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Public Service Amendment Regulations 2000 (No. 1)¹

Statutory Rules 2000 No. ²

359

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Public Service Act 1999*.

Dated 13 DEC 2000 2000

WILLIAM DEANE
Governor-General

By His Excellency's Command

DAVID KEMP
Minister for Education, Training and Youth Affairs
for the Prime Minister

1 Name of Regulations

These Regulations are the *Public Service Amendment Regulations 2000* (No. *✓*).

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Public Service Regulations 1999*

Schedule 1 amends the *Public Service Regulations 1999*.

Schedule 1 Amendments

(regulation 3)

[1] After subregulation 3.7 (2)

insert

Note A consequence of subregulation (2) is that the total term of the employee's engagement may be greater than the term specified in the item in the table, in subregulation 3.5 (2), in which the specified reason corresponds to the reason for the original engagement.

[2] Subregulation 3.7 (3)

omit

subregulations (4) and (5).

insert

subregulations (4), (5) and (6).

[3] Subregulations 3.7 (4), (5) and (6)*substitute*

- (4) If the total term of the original engagement is 3 years or more, the employee's engagement must not be extended.
- (5) If the term of the original engagement is less than 3 years:
- (a) the engagement may be extended if each of the circumstances mentioned in subregulation (6) exist; and
 - (b) an attempt to extend the engagement in any other circumstances has no effect; and
 - (c) the engagement may be extended at a particular time only if the term of:
 - (i) the original engagement; and
 - (ii) any extensions already given under this subregulation; and
 - (iii) the proposed extension;will not exceed 3 years.
- (6) For paragraph (5) (a), the circumstances are:
- (a) the reason for the original engagement continues to exist; and
 - (b) if:
 - (i) the original engagement was for a term of 12 months or less; and
 - (ii) as a result of the extension, the total term of the engagement would be more than 12 months;the opportunity to apply for the original engagement, or for the engagement for the term of the proposed extension, was notified in the *Gazette* as open to all eligible members of the community, whether or not they were APS employees; and

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- (c) the Agency cannot fully meet its objectives by using the services of an ongoing APS employee in the Agency; and
 - (d) the Agency Head certifies that extension of the engagement is in the public interest.

(7) In this regulation:

term employee has the meaning given by section 4 of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

[4] After subregulation 3.8 (2)

insert

- (2A) For paragraph 3.8 (2) (b), the date of effect of a promotion decision must not be earlier than the date that the promotion is notified in the *Gazette*.

[5] Subregulation 3.8 (3)

omit

subregulation (4), (5) or (6).

insert

subregulation (4), (5), (5A), (5B), (5C) or (6).

[6] After subregulation 3.8 (5)

insert

(5A) Subregulation (5B) applies if:

- (a) an application for review by a PRC is made before the end of the application period; and
- (b) the Merit Protection Commissioner appoints a PRC to deal with the application; and
- (c) the application lapses before the PRC makes a decision on the application.

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- (5B) The promotion of the employee takes effect:
- (a) 2 weeks after the Agency Head is notified by the Merit Protection Commissioner that the application has lapsed; or
 - (b) if another date of effect is agreed between:
 - (i) the employee; and
 - (ii) the Agency Head; and
 - (iii) if the employee is moving from another Agency, the current Agency Head —
on the agreed date of effect.
- (5C) If an application for review by a PRC is made before the end of the application period, and the Merit Protection Commissioner decides under subregulation 5.10 (1) that it is not necessary to appoint a PRC to deal with the application, the promotion of the employee takes effect:
- (a) 4 weeks after the promotion is notified in the *Gazette*; or
 - (b) if another date of effect is agreed between:
 - (i) the employee; and
 - (ii) the Agency Head; and
 - (iii) if the employee is moving from another Agency, the current Agency Head —
on the agreed date of effect.

[7] Regulation 3.12

omit

The following decisions

insert

- (1) The following decisions

[8] Paragraph 3.12 (i)*substitute*

- (i) termination, and the grounds for termination, of the employment of an ongoing APS employee under section 29 of the Act;

[9] Paragraph 3.12 (k)*substitute*

- (k) promotion of an ongoing APS employee, following the decision of a PRC under subparagraph 5.18 (1) (b) (ii), which has not been notified under paragraph (h).

[10] Regulation 3.12*insert*

- (2) If a decision mentioned in paragraph (1) (a) was made in accordance with the measures mentioned in clause 4.2 of the *Public Service Commissioner's Directions 1999*, the notification of the decision must include a statement to the effect that:

'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.'

- (3) If a decision mentioned in paragraph (1) (h) was made in accordance with the measures mentioned in clause 4.6 of the *Public Service Commissioner's Directions 1999*, the notification of the decision must include a statement to the effect that:

'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.'

[11] After regulation 3.12

insert in Subdivision 3.1

3.12A Notification in *Gazette* of cancellation of certain employment decisions

- (1) This regulation applies if:
 - (a) a decision (the *cancellation decision*) has been made to cancel a decision that has been notified in accordance with paragraph 3.12 (1) (a), (b), (c), (d), (e), (f), (g), (h), (i) or (j); or
 - (b) a decision has been made to cancel a decision that has been notified in accordance with paragraph 3.12 (1) (h), following a decision of a PRC under subparagraph 5.18 (1) (b) (ii).
- (2) The cancellation decision, and the date of effect of the cancellation decision, must be notified in the *Gazette*.

[12] Subregulations 5.10 (1) and (2)

substitute

- (1) If the Merit Protection Commissioner receives an application for review of a promotion decision under this Division, the Merit Protection Commissioner must:
 - (a) consider the circumstances in which the application was made; and
 - (b) if he or she believes that a review of the promotion decision is necessary — appoint a PRC to deal with the application.
- (2) If more than 1 application is received in relation to a particular promotion decision for which a PRC has been appointed under paragraph (1) (b), the applications are to be dealt with by the same PRC.

[13] Subregulation 5.12 (2)*substitute*

- (2) The statement must be given within 14 days after the closing date for lodging applications for review of the decision.

[14] Subregulation 5.18 (2)*after*

Agency Head

insert

, in writing,

[15] Subregulation 7.6 (1)*substitute*

- (1) This regulation applies to the following persons:
- (a) the Merit Protection Commissioner;
 - (b) a member of the staff assisting the Merit Protection Commissioner;
 - (c) a person acting under the direction or authority of the Merit Protection Commissioner;
 - (d) a person (other than an employee of the Agency) to whom the Merit Protection Commissioner has delegated any of his or her powers under section 78 of the Act;
 - (e) a member of a Review Committee established under paragraph 33 (4) (d) of the Act;
 - (f) a member of an Independent Selection Advisory Committee;
 - (g) a person (other than the Merit Protection Commissioner) who is required to assist the Commissioner to investigate a complaint under regulation 7.2;

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- (h) a person (other than the Merit Protection Commissioner) who is required to assist the Commissioner to review action under regulation 7.3.

[16] Paragraph 7.6 (2) (b)

substitute

- (b) disclosed or obtained:
- (i) under section 33 or paragraph 50 (1) (a) of the Act; or
 - (ii) during the investigation of a complaint under regulation 7.2; or
 - (iii) during the review of action under regulation 7.3; or
 - (iv) while acting as a member of an Independent Selection Advisory Committee.

Notes

1. These Regulations amend Statutory Rules 1999 No. 300.

2. Notified in the *Commonwealth of Australia Gazette* on / 2000.

20 December