

# **Public Service Regulations 1999 1999 No. 300**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1999 No. 300**

Issued by the authority of the Prime Minister

Public Service Act 1999

Public Service Regulations 1999

The Public Service Act 1999 (the Act) received the Royal Assent on 11 November 1999. The Act was proclaimed to commence on 5 December 1999.

The Public Service Act 1922 was repealed with effect from 5 December 1999 also, on the commencement on that date of the Public Employment (Consequential and Transitional) Amendment Act 1999 - item 743 of Schedule 1 of that Act refers.

Subsection 79(1) of 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.

Subsection 79(2) of the Act provides that, without limiting subsection 79(1) of the Act, regulations may be made for, or in relation to, any of the following:

- (a) confidentiality of information obtained by persons performing, or assisting in the performance of, functions under section 33, paragraph 41(1)(c) or paragraph 50(a) or (c) of the Act;
- (b) immunity from civil action in respect of acts or omissions of persons performing, or assisting in the performance of, functions under section 33, paragraph 41(1)(c) or paragraph 50(a) or (c) of the Act;
- (c) prescribing penalties for offences against the regulations by way of fines of up to 10 penalty units. (A penalty unit equals \$110 (s.4AA of Crimes Act 1914)).

The Act contains other provisions which authorise the making of regulations. Those provisions are detailed in Attachment A.

### **Purpose and Scope of Regulations**

The purpose of the Regulations is to make necessary or appropriate provision in relation to a range of matters, for purposes of giving effect to the provisions of the Public Service Act 1999.

The Regulations deal with the following matters:

Part 1 - Preliminary

Part 2 - The Australian Public Service

Division 2.1 - The Code of Conduct

Division 2.2 - Whistleblower reports

Division 2.2 - Whistleblower reports

Part 3 - APS Employees

Division 3.1 - Employer powers etc of Agency Heads

Division 3.2 - Rights of return for election candidates

Division 3.3 - Miscellaneous

Part 4 - Independent Selection Advisory Committees

Part 5 - Review of actions

Division 5.1 - Statement of intent and outline

Division 5.2 - Review of certain APS promotion decisions

Division 5.3 - Review of other APS actions

Part 6 - The Public Service Commissioner

Part 7 - The Merit Protection Commissioner

Part 8 - Administrative arrangements and re-organisation

Part 9 - Miscellaneous

Schedule 1 - Non-reviewable actions

Dictionary

The details of the Regulations are set out in Attachment B.

The Regulations commenced on 5 December 1999.

Authority: Section 79 of the

Public Service Act 1999

## **ATTACHMENT A**

Provisions of the Public Service Act 1999, additional to section 79 of that Act, which authorise the making of regulations.

Subsection 13(13) of the Act provides that an Australian Public Service (APS) employee must comply with any conduct requirement that is prescribed by the regulations, as well as complying with the other specific requirements of the Code of Conduct in section 13 of the Act.

Subsection 14(2) of the Act provides that statutory office holders are bound by the Code of Conduct in the same way as APS employees. Subsection 14(3) of the Act defines 'statutory office holder' to mean a person who holds any office or appointment under an Act, being an office or appointment that is prescribed by the regulations for the purposes of this definition.

Subsection 15(2) of the Act provides that the regulations may prescribe limitations on the power of an Agency Head to impose on an APS employee the sanctions specified in subsection 15(1) of the Act, where the employee is found to have breached the Code of Conduct set out in section 13 of the Act.

Subsection 20(2) of the Act provides that an Agency Head has, in respect of APS employees in the Agency, such additional rights, duties and powers of an employer as are prescribed by the regulations.

Subsection 22(4) of the Act provides that the regulations may limit the circumstances in which persons may be engaged as APS employees for a specified term or for the duration of a specified task, in accordance with paragraph 22(2)(b) of the Act, or engaged for duties that are irregular or intermittent, in accordance with paragraph 22(2)(c) of the Act.

Subsection 22(5) of the Act provides that the engagement of an A-PS employee for a specified term in accordance with paragraph 22(2)(b) of the Act, may be extended, subject to any limitations prescribed by the regulations.

Subsection 26(2) of the Act provides that an agreement in writing between an Agency Head and an APS employee, for the employee to move to the Agency Head's agency from another agency, has effect according to its terms, subject to the regulations.

Section 28 of the Act provides that the regulations may make provision in relation to the suspension from duties of an APS employee, with or without remuneration.

Subsection 29(4) of the Act provides that the regulations may prescribe grounds or procedures applicable to the termination of the engagement of non-ongoing APS employees.

Paragraph 32(1)(a) of the Act provides that the provisions of that section of the Act, relating to the right of return to the APS of an APS employee who has resigned to contest an election, are applicable to an election that is prescribed by the regulations.

Subsection 32(2) of the Act provides that a person who has resigned to contest an election, in accordance with subsection 32(1) of the Act, is entitled to be again engaged as an APS employee, in accordance with the regulations and within the time limits prescribed by the regulations.

Subsection 33(1) of the Act provides that an APS employee is entitled to review, in accordance with the regulations, of any APS action that relates to his or her APS employment. Subsection

33(2) of the Act provides that the regulations may prescribe exceptions to the entitlement for review of an APS action in accordance with subsection 33(1) of the Act.

Subsection 33(3) of the Act provides that regulations made for the purposes of subsection 33(1) of the Act may provide for the powers available to the Merit Protection Commissioner, or any other person or body, when conducting a review under the regulations.

Subsection 33(4) of the Act provides that regulations made for the purposes of subsection 33(1) of the Act:

- (a) may provide for an initial review to be conducted within the responsible Agency; and
- (b) may provide that applications for review of particular kinds of APS action are to be made directly to the Merit Protection Commissioner; and
- (c) must provide for an application for review to be referred to the Merit Protection Commissioner if the applicant is not satisfied with the outcome of an initial review within the responsible Agency; and
- (d) in the case of a review following an application or referral to the Merit Protection Commissioner, must provide for the review to be conducted by a person nominated by the Merit Protection Commissioner or by a 3 member committee constituted in accordance with regulations.

Subsection 33(5) of the Act provides that a person or body that has conducted a review under section 33 of the Act may make recommendations in a report on the review but does not have power to make any binding decisions as a result of the review, except as provided by the regulations.

Paragraph 41 (1)(l) of the Act provides that, in addition to 11 specified functions in subsection 41 (1) of the Act, the functions of the Public Service Commissioner include any function prescribed by the regulations.

Paragraph 41 (1)(f) of the Act provides that it is a function of the Public Service Commissioner to inquire into alleged breaches of the Code of Conduct by Agency Heads and to report to the appropriate authority on the results of such enquiries. Paragraph 43 (3)(c) of the Act provides that the appropriate authority for a report about an Agency Head is the Presiding Officers, if the Agency Head is the Head of a Statutory Agency that is prescribed by the regulations for the purposes of that paragraph.

