agency Board (ACTAB), who have lost those rights through the corporatisation by the ACT Government of those parts of the ACT public service. The Regulations also provide a mechanism, by future amendment to the Regulations, to permit the restoration of mobility rights to former ACT officers affected by future corporatisations.

On 1 July 1995 the ACT Government corporatised ACTEW and compulsorily transferred ACTEW employees to a new company, ACTEW Corporation (the Corporation). As a consequence the Corporation employees ceased to be "ACT officers" and were no longer covered by the terms of the mobility arrangements in section 6 of the Act.

The Commonwealth agreed with the ACT Government to extend the mobility provisions for a period until 30 June 1988 to the employees of the Corporation who lost the mobility rights when they were compulsorily transferred to the Corporation. Since that agreement the ACT Government has also corporatised the ACT Totalizator Agency Board (ACTTAB). A similar

agreement has been reached in respect of the employees of the AMAB. The ACT Government is considering corporatising a number of other agencies. A similar extension of mobility rights for ACT officers concerned will be looked at on a case by case basis.

The Regulations specifically restore the mobility rights of former officers who lost those rights through the corporatisation of the ACTEW and ACTAB. There is scope by amendment to the Schedule to the Regulations to extend mobility to former ACT officers affected by later corporatisations. The regulations do not affect the application of the Act to other ACT officers. The Regulations provide that they will cease to have effect on 1 July 1998.

Details of the regulations are attached.

In accordance with section 48 of the Acts Interpretation Act 1901 the retrospective commencement of these Regulations will not disadvantage any person or impose liabilities on a person in respect of anything done before the date of notification of the Regulations.

## ATTACHMENT

Regulation 1 of the Regulations provides that these regulations may be cited as the Australian Capital Territory Government Service (Consequential Provisions) Regulations.

Regulation 2 of the Regulations provides that the Regulations are taken to have commenced on 1 July 1995, the date on which the corporatisation of ACTEW occurred and staff of ACTEW lost their mobility rights. The retrospective commencement of these Regulations would not disadvantage any person or impose liabilities on a person in respect of anything done before the date of notification of the Regulations.

Regulation 3 of the Regulations provides that the Australian Capital Territory Government Service (Consequential Provisions) Act 1994 is modified in accordance with the Schedule to the Regulations for the limited purposes of its application to an ACT officer becoming the employee of a body corporate controlled by the Territory.

Item 1 of the Schedule to the Regulations modifies the Act by omitting the definition of "ACT officer" in section 3 and substituting a new definition which provides that the term means a person who has been an officer within the meaning of the ACT legislation but who now, immediately after being such a person has, on a specified date, become an employee of a body corporate listed in Schedule 4 to the Act.

Item 2 of the Schedule to the Regulations at paragraph 2.1 modifies the Act by changing a reference in paragraph 6(7)(c) which provides that an appointment to the Service takes effect on the day the appointee resigns from the Australian Capital Territory Government Service to a suitable reference. In lieu of that reference the modified provision provides that the appointment takes effect on the day on which the appointee resigns from employment by the body corporate. The modification is necessary because the appointee was not immediately before being appointed, a member of that service.

Item 2 of the Schedule to the Regulations at paragraph 2.2 modifies the Act by changing a reference in paragraph 6(7)(d) which provides that the appointment does not take effect, if when the deemed promotion takes effect the appointee has already ceased to be a member of the Australian Capital Territory Government Service to a suitable reference. In lieu of that reference the modified provision provides that the appointment does not take effect if, when the deemed promotion takes effect, the appointee has already ceased to be employed by the body corporate. The modification is necessary because the appointee was not, immediately before being appointed, a member of that service

Item 3 of the Schedule to the Regulations at paragraph 3.1 modifies the Act by changing a reference in subsection 8(3) which provides that where a person ceases to be an ACT officer and becomes an officer of the Service (because of appointment under the mechanism provided in section 6) records kept in relation to the person, for the purposes of Australian Capital Territory Government Service may be delivered to the relevant Secretary of the officer's new Department in certain circumstances. In lieu of that reference the modified provision provides that records kept by that service or the body corporate may be delivered to the officer's new Department. The modification is necessary because the appointee was not, immediately before being appointed, a member of that service.

Item 4 of the Schedule to the Regulations inserts a new Schedule 4 in the Act by modification. That Schedule prescribes certain bodies corporate for the purposes of the definition of "ACT Officer" inserted by Item 1.

Regulation 4 of the Regulations provides that these regulations modifying the Act cease to have effect on 1 July 1998.

