

# EXPLANATORY STATEMENT

*Public Service Act 1999*

## **Public Service Classification Rules Amendment Instrument 2012 (No. 1)**

### **Background**

The *Public Service Act 1999* (the Act) provides for the establishment and management of the Australian Public Service (APS).

Subsection 23(1) of the Act provides that the Public Service Minister may, by notice in the *Gazette*, make rules about classifications of APS employees. Subsection 56(1) of the *Legislative Instruments Act 2003* provides to the effect that where particulars of the making of an instrument are required to be published in the *Gazette*, this requirement is taken to have been met by registration of the instrument on the Federal Register of Legislative Instruments.

Subsection 78(3) of the Act provides that the Public Service Minister may in writing delegate to a senior official any of the Public Service Minister's powers or functions under section 23 of the Act. The authority to make rules about classifications of APS employees has been delegated to the Public Service Commissioner.

The *Public Service Classification Rules 2000* (Classification Rules) provide a systematic APS-wide mechanism for categorising duties and employees for the purposes of management of APS employees. Classification is at the heart of the merit principle and APS mobility arrangements.

### **Purpose of these amendments**

The purpose of the *Public Service Classification Rules Amendment Instrument 2012 (No.1)* (Amendment Rules) is to amend the Classification Rules to:

- remove the Senior Executive (Specialist) classifications as approved classifications;
- require APS agency heads to classify Senior Executive Service (SES) roles in accordance with the SES work level standards issued or approved by the Public Service Commissioner (classification of non-SES roles continue to be in accordance with work level standards issued by the Agency Head) ;
- provide transitional arrangements to reassign all existing SES specialists to the corresponding SES generalist classification from the commencement of the Amendment Rules;
- make a consequential amendment arising out of the introduction of the *Fair Work Act 2009*; and
- make minor changes to various definitions included in the Dictionary to the Classification Rules.

The main changes to the Classification Rules arise out of recommendations made in a report on *The Review of the Senior Executive Service* conducted in 2011. Specific recommendations included in the report, which were accepted by Government in December 2011, were to abolish Senior Executive (Specialist) classifications as they were no longer required and to introduce a requirement for APS agencies to classify SES roles in accordance with the SES Work Level Standards issued or approved by the Public Service Commissioner. These work level standards were issued by the Commissioner on 7 September 2012.

### **Consultation**

The Australian Public Service Commission has consulted with a range of APS agencies on changes to SES management arrangements arising from the recommendations of the above-mentioned report. All 20 APS Departments were consulted along with a select number of statutory

agencies, namely the Australian Agency for International Development, the Australian Bureau of Statistics, the Australian Competition and Consumer Commission, the Australian Customs and Border Protection Service, the Australian Taxation Office and the Australian Trade Commission.

### **Regulation Impact Statement**

The Office of Best Practice Regulation in the Department of Finance and Deregulation has advised that the proposed changes do not have a regulatory impact on business or the not-for-profit sector and no further analysis (in terms of Regulatory Impact Statement) is required.

### **Statement of Compatibility with Human Rights**

The Classification Rules are not a disallowable legislative instrument and therefore do not fall within the scope of section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. However, these amendments are assessed as being compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.

### **Notes on clauses**

- Clause 1** sets out the name of the Amendment Rules as the *Public Service Classification Rules Amendment Instrument 2012 (No.1)*.
- Clause 2** provides that schedules 1 and 2 of the Amendment Rules take effect on the day after registration.
- Clause 3** provides that the amendments to the *Public Service Classification Rules 2000* are set out in Schedule 1.

### **Schedule 1**

- Item 1** Item 1 substitutes current Rule 5 with a new provision that has been amended to reflect the terminology of the *Fair Work Act 2009*. The note below Rule 5 has been amended to reflect correctly the language used in section 23 of the Act.
- Item 2** Item 2 removes references to Senior Executive (Specialist) classifications from Rule 8 consequential on the removal of these classifications as approved classifications.
- Item 3** Item 3 inserts a new Rule under Rule 9 (Rule 9(2A)), which provides that for Senior Executive Service (SES) classifications, the appropriate work value requirements for the purposes of allocating an approved classification to a group of duties are those described in work level standards issued or approved by the Public Service Commissioner.
- Item 4** Item 4 replaces current Rule 10(1) with a new provision which makes it clear that the requirement for agency heads to issue work level standards for each classification does not apply to SES classifications.
- Item 5** Item 5 amends Schedule 1 of the Classifications Rules by replacing Column 2 of Classification Group 9 with a new Column 2 that excludes reference to Senior Executive (Specialist) Band 1.
- Item 6** Item 6 amends Schedule 1 of the Classifications Rules by replacing Column 2 of Classification Group 10 with a new Column 2 that excludes reference to Senior Executive (Specialist) Band 2.
- Item 7** Item 7 amends Schedule 1 of the Classifications Rules by replacing Column 2 of Classification Group 11 with a new Column 2 that excludes reference to Senior Executive (Specialist) Band 3.

- Item 8** Item 8 omits the definition of *award* from the Dictionary to the Classification Rules because it is obsolete.
- Item 9** Item 9 includes new definitions of *Commissioner* and *modern award* in the Dictionary to the Classification Rules.
- Item 10** Item 10 inserts a new definition of *SES classification* in the Dictionary to the Classification Rules.
- Item 11** Item 11 corrects an error in the Classification Rules by amending the note under the definition of *SES employee* in the Dictionary to the Classification Rules to include a reference to Rule 8 as well as Rule 6.
- Item 12** Item 12 inserts a new definition of *transitional APSC* in the Dictionary to the Classification Rules.

## **Schedule 2 Transitional**

- Item 1** Item 1 inserts a transitional provision which provides that where before the commencement of this Schedule, an APS Agency Head had allocated to an APS employee a classification of Senior Executive (Specialist) Band 1, Band 2 or Band 3, the Agency head is taken to have allocated that employee the corresponding Senior Executive classification with effect from the commencement of this Schedule.