Paragraph 50(1)(e) of the Act provides that, in addition to the functions specified in paragraphs 50(1)(a), (b), and (c) of the Act, and such functions as may be prescribed by regulations made for the purposes of section 33 of the Act, the Merit Protection Commissioner's functions include such other functions as are prescribed by the regulations.

Subsection 50(3) of the Act provides that the regulations may authorise the Merit Protection Commissioner to charge fees (on behalf of the Commonwealth) for the performance of functions that are prescribed by the regulations under paragraph 50(1)(e) of the Act.

Subsection 72(1) of the Act provides that the Public Service Commissioner may do a number of things to give effect to an administrative rearrangement. Within that framework, subsection 72(5) of the Act provides that the regulations may prescribe arrangements for determining any variation of the remuneration and other conditions of employment applicable to:

(a) APS employees who are moved to another Agency under paragraph 72(1)(a) of the Act; and

(b) persons who become engaged as APS employees in a specified Agency under paragraph 72(1)(c) of the Act.

Subsection 75(1) of the Act provides that the regulations

(a) may provide for deductions to be made from the salary of a Secretary, the Head of an Executive Agency or an APS employee in order to satisfy a judgement debt; and

(b) may prescribe fees payable in connection with such deductions.

Section 76 of the Act provides that the regulations

(a) may authorise the disclosure, in specific circumstances, of personal information (within the meaning of the Privacy Act 1988); and

(b) may impose restrictions on the collection, storage, access, use or further disclosure of information disclosed under regulations made for the purposes of paragraph (a).

## **ATTACHMENT B**

Part 1 of the Regulations deals with certain preliminary matters.

Regulation 1.1 provides that the name of the Regulations is the Public Service Regulations 1999.

Regulation 1.2 of the Regulations provides that these Regulations commence on the commencement of the Public Service Act 1999.

Regulation 1.3 of the Regulations provides that the Dictionary at the end of these Regulations defines certain words and expressions, and includes certain words and expressions that are defined elsewhere in these Regulations. Subregulation (2) provides that the dictionary includes certain words and expressions relevant to these Regulations that are defined in the Public Service Act 1999. Subregulation (3) provides that a definition in these Regulations applies to each use of the word or expression in these Regulations, unless the contrary intention appears.

Part 2 of the Regulations deals with certain matters affecting the operation of the APS.

Division 2.1 of Part 2 of the Regulations contains provisions relating to the APS Code of Conduct.

Regulation 2.1 of the Regulations provides that an APS employee must not, except in the course of his or her duties as an APS employee or with the Agency Head's express authority, give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.

Regulation 2.2 of the Regulations provides that, for the purposes of subsection 14(3) of the Act, a person who occupies an office that is in a class of defined offices, including offices held by non-APS employees (subregulation (1)), or who holds an appointment that is in a defined class of appointments, including appointments held by non-APS employees (subregulation (2)), is a person who is a statutory office holder, bound by the Code of Conduct in section 133 of the Act. Subregulation (3) defines 'non-APS employee' to mean a person employed or appointed under an Act who is not an APS employee.

Regulation 2.3 of the Regulations provides that, for the purposes of subsection 15(2) of the Act an Agency Head who imposes on an employee the sanction of deduction of salary, by way of a fine, for having breached the Code of Conduct, must not impose a deduction that is more than 2% of the employee's annual salary.

Division 2.2 of Part 2 of the Regulations contains provisions relating to whistleblower reports by APS employees.

Regulation 2.4 of the Regulations provides that an Agency Head must establish procedures for dealing with a report made by an APS employee under section 16 of the Act, which deals with protection for whistleblowers.

Subregulation (2) prescribes the matters which must be covered by those procedures. including the procedures for the reporting and investigation of breaches (or alleged breaches) of the Code of Conduct, and the responsibilities and powers of Agency Heads, in relation to these matters. The subregulation requires that the procedures must;

- \* have due regard to procedural fairness;
- \* comply with the Privacy Act 1988;

- \* provide information about the protection available under section 16 of the Act to persons making reports;
- \* provide the option for an employee to refer the report to the Commissioner, or the Merit Protection Commissioner or other authorised person;
- \* ensure that an Agency Head, or a person authorised by the Agency Head, will investigate the report unless he or she considers the report to be frivolous or vexatious; and
- \* ensure that the findings of an investigation are dealt with as soon as practicable.

Regulation 2.5 of the Regulations provides that, for the purposes of paragraphs 41(1)(c) and (1) of the Act, the functions of the Public Service Commissioner include the obligation to investigate, or authorise another person to investigate, a report made to the Commissioner in accordance with procedures established by an Agency Head for dealing with a whistleblower report by an APS employee under section 16 of the Act, unless the Commissioner considers the report to be frivolous or vexatious.

Regulation 2.6 of the Regulations provides that, for the purposes of paragraphs 50(1)(a) and (e) of the Act, the functions of the Merit Protection Commissioner include the obligation to investigate, or authorise another person to investigate, a report made to the Merit Protection Commissioner in accordance with procedures established by an Agency Head for dealing with a whistleblower report by an APS employee under section 16 of the Act, unless the Merit Protection Commissioner considers the report to be frivolous or vexatious.

Regulation 2.7 of the Regulations provides that, where a report is made to a person authorised by the Public Service Commissioner or the Merit Protection Commissioner, in accordance with procedures established by an Agency Head for dealing with a whistleblower report by an APS employee under section 16 of the Act, the authorised person must investigate the report, unless he or she considers the report be frivolous or vexatious.

Subregulations (3) and (4) provide that, where a report is made to the Public Service Commissioner or the Merit Protection Commissioner in accordance with procedures established by an Agency Head for dealing with a whistleblower report by an APS employee under section 16 of the Act, and the relevant Commissioner authorises another person to investigate the report, that authorised person must investigate the report.

Part 3 of the Regulations deals with a range of matters relating to the engagement and employment of APS employees.

Division 3.1 of Part 3 of the Regulations contains provisions relating to the employer powers of Agency Heads and associated matters.

Regulation 3.1 of the Regulations applies to an APS employee whose engagement in an Agency is subject to a condition dealing with health clearances, in accordance with paragraph (22(6)e) of the Act. Subregulation (2) provides that, while the engagement is subject to that condition, the Agency Head may direct the employee to undergo a medical examination by a nominated medical practitioner, for an assessment of the employee's fitness for duty, and may require the employee to give to the Agency Head a medical report of the examination. Footnote 2 to the regulation indicates that arrangements will be made in Agencies to ensure that employees know the period in which an engagement is subject to such a condition. Subregulation (3) provides a definition of the term 'nominated medical practitioner' for the purposes of Part 3 ) of the Regulations.

Regulation 3.2 of the Regulations applies to an APS employee if an Agency Head reasonably believes that the state of health of the employee in the Agency

- (a) may be affecting the employee's work performance; or
- (b) has caused the employee to have an extended absence from work; or
- (c) may be a danger to the employee; or
- (d) has caused or may cause the employee to be a danger to other employees or members of the public; or
- (e) may be affecting the employee's standard of conduct.

