



Public Service Amendment Regulations 2011 (No. 1)¹

Select Legislative Instrument 2011 No. 141

I, QUENTIN BRYCE, 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 28 July 2011

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

GARY GRAY
Special Minister of State for the Public Service and Integrity

1 Name of Regulations

These Regulations are the *Public Service Amendment Regulations 2011 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Public Service Regulations 1999*

Schedule 1 amends the *Public Service Regulations 1999*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 3.11 (2)

substitute

- (2) If an employment arrangement sets out procedures applicable to the termination of the non-ongoing APS employee, the procedures apply to the termination of the employee unless the procedures:
- (a) if the employment arrangement is a fair work instrument — are an unlawful term; or
 - (b) if the employment arrangement is a transitional instrument that is not an award — are prohibited content; or
 - (c) if the employment arrangement is not a fair work instrument or a transitional instrument — would be an unlawful term if the employment arrangement was a fair work instrument.

[2] Subregulation 3.11 (3), note

omit

Workplace Relations Act 1996

insert

Fair Work Act 2009

[3] Paragraphs 3.13 (c) and (d)

substitute

- (c) an election for a member of the Torres Strait Regional Authority established under Division 5 of Part 3A of the *Aboriginal and Torres Strait Islander Act 2005*.

[4] Subregulation 3.14 (3), definition of *required time* subparagraph (b) (i)

omit

or (d)

[5] Subregulation 3.15 (7)

substitute

- (7) For subregulation (6), the purposes are the calculation of entitlements under:
- (a) the National Employment Standards; and
- (b) an employment arrangement that applies to the employee.

Note For entitlements to long service leave and paid maternity leave, see the *Long Service Leave (Commonwealth Employees) Act 1976* and the *Maternity Leave (Commonwealth Employees) Act 1973*.

[6] Paragraph 8.1 (3) (c), note

substitute

Note A determination by an Agency Head under subsection 24 (1) of the Act is of no effect to the extent that it would reduce the benefit to an APS employee of a condition of employment applicable to the employee under:

- (a) a fair work instrument; or

- (b) a transitional instrument; or
- (c) a transitional minimum wage instrument; or
- (d) the National Employment Standards.

[7] Paragraph 8.2 (2) (c), note

substitute

Note A determination by an Agency Head under subsection 24 (1) of the Act is of no effect to the extent that it would reduce the benefit to an APS employee of a condition of employment applicable to the employee under:

- (a) a fair work instrument; or
- (b) a transitional instrument; or
- (c) a transitional minimum wage instrument; or
- (d) the National Employment Standards.

[8] Dictionary, definition of *Australian Fair Pay and Conditions Standard* and **AWA*

omit

[9] Dictionary, definition of **award*

substitute

award has the same meaning as in Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments Act) 2009*.

Note An expression used in a transitional Schedule to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* that was defined in the *Workplace Relations Act 1996* has the same meaning in the transitional schedule as it had in that Act, see paragraph 4 (1) (a) of the *Fair Work (Transitional Provisions and Consequential Amendments Act) 2009*.

[10] Dictionary, definition of *Commissioner's Directions*

omit

as in force on 2 April 2008.

insert

as in force on 7 July 2010.

[11] Dictionary, definition of *employment arrangement*

substitute

employment arrangement means any of the following:

- (a) a fair work instrument;
- (b) a transitional instrument
- (c) a determination under subsections 24 (1) or (3) of the Act;
- (d) a written contract of employment.

[12] Dictionary, after definition of *external review body*

insert

**fair work instrument* has the same meaning as in the *Fair Work Act 2009*.

[13] Dictionary, after definition of **Merit Protection Commissioner*

insert

**National Employment Standards* has the same meaning as in the *Fair Work Act 2009*.

[14] Dictionary, definition of *pre-reform AWA*

omit

[15] Dictionary, definition of *pre-reform certified agreement*

omit

[16] Dictionary, after definition of *Presiding Officer

insert

prohibited content has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Note 1 Prohibited content is mentioned in Schedule 8 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, see for example item 30 of Schedule 8.

Note 2 An expression used in a transitional Schedule to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* that was defined in the *Workplace Relations Act 1996* has the same meaning in the transitional schedule as it had in that Act, see paragraph 4 (1) (a) of the *Fair Work (Transitional Provisions and Consequential Amendments Act) 2009*.

[17] Dictionary, after definition of *statutory office holder*

insert

transitional instrument has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

transitional minimum wage instrument has the meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

[18] Dictionary, after definition of *Tribunal*

insert

unlawful term has the meaning given by section 12 of the *Fair Work Act 2009*.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.