

Public Service Amendment Regulations 2000 2000 No. 359

EXPLANATORY STATEMENT

Statutory Rules 2000 No. 359

Issued by authority of the Prime Minister

Public Service Act 1999

Public Service Amendment Regulations 2000

The *Public Service Act 1999* ('the Act') received the Royal Assent on 11 November 1999. The Act and its accompanying *Public Service Regulations 1999* ('the Regulations') commenced on 5 December 1999.

Subsection 79(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Since the commencement of the Regulations in December 1999, experience and feedback from Agencies have identified a number of regulations that require amending.

The purpose of the amending Regulations is to:

- * clarify the intention of the existing provisions;
- * amend various Regulations to correct minor drafting deficiencies in the existing provisions;
- * improve the monitoring and accountability of staffing decisions made under the Act; and
- * enable employees to identify where they have rights of review against promotion decisions.

The amendments to the Regulations deal with the following matters:

Limitations on extension of specified terms of engagement of certain non-SES employees Regulation 3.7

- * The amendments to Regulation 3.7 clarify the existing provisions concerning the maximum term of engagement for a non-ongoing APS employee and the extensions of a contract within this maximum term.

Promotion of ongoing APS employees - date of effect - Regulation 3.8

- * The amendments remove any uncertainty that the date of effect for a promotion must not be earlier than the date that the promotion is notified in the *Gazette*, and establish a date of effect for the promotion of an ongoing APS employee where an application to a Promotion Review Committee ('PRC') lapses.

Notification in Gazette of certain employment decisions - Regulation 3.12

- * The amendments to Regulation 3.12 are to:

- paragraph 3.12 (i) to include an additional requirement for APS agencies to specify the grounds for termination under section 29 of the Act in the *Gazette* notification;
- paragraph 3.12 (k) to clarify that it is only decisions of a PRC which make a new promotion decision which require notification in the *Gazette*; and
- include two new subregulations 3.12 (2) and (3) to require that the notification in the *Gazette* of an engagement or promotion decision based on a similar employment opportunity having been advertised previously in accordance with the *Public Service Commissioner's Directions 1999* be identified by the inclusion of a statement to that effect.

Notification in Gazette of cancellation of certain employment decisions - Regulation 3.12A

- * The amendment includes a new regulation that requires an Agency to notify in the *Gazette* the cancellation of any decision that has previously been notified in the *Gazette* under Regulation 3.12 and the date of effect of the cancellation decision.

Promotion of ongoing APS employees - date of effect - Regulation 5.10

- * The amendment changes the requirement on the Merit Protection Commissioner from having to establish a PRC on receipt of an application for review to providing the Commissioner with the discretion not to establish a PRC where an application to a PRC lapses.

Statements by parties - Regulation 5.12

The amendment provides for a single date for the lodgement of statements of parties to reviews of promotion decisions of 14 days after the closing date of applications for review.

Conduct of review by PRC - Regulation 5.18

- * The amendment requires a PRC to advise the Agency Head of its decision in writing.

Non-disclosure of information by Merit Protection Commissioner etc - Regulation 7.6

- * The amendment extends the non-disclosure provisions to members of Independent Selection Advisory Committees, to people undertaking reviews of actions of statutory office holders and to people undertaking an investigation of complaints by former employees.

Details of the Regulations are set out in the Attachment.

The Regulations commence on gazettal.

ATTACHMENT

Regulation 1 provides that the name of the Regulations is the *Public Service Amendment Regulations 2000 (No. 1)*.

Regulation 2 of the Regulations provides that the Regulations commence on gazettal.

Regulation 3 of the Regulations provides for the *Public Service Regulations 1999* to be amended as provided for in Schedule 1.

Schedule 1 Amendments

Item 1 Regulation 3.7, ("Limitation on extension of specified terms of engagement of certain non-SES employees"), applies to a person who was engaged as a term employee under section 82AD, 82AE or 82AG of the *Public Service Act 1922* ('the old Act') and who became a non-SES employee under the Act in accordance with subsection 5(7) of the *Public Employment (Consequential and Transitional) Amendment Act 1999* ('the PECTA Act').

Subregulation (2) provides that the total term of the employee's engagement includes the period of his or her continuing engagement under the relevant provision of the old Act that ended immediately before the commencing time of the *Public Service Act 1999* ('the Ad').

The amendment to subregulation 3.7 (2) includes a note at the end of this subregulation to highlight that certain non-SES employees may by virtue of their continuing engagements already have a term of employment greater than the term specified in the item in the table.

Item 2 The amendment to subregulation 3.7 (3), ("Limitation on extension of specified terms of engagement of certain non-SES employees"), is necessary to account for the inclusion of a new subregulation 3.7 (6) as outlined in Item 3 below.

Item 3 Existing subregulations 3.7 (4) and 3.7 (5), ("Limitation on extension of specified terms of engagement of certain non-SES employees"), are replaced with new subregulations 3.7 (4), (5) and (6) giving an Agency Head the flexibility to treat the extension of engagement of a non-SES employee covered by these Regulations in the same way as an employee employed for a specified term. Subregulation 3.7 (7) is included to provide for the definition of "term employee" as mentioned in subregulation 3.7 (1) as having the meaning given by section 4 of the PECTA Act.