The footnote to subregulation (2) provides examples that could be treated as extended absences.

Subregulation (2) provides that the Agency Head may direct the employee to undergo a medical examination by a nominated medical practitioner (as defined in subregulation 3.1(3)), for an assessment of the employee's health and physical fitness, and may require the employee to give to the Agency Head a medical report of the examination.

Regulation 3.3 of the Regulations provides that, for the purposes of subsection 20(2) of the Act, an Agency Head may approve a scheme for persons engaged for a specific term in the Agency to gain skills and experience for the purpose of assisting them to participate in the workforce. Subregulation (2) requires that notice of the approval of a scheme must be published in the Commonwealth Gazette within 14 days after the day on which the scheme was approved.

Regulation 3.4 of the Regulations sets out the circumstances in which a person may be engaged as an SES employee for a specified term. Subregulation (2) provides that the person may be engaged for a specified term not exceeding 5 years and subregulation (3) provides that, if the engagement is for a specified term of less than 5 years, it may be extended one or more times, but only to the extent that the total term does not exceed 5 years.

Regulation 3.5 of the Regulations sets out the circumstances in which a person may be engaged by an Agency as a non-SES employee for a specified term or for the duration of a specified task. Items 1, 2, 3, 4 and 5 of the table in subregulation (2) set out 5 possible reasons for engaging a person for a term not exceeding 18 months. Items 6 and 7 of the table set out 2 further reasons for engaging a person for a period, not exceeding 6 months, until an ongoing employee is engaged. Item 8 of the table provides for engaging a person for a term not exceeding 3 years, where the person concerned has been offered engagement as an ongoing APS employee in accordance with paragraph 22(2)(a) of the Act but prefers to be engaged for a specified term.

Subregulation (3) provides for the engagement of a person for the duration of a specified task, where the Agency Head can reasonably estimate the duration of the task at the time of engagement, the services of the person are unlikely to be required after completion of the task and provision has been made for considering the interest and claims of appropriately skilled APS employees in the Agency to perform the duties.

Subregulations (4), (5) and (6) provide variously for the engagement of a person for a specified term, or for the duration of a specified task, if the engagement is for the purpose of



- (a) the person gaining skills and experience under a workforce training scheme, approved under regulation 3 of these Regulations or a scheme which is the subject of a general direction by the Prime Minister under sub-section 2 1 (1) of the Act; or
- (b) meeting a practical requirement for the award of a qualification to the person by an educational institution or for accreditation of the person by a professional body; or
- (c) providing the person with occupational experience for purposes of satisfying legal requirements for licensing or registration to engage in the occupation.

Regulation 3.6 of the Regulations provides that, for the purposes of subsection 22(5) of the Act, the engagement of a person to meet a temporary increase in the workload of an Agency, or a component of the Agency, that the Agency Head does not expect to continue (item 1 in the table in subregulation 5(2) refers) may be extended for a total term not exceeding 3 years, if the reason for the engagement continues to exist, the Agency cannot fully meet its objectives by using the services of an ongoing APS employee in the Agency, and the temporary increase in workload is a result of implementing a policy that does not involve an ongoing increase in the usual workload of the Agency or its component.

Subregulation (2) provides that, for the purposes of subsection 22(5) of the Act, the engagement of a person for a reason mentioned in items 2,3,4 or 5 of the table in subregulation 5(2) may be extended if the reason for the engagement continues to exist, the total term of the extended engagement does not exceed 3 years and the Agency Head certifies that the Agency cannot fully meet its objectives by using the services of an ongoing APS employee in the Agency and that the extension of the engagement is in the public interest.

Regulation 3.7 of the Regulations applies to a person who was engaged as a term employee under section 82AD, 82AE or 82AG of the Public Service Act 1922 ('the, old Act') and who became a non-SES employee under the Act in accordance with subsection 5(7) of the Public Employment (Consequential and Transitional) Amendment Act 1999. Subregulation (6) provides that 'term employee' has the meaning given by section 4 of the latter Act.

Subregulation (2) provides that the total term of the employee's engagement includes the period of his or her continuing engagement under the relevant provision of the old Act that ended immediately before the commencing time of the Public Service Act 1999.

Subregulations (3) and (4) provide that, for the purposes of subsection 22(5) of the Act, the extension of the employee's original engagement for a specified term must not be greater than the term specified for a corresponding reason specified in the appropriate item in the table in subregulation 5(2). Subregulation (5) specifies 5 further requirements which must be satisfied before the engagement may be extended.

Regulation 3.8 of the Regulations provides that the promotion of an ongoing APS employee takes effect 4 weeks after the promotion is notified in the Gazette, or on such other date as may be agreed between the employee and the Agency Head concerned and, if the employee is being promoted from another Agency, the Agency Head of that Agency. However, subregulation (3) provides that, if a valid application has been made for review of a promotion decision by a PRC, then the promotion takes effect after 2 weeks or 4 weeks, in accordance with subregulations (4), (5) and (6) (or from such other date of effect as is agreed between the employee and the Agency Head concerned and, if the employee is moving from another Agency, the Agency Head of that Agency).

Regulation 3.9 of the Regulations applies to a written agreement, entered into by an Agency Head with an ongoing APS employee, for the employee to move to the Agency Head's Agency

from another Agency, where that move is not a promotion. Subregulation (5) provides that a move which is a promotion takes effect as provided by regulation 3.8.

Subregulation (2) provides that the APS employee concerned must tell the Agency Head of the Agency in which the employee is then located, ('the current Agency Head'), about the agreement before the end of the next working day after the agreement is made. Subregulation (3) then provides that, if the move is not a promotion, it takes effect 4 weeks after the day when the current Agency Head is told of the agreement or, if another date of effect is agreed between the new and current Agency Heads and the employee, on the agreed date of effect. Subregulation (3) has effect in relation to the move of an SES employee, subject to any directions issued by the Commissioner under section 36 of the Act.

Regulation 3.10 of the Regulations provides that an Agency Head may suspend from duties an Agency employee for a breach, or possible breach of the Code of Conduct, where the employee's suspension is in the public, or the Agency's, interest. The suspension may be with or without remuneration, but suspension without remuneration is to be for not more than 30 days, unless exceptional circumstances apply (subregulations (2) and (3)).

Subregulation (4) requires the Agency Head to review the suspension at reasonable intervals, and subregulations (5) and (6) specify circumstances under which the Agency Head must immediately end the suspension. Subregulation (7) provides that, in exercising powers under this regulation, the Agency Head must have due regard to procedural fairness, unless the Agency Head is satisfied on reasonable grounds that, in the particular circumstances, it would not be appropriate.

