

Public Service Amendment Regulations 2002 (No. 1) 2002 No. 214

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 214

Issued by authority of the Prime Minister

Public Service Act 1999

Public Service Amendment Regulations 2002 (No. 1)

The *Public Service Act 1999* (the Act) and its accompanying *Public Service Regulations 1999* (the principal 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.

Subsection 75(1) of the Act which covers the attachment of salaries to satisfy judgment debts provides that the Regulations

- (a) may provide for deductions to be made from the salary of a Secretary, the Head of an Executive Agency or an APS employee in order to satisfy a judgment debt; and
- (b) may prescribe fees payable in connection with such deductions.

Regulation 9.1 of the principal Regulations provides that an Agency may make deductions from the salary of certain persons to satisfy a judgment debt and provides that a fee is payable in connection with the deductions.

The purpose of the Regulations is to provide for a more detailed procedure in relation to the attachment of salaries of certain persons to satisfy judgments debts.

Where a person has incurred a judgment debt, one of the avenues available to a creditor to recover the debt is to withhold part of an employee's wage, and to pay it to the creditor, in satisfaction of a debt due. Section 75 of the Act and Regulation 9.1 of the principal Regulations create the framework for such action to be available where the debtor is a Secretary, the Head of an Executive Agency, or an APS employee, and the employer is the Commonwealth.

The Regulations overcome some unintended consequences of not retaining the detailed provisions for the same purpose as previously provided in section 64 of the repealed *Public Service Act 1922* (the 1922 Act). The Australian Government Solicitor has advised that the omission of the detailed provisions, previously provided under the 1922 Act, creates uncertainties about the application of State and Territory legislation to the process. It was intended that State and Territory legislation would have only limited relevance to the attachment of salary process.

The new provisions neither remove nor enhance current entitlements or obligations in this area. They provide for a single Commonwealth scheme, applying consistently to affected APS employees, Secretaries and Heads of Executive Agencies in all State and Territory jurisdictions and remove the uncertainty about the application of State and Territory legislation created by omitting a detailed scheme.

Details of the Regulations are set out in the Attachment.

The Regulations commenced on gazettal.

ATTACHMENT

Regulation 1 names the Regulations as the Public Service Amendment Regulations 2002 (No. 1).

Regulation 2 provides that the Regulations commenced on gazettal.

Regulation 3 of the Regulations provides that the *Public Service Regulations 1999* (the principal Regulations) are amended as set out in Schedule 1.

Schedule 1 Amendments

Item 1 After Part 8A.

The amendment inserts after Part 8 of the principal Regulations a new Part 8A.

Part 8A Attachment of salaries to satisfy judgment debts

Regulation 8A.1 defines certain words and expressions used in Part 8A.

Regulation 8A.2 provides that Part 8A does not apply in relation to a debtor whose estate has been sequestrated for the benefit of creditors, and who has not obtained a certificate of discharge.

Regulation 8A.3 provides that a law of a State or a Territory that deals with satisfying a judgment debt applies to a debtor's judgment debt only to the extent that the law deals with the calculation of interest on the debt, and does not apply to the debt for any other purpose. This takes account of differing legal provisions for the calculation of interest on a debt within the various State and Territory jurisdictions.

Regulation 8A.4 makes provision for the appointment of one or more persons as paying officers in an Agency, for the purpose of making deductions from a debtor's salary, and specifies certain conditions which apply to such appointments.

Regulation 8A.5 specifies the conditions which must be satisfied before deductions from a debtor's salary may be started, and related obligations of the paying officer.

Regulation 8A.6 requires a judgment creditor (other than the Commonwealth) to pay a fee of \$38 before deductions will be commenced from the salary of a judgment debtor. The fee has been increased from the amount of \$35 specified when the present regulation 9.1 was made in December 1999, to take account only of introduction of the Goods and Services Tax in July 2000.

Regulation 8A.7 specifies the procedure to be followed by the paying officer where more than one judgment debt exists against a debtor.

Regulation 8A.8 provides that when a deduction is made from a debtor's salary on the debtor's pay day, an amount equal to the amount of the deduction will be taken to have been paid by the Commonwealth to the debtor on that pay day and by the debtor to the judgment creditor for the purposes of the judgment debt. The regulation recognises both the continuing legal entitlement of the debtor to receive payment of his or her normal salary, and the requirement for the appropriate amount to be deducted from that payment towards satisfaction of the judgment debt.

Regulation 8A.9 provides that the rate at which a deduction is to be made from a debtor's net salary on a pay day for the debtor is to be 20% unless

- the paying officer is satisfied that the rate should be reduced on grounds that otherwise the debtor was suffering, or would suffer, serious financial hardship (sub-regulation (2)); or
- the debtor has asked the paying officer, in writing, to make deductions at a higher rate, in which case the paying officer must comply with the request as soon as practicable (sub-regulation (3)).

The paying officer must comply also with a request by the debtor to reduce an existing rate of deduction greater than 20%, but the paying officer is not required to reduce the rate to less than 20% (sub-regulation (4)).

Regulation 8A.10 provides for the conditions which are to apply to the continuing payment of deductions in respect of one or more judgment debts, where the debtor moves from one Agency to another Agency. The paying officer of the second Agency must notify the judgment creditor of the movement that has taken place and of the continuing arrangements which will be made for payment. The judgment creditor is not required to pay another fee.

Regulation 8A.11 provides that a paying officer may require a judgment creditor to confirm that the judgment debt of a debtor has not been discharged, and may suspend the making of deductions until such confirmation has been received. The paying officer must notify the judgment creditor also of the cessation or termination, for any reason, of the debtor's employment.

Regulation 8A.12 provides that where a payment is made to a judgment creditor, which exceeds the amount due under the judgment debt, the excess is repayable by the judgment creditor to the debtor.

Item 2 Regulation 9.1.

The amendment omits Regulation 9.1 of the principal Regulations.