Item 4 The amendment to Regulation 3.8, ("Promotion of ongoing APS employees - date of effect"), includes a new subregulation (2A) to remove any uncertainty that the date of effect for a promotion must not be earlier than the date that the promotion is notified in the *Gazette*.

Item 5 The amendment to subregulation 3.8 (3), ("Promotion of ongoing APS employees - date of effect"), is necessary to account for the inclusion of new subregulations 3.8 (5A), (5B) and (5C) as outlined in Item 6 below.

Item 6 The amendment to Regulation 3.8, ("Promotion of ongoing APS employees - date of effect"), includes three new subregulations 18(5A), (5B) and (5C). These new subregulations concern dates of effect for the promotion of an ongoing APS employee where an application to a Promotion Review Committee (PRU) lapses.

Item 7 The amendment to Regulation 3.12, ("Notification in Gazette of certain employment decisions"), amends the existing provisions to be known as subregulation 3.12 (1) to account for the inclusion of new subregulations 3.12 (2) and (3) under Regulation 3.12 as outlined in Item 10 below.

Item 8 The amendment to paragraph 3.12 (i), ("Notification in Gazette of certain employment decisions"), provides an additional requirement for APS agencies to specify the grounds for termination under section 29 of the Act in the Gazette notification. This amendment will assist the Public Service and Merit Protection Commission ('PSMPC') in monitoring and reporting on the types of separations from the APS.

Item 9 The amendment to paragraph 3.12(k), ("Notification in Gazette of certain employment decisions"), clarifies that it is only decisions of a PRC which change an original promotion decision made by an Agency Head which require notification in the Gazette.

Item 10 The amendment to Regulation 3.12, ("Notification in Gazette of certain employment decisions"), includes two new subregulations, 3.12 (2) and (3).

New subregulation 3.12 (2) requires the notification in the Gazette of the engagement of a person as an ongoing APS employee (paragraph 3.12 (1)(a)) to include an additional statement if an Agency decides to staff the employment opportunity from an existing order of merit where a similar employment opportunity was advertised within the previous 12 months in accordance with the provisions of subclause 4.2(2) of the Public Service Commissioner's Directions 1999.

The Gazette notification in these circumstances will be required to specify 'This engagement is made in accordance with the provisions of subclause 4.2(2) of the Public Service Commissioner's Directions 1999 -similar employment opportunity previously notified'.

New subregulation 3.12 (3) requires the notification in the Gazette of the promotion of an ongoing APS employee (paragraph 3.12 (1)(h)) to include an additional statement if an Agency decides to staff the employment opportunity from an existing order of merit where a similar employment opportunity was advertised within the previous 12 months in accordance with the provisions of subclause 4.6(2) of the Public Service Commissioner's Directions 1999.

The Gazette notification in these circumstances will be required to specify 'This promotion is made in accordance with the provisions of subclause 4.6(2) of the Public Service Commissioner's Directions 1999 -similar employment opportunity previously notified'.

This amendment ensures greater accountability in decision making and enables APS employees to identify promotion decisions where they may wish to exercise any rights of review that may be applicable to the promotion Item 11 The amendment includes a new regulation, Regulation 3.12A "Notification in Gazette of cancellation of certain employment decisions" that requires an Agency to notify in the *Gazette* the cancellation of any decision that has previously been notified in the *Gazette* under Regulation 3.12 and the date of effect of the cancellation decision. This amendment ensures greater accountability in decision making and assists the PSMPC in monitoring employee movements within the APS.

Item 12 The amendment to subregulation 5.10(1), ("Appointment of PRC"), changes the statutory requirement imposed on the Merit Protection Commissioner to appoint a PRC on receipt of any application for review of a promotion decision, to allow a discretion not to appoint a PRC where he or she believes that a review is not necessary eg where an application lapses. The amendment to subregulation 5.10(2) makes it clear that where more than one application for review is received in relation to a particular promotion decision, all applications will be dealt with by the same PRC.

Item 13 The amendment to subregulation 5.12 (2), ("Statements by parties"), provides for a single date for the lodgement of statements of parties to reviews of promotion decisions of 14 days after the closing date of applications for review. The previous provisions did not provide for a standard date for the lodgement of statements by parties thereby causing potential delays in considering the applications for review.

Item 14 The amendment to subregulation 5.18 (2), ("Conduct of review by PRC"), now stipulates that a PRC has to advise the Agency Head of its decision 'in writing'. While it has been a standard practice of a PRC to provide its advice in writing to an Agency Head, this amendment has been included following a suggestion from the Senate Standing Committee on Regulations and Ordinances.

Item 15 The amendment to subregulation 7.6(1), ("Non-disclosure of information by Merit Protection Commissioner etc"), taken with the amendment outlined at Item 16, expands the

application of the regulation to include members of Independent Selection Advisory Committees ('ISACs').

Item 16 The amendment to paragraph 7.6(2)(b), ("Non-disclosure of information by Merit Protection Commissioner etc"), taken with the amendment outlined at Item 15, expands the application of the regulation to ensure that members of ISACs, people undertaking investigations under Regulation 7.2, and people undertaking reviews under Regulation 7.3 are bound by the non-disclosure provision.