Regulation 3.11 of the Regulations sets out, for the purposes of subsection 29(4) of the Act, procedures applicable to the termination of the engagement of a non-ongoing APS employee. Subregulation (2) provides that any such procedures set out in an award, certified agreement or AWA will apply to the termination of engagement. Subregulation (3) provides that termination on the grounds of misconduct may only occur in accordance with procedures determined by an Agency Head under subsection 15(3) of the Act, for purposes of determining whether an APS employee in the Agency has breached the Code of Conduct.

Regulation 3.12 of the Regulations requires notification in the Commonwealth Gazette of decisions taken in the following circumstances in relation to the engagement and employment of persons under the Act and these Regulations as APS employees:

- \* engagement of a person as an ongoing APS employee, or for a specified term or the duration of a specified task exceeding 12 months;
- \* extension beyond 12 months of the engagement of a person who was initially engaged as an APS employee for a specified term of less than 12 months;
- \* movement by an ongoing APS employee to perform duties in another Agency (other than a promotion or temporary movement);
- \* assignment of duties to an ongoing APS employee in an Agency;
- \* assignment to an SES employee of duties of a lower classification without the employee's agreement;
- \* promotion of an ongoing employee;

\* termination of the employment of an ongoing APS employee under section 29 of the Act; and

\* decision of a PRC on review of a promotion decision under Part 2 of Chapter 2 of these Regulations.

Division 3.2 of Part 3 of the Regulations deals with the right of return to the APS of former APS employees who have resigned to contest an election.

Regulation 3.13 of the Regulations specified 4 categories of election which are prescribed for the purposes of section 32 of the Act, dealing with the right of a former APS employee who has resigned to contest one of the prescribed elections but has failed to be elected. The 4 categories are:

(a) an election for a member of a House of the Parliament of the Commonwealth or of a State;

(b) an election for a member of the Legislative Assembly of the Australian Capital Territory or the Northern Territory;

(c) a zone election under Division 7 of Part 3 of the Aboriginal and Torres Strait Islander Commission Act 1989;

(d) an election for a member of the Torres Strait Regional Authority, established under section 142 of the Aboriginal and Torres Strait Islander Commission Act 1989.

Regulation 3.14 of the Regulations provides that a person to whom section 32 of the Act applies is entitled to be again engaged as an APS employee if the person applies within the required time to the Agency Head for the Agency in which the person was employed at the time of resignation. Subregulation (3) defines the term 'required time' to mean:

(a) 2 months after the declaration of the result of the election, where the result is

not disputed; or

(b) 2 months after the Federal Court of Australia makes a final decision on a disputed zone or Torres Strait Regional Authority election (if the relevant dispute petition is not withdrawn) or, in any other case, 2 months after a court of disputed returns decides the petition disputing the result (or the petition is withdrawn or lapses).

Subregulation (2) provides that the entitlement to be again engaged as an APS employee no longer applies if, before resigning to contest the election, the person was engaged for a specified term or for the duration of a specified task, and the specified term (including any extension of the term) has expired or the task has been completed when the person applies to be again engaged.

Regulation 3.15 of the Regulations specifies the conditions which must apply to a person who is entitled to be again engaged as an APS employee in accordance with section 32 of the Act.

Subregulation (2) requires that the person must be engaged on the same basis on which the person was engaged before resigning to contest the election. Subregulations (3) and (4) require the re-engagement to be at the person's previous classification, with duties that are the same

as, or similar to, the duties the person had before resigning, or, if such duties are unavailable, other duties at the previous classification.

Subregulation (5) requires that the person must be engaged on the same terms and conditions of employment as applied to the person at time of resignation, subject to the application of any changed remuneration, term or condition applying to the person's previous classification since that time.

Subregulation (6) provides that the period between the person's resignation and again being engaged as an APS employee counts as service as an APS employee for all purposes.

Division 3.3 of Part 3 of the Regulations is a Miscellaneous Division

Regulation 3.16 of the Regulations requires each APS employee to inform him or herself about the Act, these Regulations and Commissioner's Directions issued under section 11, 15 or 36 of the Act.

Part 4 of the Regulations contain provisions relating to Independent Selection Advisory Committees.

Regulation 4.1 of the Regulations provides that the function of an ISAC is to make recommendations to an Agency Head about the suitability of candidates for engagement, promotion or assignment to duties in relation to employment in the Agency, at a classification level mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules.

Regulation 4.2 of the Regulations provides that the Merit Protection Commissioner may establish an ISAC at the request of an Agency Head and may charge the Agency Head a fee for carrying out functions under Part 2.

Regulation 4.3 of the Regulations provides that an ISAC must comprise:

- (a) a Convenor nominated by the Merit Protection Commissioner; and
- (b) a person nominated by the relevant Agency Head; and
- (c) an APS employee nominated by the Merit Protection Commissioner.

Subregulations (2), (3), (4) and (5) specify certain requirements in relation to the membership and operation of an ISAC. Subregulation (6) provides that a person is not subject to direction in carrying out his or her duties as a member of an ISAC, except by a Court or as specified in instructions issued under regulation 2.5 of these Regulations.

Regulation 4.4 of the Regulations specifies the minimum requirements of the procedures used by an ISAC in performing its functions under Part 4, in terms of procedural fairness, informality and privacy. It requires that the functions of the ISAC be finished as quickly as a proper consideration of the matter allows, and that a person appearing before an ISAC must do so without representation unless the Merit Protection Commissioner decides otherwise.

Regulation 4.5 of the Regulations requires the Merit Protection Commissioner to issue as soon as practicable instructions, not inconsistent with the Act, these Regulations or the Commissioner's Directions, relating to the procedures to be followed by an ISAC in performing its functions under Part 2. An ISAC must comply with these instructions.

Regulation 4.6 of the Regulations requires the Merit Protection Commissioner to take all reasonable steps to ensure that staff and other resources are available to assist an ISAC to carry out its functions efficiently and effectively.

Regulation 4.7 of the Regulations specifies the action which must be taken by an ISAC in assessing the relative merits of candidates for an employment opportunity, on the basis of the relative suitability of each candidate for the duties, their work-related qualities and the relative capacity of each candidate to achieve outcomes related to the duties. The ISAC must report on its assessment to the relevant Agency Head and make a recommendation to the Agency Head, primarily on the basis of the assessment, as to which candidate, if any, it considers to be the most suitable for the relevant employment.

Regulation 4.8 of the Regulations specifies the basis on which a recommendation may be made if all members of the ISAC do not agree on a recommendation.

Regulation 4.9 of the Regulations provides that the recommendation of an ISAC is not binding on an Agency Head.

Regulation 4.10 of the Regulations provides that engagement, promotion or assignment of duties made in accordance with an ISAC recommendation is not subject to review under Part 5 of these Regulations. The engagement, promotion or assignment of duties must be notified in the Commonwealth Gazette as having been made in accordance with an ISAC recommendation. It is not affected by any defect in the nomination of a member of the ISAC or a failure to comply with the instructions issued under regulation 4.5 of these Regulations.

