



Public Service Amendment (Miscellaneous Measures) Regulations 2018

I, the Honourable Paul de Jersey AC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 06 December 2018

Paul de Jersey AC
Administrator of the Government of the Commonwealth of Australia

By His Excellency's Command

Mathias Cormann
Minister for Finance and the Public Service

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1 Name

This instrument is the *Public Service Amendment (Miscellaneous Measures) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	11 December 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Public Service Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Public Service Regulations 1999

1 After subparagraph 2.2(2)(c)(vii)

Insert:

(viii) an appointment as a member of the Fair Work Commission; or

2 Subregulation 5.23(4) (table item 1, column headed “Action”)

Omit “an affected employee’s Agency Head”, substitute “the relevant Agency Head”.

3 After regulation 7.2D

Insert:

7.2DA Action by Agency Head

- (1) If an Agency Head receives a recommendation under regulation 7.2D, the Agency Head must, as soon as possible:
 - (a) consider the recommendation; and
 - (b) make a decision about the recommendation.
- (2) The Agency Head may:
 - (a) confirm the relevant determination; or
 - (b) vary the determination; or
 - (c) set the determination aside and substitute a new determination.
- (3) If the Agency Head acts in accordance with the recommendation, the Agency Head is not required to seek the view of the affected former employee before acting on the recommendation.

Note: The views of the affected former employee have already been sought by the Merit Protection Commissioner during the review in accordance with the principles of procedural fairness.

- (4) Subregulation (2) does not limit the employer powers of the Agency Head in relation to the determination or the affected former employee.

Example: The Agency Head may take other appropriate action to rectify effects of the determination or restore the affected former employee to the position in which the affected former employee would have been if the determination had not been made.

- (5) If, after the recommendation:
 - (a) the Agency Head considers making a finding of a breach of the Code of Conduct; and
 - (b) the Agency Head had not made the finding before the recommendation was made; and
 - (c) the finding was not mentioned in the recommendation;the Agency Head must comply with the procedures established under subsection 15(3) of the Act before deciding whether to make the finding.
- (6) The Agency Head must tell the affected former employee and the Merit Protection Commissioner in writing of:
 - (a) the decision; and

(b) the reasons for the decision.

4 At the end of Part 10

Add:

Division 10.2—Amendments made by the Public Service Amendment (Miscellaneous Measures) Regulations 2018

10.12 Application—members of the Fair Work Commission

Paragraph 2.2(2)(c), as amended by Schedule 1 to the *Public Service Amendment (Miscellaneous Measures) Regulations 2018*, applies in relation to a person who is a member of the Fair Work Commission on or after the day that Schedule commences.

10.13 Application—recommendation in relation to determination of breach of Code of Conduct by former APS employee

Regulation 7.2DA, as inserted by Schedule 1 to the *Public Service Amendment (Miscellaneous Measures) Regulations 2018*, applies in relation to a recommendation under regulation 7.2D received by an Agency Head on or after the day that Schedule commences, resulting from a review of a determination under Division 7.3 that began before, on or after that day.

5 Dictionary

Insert:

member of the Fair Work Commission has the same meaning as FWC Member in section 12 of the *Fair Work Act 2009*.