

## EXPLANATORY STATEMENT

### Select Legislative Instrument 2010 No. 182

Subject - *Public Service Act 1999*

*Public Service Amendment Regulations 2010 (No. 1)*

Subsection 79(1) 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, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 33 of the Act provides that an Australian Public Service (APS) employee is entitled to review, in accordance with the regulations, of any APS action that relates to his or her employment. Part 5 of the *Public Service Regulations 1999* (the Principal Regulations) establishes the framework under which reviews of action are conducted in the APS. Regulation 5.1 of the Principal Regulations specifies that one element of the general policy about review is that “employees’ concerns are intended to be dealt with **quickly**, impartially, and fairly” (emphasis added).

The review framework established by the Principal Regulations provides for a two-tier system of review. Most primary reviews of action are undertaken within an employee’s agency. However applications for primary review involving a breach of the APS Code of Conduct, or cases where an Agency Head is directly involved, are conducted by a person or committee nominated by the Merit Protection Commissioner. If an employee is dissatisfied with the outcome of a primary review, the employee may apply to the Merit Protection Commissioner for a secondary review of the action.

Paragraph 5.24(3)(a) of the Principal Regulations provided that an action ceased to be reviewable action if an application for review was not made within one year of the action occurring and there were no exceptional circumstances explaining why the application was not made within the year.

In practice, the previous timeframe did not meet the policy objective of dealing with employees’ concerns quickly. Disputes were often delayed, unnecessarily protracting resolution of the issue long after the original action occurred. Moreover, the pre-existing timeframe did not encourage productivity and harmony in the workplace as, over this length of time, working relationships had often broken down.

The purpose of the amendments to the Principal Regulations is to specify new timeframes in which applications for review should be made. While reducing the previous timeframe, the amendments do not modify the existing discretion to allow for applications to be made outside the specified periods when there are “exceptional circumstances” justifying the delay. Exceptional circumstances typically include circumstances causing delay that is beyond the control of the applicant. The amendments also resolve an ambiguity that existed in the application of the previous timeframe.

The amendments to the Principal Regulations specify the timeframes in which an APS employee should apply for either primary review or secondary review of an APS action. The new timeframes are as follows:

- in relation to applications for primary review within an employee's agency, the timeframe is 120 days from the date of the relevant action;
- with respect to primary reviews involving a breach of the APS Code of Conduct, the timeframe is 60 days from either the determination of the breach or from the imposition of the sanction;
- for primary reviews in which the Agency Head is directly involved in the action, the timeframe is 60 days from the date of the action; and
- in relation to applications for secondary review, the timeframe is 60 days from the date the employee is told either the outcome of the primary review or that the action is not considered reviewable.

In developing the new timeframes, the Merit Protection Commissioner consulted with the heads of APS Agencies as well as with the Community and Public Sector Union, the Australian Services Union and the Australian Manufacturing Workers' Union.

The Act does not specify any conditions that must be satisfied before exercising the power to make regulations.

These Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

These Regulations commence on 2 August 2010.