Regulation 4.11 of the Regulations provides that if, instead of acting in accordance with an ISAC recommendation in respect of a employment opportunity, an Agency Head promotes another APS employee to the employment opportunity, the promotion is subject to review under Division 5.2. The promotion concerned must be notified in the Commonwealth Gazette as a promotion decision that is subject to review under that Division.

Regulation 4.12 of the Regulations provides for the imposition of a penalty of 10 penalty units if a person obstructs an ISAC in carrying out its functions under this Part.

Part 5 of the Regulations deals with the review, in accordance with section 33 of the

Act, of an action relating to the employment of an APS employee.

Division 5.1 of Part 5 of the Regulations provides a statement of intent and an outline of Part 5 of the Regulations.

Regulation 5.1 of the Regulations contains a statement of general policy concerning review of actions, indicating that it is the policy of the Australian Government that APS Agencies should achieve and maintain workplaces that encourage productive and harmonious working environments. It states further the intention of Part 5 to provide for a fair system of review of APS actions and notes that nothing in Part 5 is intended to prevent an application for review from being resolved by conciliation or other

means at any time before the review process is completed.

Subregulation (3) provides that employees' concerns are intended to be dealt with quickly, impartially and fairly. Subregulation (4) provides that the review processes are intended to be consistent with the use of alternative dispute resolution methods to reach satisfactory outcomes.

Regulation 5.2 of the Regulations provides an outline of Part 5, stating that it makes provision in relation to the following matters:

- (a) the entitlement of APS employees to review of certain promotion decisions and other APS actions;
- (b) the responsibilities and powers of Agency Heads and the Merit Protection Commissioner in relation to review of APS actions;
- (c) the role and powers of Promotion Review Committees constituted for the review of promotion decisions.

Regulation 5.3 of the Regulations states that Division 5.2 of Part 5 of the Regulations provides for applications for review of certain promotion decisions to be made to the Merit Protection Commissioner for review by a Promotion Review Committee (PRC).

Regulation 5.4 of the Regulations states that Division 5.3 of Part 5 of the Regulations provides for:

- (a) applications for primary review of other APS actions to be made to the relevant Agency Head or, in certain circumstances, to the Merit Protection Commissioner; and
- (b) applications for secondary review of an action which has been the subject of a primary review conducted by an Agency Head to be made to the Merit Protection Commissioner.

Regulation 5.5 of the Regulations provides that each Agency Head is responsible for ensuring that applications for review can be dealt with in accordance with Chapter 2, directions given by the Public Service Commissioner under subsection 11(1) of the Act and the Agency Head's responsibility to uphold and promote the APS Values.

Division 5.2 of Part 5 of the Regulations provides for the review of certain APS promotion decisions.

Regulation 5.6 of the Regulation provides that Division 5.2 applies if a decision (a promotion decision) is made by an Agency Head to promote an ongoing APS employee to employment at a classification mentioned in any of Groups 1 to 6 set out in Schedule 1 to the Classification Rules made by the Public Service Minister, under subsection 23(1) of the Act; the promotion decision is not made in accordance with the recommendation of an Independent Selection Advisory Committee (ISAC); and the promotion decision has not previously been reviewed by a PRC.

Regulation 5.7 of the Regulations provides that an ongoing APS employee who applied for promotion to the relevant employment is entitled to apply to the Merit Protection Commissioner to have the promotion decision reviewed by a PRC.

Regulation 5.8 of the Regulations provides that a promotion decision can only be reviewed under Division 5.2 on the grounds of merit. Subsection 10(2) of the Act provides that a decision relating to engagement or promotion is based on merit if the matters set out in that subsection are satisfied.

Regulation 5.9 of the Regulations provides that an application for review must:

- (a) be in writing; and

(b) be received by the Merit Protection Commissioner within the period specified in the Commonwealth Gazette as part of notifying the promotion or within such longer period as the Merit Commissioner allows, before the end of that period, at the place notified in the Gazette.

Subregulation (2) provides that, if an application for review is made, it operates to stay the decision until it takes effect in accordance with regulation 3.8 of these Regulations.

Regulation 5.10 of the Regulations provides that, if the Merit Protection Commissioner receives an application for review under Division 5.2, the Merit Protection Commissioner must appoint a PRC to deal with the application. If more than 1 application is received in relation to a particular promotion decision, the applications are to be dealt with by the same PRC and a particular PRC may deal with applications in relation to more than 1 promotion decision.

Regulation 5.11 of the Regulations provides that a PRC must comprise:

- (a) a Convenor nominated by the Merit Protection Commissioner; and
- (b) an APS employee nominated by the relevant Agency Head; and
- (c) an APS employee nominated by the Merit Protection Commissioner.

Subregulations (2), (3), (4) and (5) specify certain requirements in relation to the membership and operation of a PRC. Subregulation (6) provides that a person is not subject to direction in carrying out his or her duties as a member of a PRC, except by a Court or as specified in instructions issued under regulation 19 of these Regulations.

Regulation 5.12 of the Regulations provides that an applicant for review of a promotion decision, and the person promoted, must each give the Merit Protection Commissioner a statement in writing setting out his or her claims for promotion to the relevant employment. The statement must be given within 14 days after the application for review is made or notice of the application is received, as the case requires, or within such longer period as the Merit Protection Commissioner allows. If the statement is not given within the required time, the PRC may consider and decide the application without the statement.

Regulation 5.13 of the Regulations provides that a PRC may refuse to consider, or further consider, an application for review if each member of the PRC is satisfied that the application is frivolous or vexatious.

Regulation 5.14 of the Regulations specifies the minimum requirements for PRC review procedures, in terms of procedural fairness, informality, and privacy. It requires that the review be finished as quickly as a proper consideration of the matter allows, and that a person appearing before a PRC must do so without representation, unless the Merit Protection Commissioner decides otherwise.

Regulation 5.15 of the Regulations provides that the Merit Protection Commissioner must issue as soon as practicable instructions about the procedures to be followed by a PRC in performing its functions under Division 5.2 of these Regulations. Those instructions must not be inconsistent with the Act, these Regulations or the Commissioner's Directions, and a PRC must comply with the instructions.

Regulation 5.16 of the Regulations requires the Merit Protection Commissioner to take all reasonable steps ensure that a PRC is provided with supporting staff to ensure that it can carry out its functions properly and efficiently.

Regulation 5.17 of the Regulations provides that a PRC may require an Agency Head to give to the PRC stated information or documents relevant to the review, in the way and at or within the time stated in the notice.

Regulation 5.18 of the Regulations provides that a PRC established to consider an application or applications for review of a promotion decision must:

(a) assess the relative merits of the person promoted and each person who applied for review of the promotion decision, on the basis of the relative suitability for the duties of each of the parties, their work-related qualities and the relative capacity of each person to achieve outcomes related to the duties; and

(b) decide, primarily on the basis of the assessment, whether the promotion decision should be upheld or whether another applicant should be promoted to the relevant employment.

Subregulation (2) provides that the PRC must tell the relevant Agency Head of its decision.

