

EXPLANATORY STATEMENT

STATUTORY RULE 1985 NO. 296 ISSUED BY THE AUTHORITY OF THE

MINISTER FOR COMMUNICATIONS

Section 116 of the Postal Services Act 1975 (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by that Act are required or permitted to be prescribed by the regulations, or which are necessary or convenient to be prescribed by the regulations for carrying out or giving effect to that Act.

Section 43 of the Act requires that the appointment of an officer shall be on probation for a period of 6 months unless the Commission otherwise directs in a particular case. Section 43(4)(b) allows the Commission to terminate the employment of such a probationary officer as soon as practicable after the expiration of that period of six months.

Section 43(7) of the Act requires that regulations shall make provision for and in relation to the review of a decision of the Commission which relates to the termination of employment of a probationary officer under section 43(4)(b).

The amendments to the Postal Services Regulations ("the Principal Regulations") allow for the appeal provisions which already attach to sections 58 and 59 of the Act to be attracted to the termination of employment of probationary officers under section 43(4)(b) of the Act. Section 58 relates to removal, transfer or retirement of excess officers of the Commission and Section 59 relates to retirement, transfer or demotion of officers considered to be inefficient, incompetent or incapable of performing their duties. These appeal provisions are located in regulations 31-35 inclusive of the Principal Regulations. In summary, these provide for the establishment of a Review Tribunal ("the Tribunal") consisting of a Chairperson from the Promotions Appeal Board an officer nominated by the Commission and an

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officer nominated by the appropriate trade union or professional organisation. The Tribunal is empowered to undertake a full review of a Commission decision relating to the dismissal of the probationary officer without regard to legal formality and may recommend to the Commission action to be taken.

Sub-section 109(3A) of the Act provides that where a judgement creditor of an employee or officer of the Commission serves on the Commission an order for attachment of wages of that employee or officer, an administrative fee at a prescribed rate will be charged by the Commission.

An addition to the Principal Regulations sets a prescribed rate of \$35 for the purposes of sub-section 109(3A). This fee is to cover administrative costs which will arise when the Commission is required to garnishee the wages of an officer or employee in order to settle a judgement debt.

The definition of "article" in regulation 36 of the Principal Regulations is amended. This amendment extends the existing definition so that articles that are transmissible by courier services will also attract the provisions of Part VI of the Act which relate to the opening, examining, repair and disposal of postal articles, and sections 53 and 53A of the Act which relate to the transmission of articles advertising indecent, obscene or offensive material which is unsolicited.

The meaning of "appropriate organisations" as it appears in regulation 32 of the Principal Regulations in relation to review of decisions by a Review Tribunal is clarified and the same meaning will apply to review of decisions made in respect of termination of probationary appointments. The new definition will more readily identify the "appropriate organisation" (trade union or professional organisation) which is to nominate a representative on the Review Tribunal.

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Details of the amending regulations are as follows:

Regulation 1: Provides a citation for the Postal Services Regulations (The Principal Regulations).

Regulation 2: Provides an addition to the Heading of Part V of the Principal Regulations which will allow for the inclusion of Division 3 of the Act which relates to probationary officers.

Regulation 3: Inserts in existing regulation 31 of the Principal Regulations a reference to section 43 of the Act. This will allow for the formation, from time to time, of a Review Tribunal, for the purposes of reviewing decisions relating to probationary officers.

Regulation 4(a): Inserts in existing regulation 32 of the Principal Regulations a reference to section 43 of the Act. This allows for the constitution of a Review Tribunal to determine appeals against decisions relating to probationary officers.

Regulation 4(b): Provides a new definition of "appropriate organisation" in respect of the constitution of a Review Tribunal. This new definition clarifies the existing definition and will apply to applications for review under sections 43, 58 and 59 of the Act.

Regulation 5: Inserts in existing regulation 33 of the Principal Regulations a reference to section 43 of the Act. This will allow for an application for review of a decision made by the Commission in respect of probationary officers.

Regulation 6(a): Inserts a new sub-regulation 34(1) of the Principal Regulations which will extend the power of a Review Tribunal to undertake a full review of a decision relating to probationary officers who have submitted a written application for review under regulation 33 of the Principal Regulations.

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Regulation 6(b): Inserts in existing regulation 34 of the Principal Regulations a reference to sections 58 and 59 of the Act. This will confine regulation 34(3) to sections 58 and 59 of the Act and exclude its operation in respect of probationary officers. Regulation 34(3) requires the Tribunal to consider retraining an officer for another position or retaining an officer whose services may again become valuable as a result of normal staff losses. This provision provides protection which is appropriate in relation to excess officers (section 58) and to officers who have become inefficient or incapable in a particular position (section 59). It is not appropriate, however, to probationary officers, who do not have the same legitimate expectation of continued employment. During the six month period probationary officers are assessed as to their fitness for permanent appointment.

Regulation 7: Inserts in existing regulation 35 of the Principal Regulations a reference to section 43 of the Act. This will allow for the Review Tribunal to make recommendations to the Commission in respect of decisions made by the Commission in respect of probationary officers.

Regulation 8: Inserts a new definition of "article" in regulation 36 of the Principal Regulations. This new definition will allow the provisions of Part VI of the Principal Regulations (Opening, Examination, Repair and Disposal of Postal Articles) to apply to articles carried by courier services. The penalties incurred relating to the unsolicited mailing of indecent, obscene or offensive material under sections 53 and 53A will also apply to articles carried by courier services as a result of this amendment.

Regulation 9: Provides a new regulation 57 which will set a prescribed rate of \$35 as the rate to be paid to the Commission under sub-section 109(3A) as an administrative fee by any person who serves on the Commission an order to garnishee the wages of

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an officer or employee of the Commission under section 109 of the Act. Section 109 of the Act allows for attachment of wages or salaries of officers or employees of the Commission.

AUTHORITY: Section 116 of the Postal Services Act 1975

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