

Public Service Amendment Regulations 2002 (No. 2) 2002 No. 264

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 264

Issued by authority of the Prime Minister

Public Service Act 1999

Public Service Amendment Regulations 2002 (No. 2)

The *Public Service Act 1999* (the Act) and its accompanying *Public Service Regulations 1999* (the principal Regulations) commenced on 5 December 1999.

Section 79 of the *Public Service Act 1999* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed.

Section 26 of the Act provides that an Agency Head and an ongoing APS employee may enter into an agreement for the employee to move to the Agency Head's agency from another agency and that the agreement has effect according to its terms subject to the regulations. The movement of the APS employee may be ongoing or for a specified period ie a temporary movement. The provision has no application in relation to a non-ongoing employee.

Regulation 3.9 of the principal Regulations provided that the employee entering into an agreement under section 26 of the Act with the post-move Agency Head (the Agency Head of the agency the employee is moving to) must tell the pre-move Agency Head (the Agency Head of the agency from which the employee is moving) of the move before the end of the next working day after the agreement is made. The movement, if not a promotion, took effect 4 weeks after the day when the pre-move Agency Head was told of the agreement or on a date negotiated by the two Agency Heads and the employee.

Regulation 3.9 did not distinguish between a move with no specified period referred to as an ongoing move and a move for a specified period referred to as a temporary move. At the expiration of the period of a temporary move the employee automatically became reemployed in the pre-move agency. This meant that the pre-move Agency Head had no control over an employee in his or her Agency making an agreement with another Agency Head to move.

In developing the Act and Regulation 3.9, it was always intended that a pre-move Agency Head would have the ability to block a temporary move of an employee to another agency by not entering into an agreement for the employee to return. The Australian Government Solicitor advised that under the provisions of the Act, the movement back to the pre-move agency happened automatically on the expiration of the temporary movement. This was found to be unsatisfactory because of the uncertainty caused for the pre-move Agency Head through the lack of control over the initial move or the duration of the temporary move.

The Regulations clarify and simplify the existing arrangements for ongoing moves of APS employees between agencies, provide a pre-move Agency Head with some control over temporary moves by APS employees out of his or her agency and make provision for variations of temporary movement agreements.

The Regulations introduced a new Regulation 3.9 covering ongoing moves, and inserted a new Regulation 3.9A to cover temporary moves and a new Regulation 3.9B to provide for variations in temporary moves.

Regulation 3.9 sets out the date of effect of an ongoing move of an APS employee between agencies and provides the post-move Agency Head, the pre-move Agency Head and the APS employee with the opportunity to agree to an earlier or later date of effect.

Regulation 3.9A provides for moves that are for a specified period ie temporary, and ensures that an agreement for a temporary move has effect according to its terms only if the pre-move Agency Head approves in writing the period of the move. The Regulation also establishes the date of effect of a temporary move of an APS employee between agencies and provides the post-move Agency Head, the pre-move Agency Head and the APS employee with the opportunity to agree to an earlier or later date of effect. This Regulation only applies to an agreement to move made on or after the day on which these amendments commence.

Regulation 3.9B allows an APS employee and the post-move Agency Head to seek to vary the period of a temporary 'Move and provides that the variation will only have effect if the pre-move Agency Head approves the variation in writing. This Regulation only applies to a variation to a temporary movement agreement made on or after the day of commencement of these Regulations.

In relation to temporary moves, the Regulations confirm that an employee automatically becomes reemployed in the pre-move agency at the end of a period of temporary movement.

Section 26 and the Regulations do not apply to non-ongoing APS employees. Non-ongoing APS employees engaged under section 22 of the Act for a specified term or for the duration of a specified task or on an irregular or intermittent basis may commence employment in another agency but this will be a new engagement by the post-move Agency Head.

Details of the proposed Regulations are set out in the Attachment.

The Regulations will commence on 1 December 2002. A fixed date has been set for the commencement of the Regulations to make it easier for agencies to administer the proposed Regulations and to provide sufficient time for all APS agencies to be notified of the changes, make the appropriate amendments to their internal policies and to advise all staff of the proposed changes.

ATTACHMENT

Regulation 1 names the proposed, Regulations as the *Public Service Amendment Regulations 2002* (No. 2)

Regulation 2 of the proposed Regulations provides that the Regulations will commence on 1 December 2002.

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

Schedule 1 Amendments

Item 1 **Substitution of Regulation 3.9**

The amendment substitutes existing Regulation 3.9 and inserts new Regulation 3.9A and new Regulation 3.9B.

Regulation 3.9 Ongoing moves between Agencies

Regulation 3.9(1) provides that the regulation applies if an APS employee has entered into a written agreement with a post-move Agency Head to move to the Agency Head's agency on an ongoing basis.

Regulation 3.9(2) provides that if the agreement to move involves a promotion it takes effect in accordance with Regulation 3.8.

Regulation 3.9(3) provides that if the ongoing move is not associated with a promotion, the move takes effect 4 weeks after the day on which the pre-move Agency Head is told of the agreement or on another date if there is agreement between the post-move Agency Head, the pre-move Agency Head and the APS employee.

Regulation 3.9(4) makes the taking of effect of an ongoing move of an SES employee subject to any directions issued by the Public Service Commissioner under section 36 of the Act.

Regulation 3.9A Other Moves between Agencies

Regulation 3.9A(1) provides that the regulation applies if an APS employee has entered into a written agreement with a post-move Agency Head to move to the Agency Head's agency on a temporary basis.

Regulation 3.9A(2) provides that if the pre-move Agency Head approves in writing the move prior to the employee entering into an agreement with the post-move Agency Head, the agreement will take effect as a temporary move for the specified period.

Regulation 3.9A(3) provides that if the pre-move Agency Head does not approve the move prior to the employee entering into an agreement with the post-move Agency Head, the agreement will take effect as an ongoing move. The employee will not become re-employed in the pre-move agency at the end of the period specified in the agreement and the employee will continue to be employed on an ongoing basis in the post-move agency.

Regulation 3.9A(4) provides that the move takes effect 4 weeks after the day on which pre-move Agency Head is told of the agreement or on another date if there is agreement between the post-move Agency Head, the pre-move Agency Head and the APS employee.

Regulation 3.9A(5) makes the taking of effect of a move of an SES employee subject to any directions issued by the Public Service Commissioner under section 36 of the Act.

Regulation 3.9B Variation of period of agreement

Regulation 3.9B(1) applies to a temporary move made under section 26 with the approval of the pre-move Agency Head where the APS employee and the post-move Agency Head are seeking to vary the length of the temporary move.

Regulation 3AA(2) provides that if the pre-move Agency Head approves in writing the variation of the length of the temporary move before the agreement is varied, the variation will take effect.

Regulation 3AA(3) provides that if the pre-move Agency Head does not approve the variation of the length of the temporary move before the agreement is varied, the variation will not take effect and the terms of the original agreement will continue to operate.

Item 2 Dictionary, insertion of definitions

The proposed amendment inserts definitions of the terms *post-move Agency*, *post-move Agency Head*, *pre-move Agency* and *pre-move Agency Head* that have been introduced in the amended regulations.