Regulation 5.19 of the Regulations specifies the basis on which a decision may be reached if all members of a PRC do not agree on a decision.

Regulation 5.20 of the Regulations provides that the decision of a PRC is binding on an Agency Head and is not affected by any defect in the nomination of a member of the PRC or a failure to comply with instructions issued under regulation 5.15 of these Regulations.

Regulation 5.21 of the Regulations provides for the imposition of a penalty of 10 penalty units if a person obstructs a PRC in carrying out its functions.

Division 5.3 of the Regulations deals with the review of certain actions which affect an APS employee, other than a review of a promotion decision in accordance with Division 5.2 of Part 5 of the Regulations.

Subdivision 5.3.1 of Division 5.3 of the Regulations contains provisions relating to reviewable actions covered by Division 5.3.

Regulation 5.22 of the Regulations provides that an affected non-SES employee is entitled to review of a reviewable action under Division 5.31 if the action is an action by a person who is an Agency Head or APS employee.

Regulation 5.23 of the Regulations provides that an action is reviewable if the affected employee is entitled to review of the action under subsection 33(1) of the Act. The action is not, or ceases to be, reviewable if it is an action mentioned in Schedule 1 to these Regulations or if the affected person has applied and is able to have the action reviewed by a Court or Tribunal. Subregulation (3) provides that the action is not, or ceases to be, reviewable if the person or committee that is or would be conducting the review considers that the action should not be reviewable for any of 7 reasons specified in the subregulation.

Subdivision 5.3.2 of Division 5.3 of the Regulations contains provisions for primary review of a reviewable action.

Regulation 5.24 of the Regulations provides that an affected employee may apply to the relevant Agency Head for review of the action, but the application must be made to the Merit Protection Commissioner if the application is for review of a determination that the affected employee has



breached the Code of Conduct, or for review of a sanction imposed for a breach of the Code. The application may be directed to the Merit Protection Commissioner also if

(a) the Agency head was directly involved in the action; or

(b) it is not appropriate, because of the seriousness or sensitivity of the action, for the Agency Head to deal with the application; or

(c) the action is claimed to be victimisation or harassment of the employee for having made a previous application for review of action.

Subregulation (4) provides that the application must state briefly why the review is sought and any particular outcome that is sought, such as reconsideration of the action or assignment to other duties.

Regulation 5.25 of the Regulations specifies circumstances in which an Agency Head who has received an application for review, may refer the application to the Merit Protection Commissioner. The Agency Head is required to inform the employee of the referral.

Regulation 5.26 of the Regulations provides that, if an action is not reviewable in accordance with subregulation 5.23(3), the person who would have conducted the review must inform the affected employee of the reasons for that decision and of any right of the employee to apply to the Merit Protection Commissioner for secondary review of the action in accordance with regulation 5.29 of these Regulations.

Regulation 5.27 of the Regulations provides that an Agency Head who accepts an application for review must review the action and attempt to resolve the employee's concerns. Subject to meeting the minimum requirements for review procedures in subregulation 5.33(1) of the Regulations, the Agency Head may conduct the review in any manner the Agency Head thinks fit. Subregulation (3) provides that the Agency Head may confirm or vary the action, or set the action aside and substitute a new action. Subregulation (3) does not, however, limit the employer powers of the Agency Head in relation to the matter. Subregulation (5) requires the Agency Head to tell the employee in writing of any decision made on the application and the reasons for the decision, of any action to be taken as a result of the review, and of the right of the applicant to apply to the Merit Protection Commissioner, under regulation 5.29, for secondary review of the decision.

Regulation 5.28 of the Regulations sets out the provisions which apply if the application for review of the action is made to the Merit Protection Commissioner under subregulation 5.24(2) or (3), or referred to the Merit Protection Commissioner under subregulation 5.25(1). Subregulation (2) requires the Merit Protection Commission to nominate a person (who may be the Merit Protection Commissioner) to conduct the review or to constitute a 3 person committee to conduct the review.

Subregulation (3) specifies the obligations of the Merit Protection Commissioner in relation to undertaking the review, and subregulation (4) specifies obligations if another person or committee is to conduct the review and make a recommendation to the Merit Protection Commissioner, with reasons, concerning the action. Subregulation (5) requires that, on receipt of such recommendations and reasons, the Merit Protection Commissioner must report the outcome to the relevant Agency Head, may make a recommendation to the Agency Head concerning the action which was the subject of the review, and must give to the employee concerned a copy of the report and any recommendations made by the Merit Protection Commissioner about the action.

Subdivision 5.3.3 of Division 5.3 contains provisions relating to secondary review of actions covered by Division 5.3.

Regulation 5.29 of the Regulations provides that an affected employee who is dissatisfied with the Agency Head's decision that an action is not a reviewable action under regulation 5.26 or who is dissatisfied with the outcome of the Agency Head's review of the action under regulation 5.27, may apply in writing, through the Agency Head, to the Merit Protection Commissioner for secondary review of the action, stating briefly why the review is sought.

Regulation 5.30 of the Regulations requires the Agency Head to give to the Merit Protection Commissioner within 14 days after receiving the application for secondary review of the action, the application and any relevant documents relating to the primary review of the action. A copy of the documents provided to the Merit Protection Commissioner must be given to the affected employee by the Agency Head.

Regulation 5.31 of the Regulations requires the Merit Protection Commissioner to nominate a person (who may be the Merit Protection Commissioner) to conduct the review or to constitute a 3 person committee to conduct the review.

Subregulation (2) specifies the obligations of the Merit Protection Commissioner in relation to undertaking the review, and subregulation (3) specifies the obligations if another person or committee is to conduct the review and makes a recommendation to the Merit Protection Commissioner, with reasons, concerning the action. Subregulation (4) requires that, on receipt of the recommendations and reasons, the Merit Protection Commissioner must report the outcome to the relevant Agency Head, may make a recommendation to the Agency Head concerning the action which was the subject of the review and must give to the employee concerned a copy of the report and any recommendations made by the Merit Protection Commissioner about the action.

Subdivision 5.3.4 of Division 5.3 of the Regulation deals with action to be taken by an Agency Head following receipt of a recommendation from the Merit Protection Commissioner under regulation 5.28 or 5.31.

Regulation 5.32 of the Regulations requires the Agency Head to consider and make a decision about the recommendation of the Merit Protection Commissioner. Subregulation (2) provides that the Agency Head may confirm or vary the relevant action, or set the action aside and substitute a new action. Subregulation (2) does not, however, limit the employer powers of the Agency Head in relation to the matter. Subregulation (4) requires the Agency Head to tell the employee in writing of the decision and the reasons for the decision.

Subdivision 5.31.5 of Division 5.3 of the Regulations contains additional provisions relating to the review of actions.

Regulation 5.33 of the Regulations specifies the minimum requirements of the procedures used for a review conducted under Part 3, in terms of procedural fairness, informality and privacy. It requires that the review be finished as quickly as a proper consideration of the matter allows, and that a person appearing before a person or committee must do so without representation unless the Merit Protection Commissioner decides otherwise.

Regulation 5.34 of the Regulations requires the Merit Protection Commissioner to issue instructions (not inconsistent with the Act these Regulations or the Commissioner's Directions) concerning the procedures which must be followed by a person or a committee conducting a review under regulation 5.28 or 5.3 1. The person or committee must comply with these instructions.

Regulation 5.35 of the Regulations provides that a person or committee carrying out a review under Division 5.3 may, by written notice given to an Agency Head or APS employee, require the Agency Head or APS employee to give the person or committee stated information or documents relevant to the review. The Agency Head or APS employee must give the information or documents in the way, and at or within the time, stated in the notice.

Regulation 5.36 of the Regulations provides that the making of an application for review under Division 5.3 does not operate to stay the action for which review is sought.

Regulation 5.37 of the Regulations provides for the imposition of a penalty of 10 penalty units if a person obstructs a person or committee conducting a review in carrying out its functions under Division 5.3.

Part 6 of the Regulations contains provisions relating to the Public Service Commissioner, members of the Commissioner's staff and persons acting under the direction or authority of the Commissioner.

Regulation 6.1 of the Regulations provides, in accordance with paragraph 41(1)(1) of the Act, that an additional, required function of the Public Service Commissioner is to inquire into alleged breaches of the Code of Conduct by the Merit Protection Commissioner and to report to the Presiding Officers on the results of such inquiries, with recommendations for sanctions, where relevant. The Public Service Commissioner has the same obligation under paragraph 41 (1)(f) of the Act to inquire into, and report on, alleged breaches of the Code of Conduct by Agency Heads generally, with the report to be directed to the Presiding Officers where an Agency Head is the Head of a prescribed Statutory Agency (paragraph 41(3)(c) of the Act refers).

Regulation 6.2 of the Regulations provides that, for the purposes of paragraph 41(3)(c) of the Act, the Public Service Commissioner is required to report to the Presiding Officers concerning the results of an alleged breach of the Code of Conduct by any of the following Agency Heads:

- (a) the Auditor- General;
- (b) the Australian Statistician;
- (c) the Chief Executive Officer of Customs;
- (d) the Commissioner of Taxation; and
- (e) the Ombudsman.

Regulation 6.3 of the Regulations details the secrecy provisions which apply to the Public Service Commissioner, a member of the staff assisting the Commissioner and a person acting under the direction or authority of the Commissioner. They prohibit such a person, directly or indirectly, making a record of, or divulging or communicating to any person, any information acquired by that person in performing his or her duties and any information disclosed or obtained by the person in the course of an inquiry into a whistleblower report in accordance with section 16 and paragraph 41(1)(c) of the Act. A breach of these obligations attracts a penalty of 10 penalty units. The provisions apply to the person both while performing their duties and after ceasing to perform those duties.

Subregulation (4), (5), (7) and (9) specify certain circumstances under which the prohibitions are modified in relation to the performance of the functions of the duties of the persons concerned but subregulation (8) precludes the Commissioner from disclosing information or making a

statement with respect to a particular inquiry, if such action would be likely to interfere with the carrying out of the inquiry or any other inquiry.

Subregulation (6) provides that a person who is, or has been, a person to whom this regulation applies is not competent and may not be required in any proceedings before a court or a legally authorised person, to disclose any information acquired by the person being or having been such a person, being information that was disclosed or obtained under the provisions of section 16 or 41 of the Act.

Regulation 6.4 of the Regulations provides that the Public Service Commissioner, a member of staff assisting the Commissioner and a person acting under the direction or authority of the Commissioner, are not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise, or purported exercise, of any power or authority conferred by the Act.

Part 7 of the Regulations contains provisions relating to the Merit Protection Commissioner, members of that Commissioner's staff and other persons performing functions related to the Merit Protection Commissioner.

Regulation 7.1 of the Regulations provides that the functions of the Merit Protection Commissioner set out in Part 5 of the Regulations are prescribed functions for the purposes of paragraph 50(1)(d) and (e) of the Act, respectively.

Regulation 7.2 of the Regulations provides that the Merit Protection Commissioner may investigate a complaint by a former APS employee that relates to the employee's entitlements on separation from the APS, and may make recommendations to the employee's former Agency Head in relation to the complaint.

Regulation 7.3 of the Regulations provides that a non-SES employee may apply to the Merit Protection Commissioner for review of an action Of a statutory office holder (being a statutory office holder bound by the Code of Conduct in accordance with section 14 of the Act). The application for review is to relate to the employee's APS employment (other than termination of that employment) and to an action that would be reviewable action for Division 5.3 of these Regulations, if the statutory office holder were an Agency Head.

Subregulations (2) and (3) provide that the Merit Protection Commissioner may require the statutory office holder to provide a report about the action, together with other stated information or documents relevant to the review, and require the statutory office holder to comply with such a written notice of request, at or within the time stated in the notice.

Subregulation (4) requires the Merit Protection Commissioner to review the action, to make a recommendation to the statutory office holder, with reasons, about the action, and to tell the employee concerned in writing of the recommendation and the reasons given to the statutory office holder. Subregulation (5) provides that the Merit Protection Commissioner may give a report on the matter to the relevant Agency Minister, if the Merit Protection Commissioner is not satisfied with the statutory office holder's response.

Regulation 7.4 of the Regulations applies to a request by a person or body for the Merit Protection Commissioner to perform certain specified functions which that Commissioner is not required to perform by a Commonwealth law. The footnote to subregulation (1) gives examples of persons or bodies who might make such a request and subregulation (2) specifies 5 possible functions to which the request can relate. Subregulation (3) provides that the Merit Protection Commissioner may perform the functions (but is not required to do so) and may charge the person or body a fee for carrying out the function (but is not required to do so).

Regulation 7.5 of the Regulations provides that the Merit Protection Commissioner is not subject to direction in carrying out his or her duties under Part 4 or 5 of the Regulations, except by a Court.

Regulation 7.6 of the Regulations specifies secrecy provisions, in relation to the Merit Protection Commissioner, a member of a Review Committee established under paragraph 33(4)(d) of the Act, a member of the staff assisting the Merit Protection Commissioner, a person acting under the direction or authority of the Merit Protection Commissioner, and a person (other than an employee of the Agency) to whom the Merit Protection Commissioner has delegated any of his or her powers under section 78 of the Act. These secrecy provisions are similar to the provisions specified in regulation 6.3 for the Public Service Commissioner and associated persons. They prohibit such a person, directly or indirectly, making a record of, or divulging or communicating to any person, any information acquired by that person in performing his or her duties, or any information disclosed or obtained under section 33 or paragraph 50(1)(a) of the Act. A breach of these obligations attracts a penalty of 10 penalty units. The provisions apply to the person both while performing their duties and after ceasing to perform those duties.

Subregulation (4), (5), (7) and (9) specify certain circumstances under which the prohibitions are modified in relation to the performance of the functions of the persons concerned, but subregulation (8) precludes the Merit Protection Commissioner from disclosing information or making a statement with respect to a particular inquiry or review, if the disclosure of the information, or the making of the statement, would be likely to interfere with the carrying out of the inquiry or review or of any other inquiry or review.

Subregulation (6) provides that a person who is, or has been, a person to whom this regulation applies is not competent and may not be required in any proceedings before a court or a legally authorised person, to disclose any information acquired by the person being or having been such a person, being information that was disclosed or obtained under the provisions of section 33 or paragraph 50(1)(a) of the Act.

Regulation 7.7 of the Regulations provides that the Merit Protection Commissioner, a member of the Merit Protection Commissioner's staff, a person acting under the direction or authority of the Merit Protection Commissioner, a member of a Promotion Review Committee and a member of an Independent Selection Advisory Committee are not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise, or purported exercise, of any power or authority conferred by the Act.

Part 8 of the Regulations deal with administrative arrangements and reorganisations, for the purposes of section 72 of the Act.

Regulation 8.1 of the Regulations prescribes, for the purposes of paragraph 72(5)(a) of the Act, arrangements for determining variations of the remuneration and other conditions of employment applicable to an APS employee who moves to an Agency as a result of a machinery of government change, in accordance with a determination by the Public Service Commissioner under paragraph 72(1)(a) of the Act.

Subregulation (2) specifies the basis for determining the annual salary of the APS employee on the day on which the machinery of government move occurs. Subregulation (3) specifies the circumstances under which the other conditions of employment of the APS employee may be varied before or after the move but having effect no sooner than the day in which the move occurs. However, subregulation (4) further provides that, if a relevant determination under subsection 24(1) of the Act relating to conditions of employment applies to the employee and if an award, certified agreement or AWA commences on or after the day on which the APS employee moves to the Agency, and applies to that employee, the conditions of employment

under the award, certified agreement or AWA apply to the APS employee and the determination under subsection 24(1) of the Act ceases to apply.

Regulation 8.2 of the Regulations prescribes, for the purposes of paragraph 72(5)(b) of the Act, arrangements for determining variations of the remuneration and other conditions of employment applicable to a person who is a non-APS employee and who becomes an APS employee as a result of a machinery of government change, in accordance with a determination by the Public Service Commissioner under paragraph 72(1)(c) of the Act.

Subregulation (2) specifies the circumstances under which the remuneration and other conditions of employment of the person who becomes an APS employee may be varied before or after the engagement, but having effect no sooner than the day on which the person becomes engaged as an APS employee. However, subregulation (3) further provides that, if a relevant determination under subsection 24(1) of the Act relating to conditions of employment applies to the employee, and if an award, certified agreement or AWA commences on or after the day on which the person becomes an APS employee, and applies to that person, the conditions of employment under the award, certified agreement or AWA apply to that person, and the determination under subsection 24(1) of the Act ceases to apply.

Part 9 of the Regulations deals with certain miscellaneous provisions.

Regulation 9.1 of the Regulations provides that, for the purposes of section 75 of the Act, an Agency may make deductions from the salary of any of the following persons in order to satisfy a judgement debt:

- (a) the Secretary of a Department; or
- (b) the Head of an Executive Agency; or
- (c) an APS employee employed in the Agency.

Subregulations (2) and (3) provide that a fee of \$35 is payable in connection with the deductions by the person to whom the judgement debt is owed.

Regulation 9.2 of the Regulations provides that, for the purposes of paragraph 76(a) of the Act, an Agency Head may disclose personal information (within the meaning of the Privacy Act 1988) that is in the possession, or under the control, of the Agency Head in any of the 5 following circumstances:

- (a) disclosure necessary for the performance of Agency Head employer powers;
- (b) disclosure necessary for the performance of a function of the Public Service Commissioner or the Merit Protection Commissioner;
- (c) disclosure necessary for the performance of a function of an Independent Selection Advisory Committee;
- (d) disclosure necessary for the review of APS action, or action of a statutory office holder, by a Promotion Review Committee, the Merit Protection Commissioner, or a person nominated, or committee constituted, by the Merit Protection Commissioner to conduct the review; or
- (f) disclosure necessary for the performance of an outsourced personnel function.

Subregulation (2) provides that, for the purpose of paragraph 76(b) of the Act, which allows for imposition of restrictions on the collection, storage, access, use or further disclosure of information that is disclosed under paragraph 76(a) of the Act, personal information that is disclosed by an Agency Head for the performance of an outsourced personnel function must not be further disclosed without the Agency Head's written authority.

Subregulation (3) requires that a disclosure under subregulation (1) must be consistent with any guidelines issued by the Public Service Commissioner after consultation with the Privacy Commissioner.

Subregulation (4) provides that a disclosure in accordance with this regulation is an authorised disclosure for the purposes of paragraph 1 (d) of Information Privacy Principle 11 set out in section 14 of the Privacy Act 1988. Principle 11 deals with limits on the disclosure of personal information by a record keeper to a person other than the person to whom the information relates.

Subregulation (5) defines 'outsourced personnel function' to mean a personnel function that was performed in the APS but is being performed outside the APS under a contract at the time of the proposed disclosure.

Regulation 9.3 of the Regulations makes provision for delegation of the respective powers or functions under these Regulations of the Public Service Commissioner, the Merit Protection Commissioner and Agency Heads, other than the power of delegation in each case.

Subregulation (1) provides that the Public Service Commissioner may delegate to a person any of his or her powers or functions under these Regulations (other than this delegation power). Subregulation (2) provides that the Merit Protection Commissioner may delegate to a person any of his or her powers and functions under these Regulations (other than this delegation power).

Subregulation (3) provides that an Agency Head may delegate to a person any of his or her powers and functions under these Regulations, but subregulation (4) requires that delegation to an 'outsider' may occur only with the prior written consent of the Public Service Commissioner. Subregulation (9) defines the terms 'outsider' for the purposes of this regulation.

Subregulation (5) provides that a delegate of an Agency Head (the first delegate) may subdelegate any of the delegated powers to another person (the second delegate). However, under subregulation (6), both the first and second delegates must comply with any directions given by an Agency Head about the exercise of a delegated power or function. Subregulation (7) provides that a power or function that is exercised or performed by a second delegate in accordance with subregulation (5), is taken to have been exercised or performed by the person who originally delegated the corresponding power or function under subregulation (3).

Subregulation (8) provides that a person exercising powers or functions under a delegation under this regulation must comply with any directions of the person who delegated the power or function.

Schedule 1 to the Regulations details actions for which there is no entitlement of an APS employee for review, in accordance with subregulation 5.23(2) of these Regulations.

The Diction at the end of the Regulations comprises the dictionary of words and expressions used in these Regulations and, where relevant, the Public Service Act 1999, as provided for in regulation 1.3 of these Regulations.

