

EXPLANATORY STATEMENT
Select Legislative Instrument 2008 No. 72

Issued by the authority of the Special Minister of State

Public Service Act 1999

Public Service Amendment Regulations 2008 (No. 1)

Section 79 of the *Public Service Act 1999* (the Act) provides, in part, 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.

The Public Service Amendment Regulations 2008 (No. 1) (the Amendment Regulations) amend the *Public Service Regulations 1999* (the Principal Regulations) to make changes that are consequential on amendments to the Act contained in the *Workplace Relations (Transition to Forward with Fairness) Act 2008* (the Transition Act).

The Amendment Regulations also reflect changes to the way in which the terms and conditions of employment of APS employees can be set following the release of the Australian Government's Employment Bargaining Framework. The aim of this Bargaining Framework is to implement the Government's workplace relations policy with respect to Australian Government employment.

The Transition Act amends the *Workplace Relations Act 1996* (WR Act) to prevent the making of new Australian Workplace Agreements (AWAs) and also amends the definition of 'workplace agreement' in the WR Act to exclude AWAs. These changes have flow-on effects to APS employment legislation and the Transition Act makes consequential amendments to the Act. These changes then have an impact on the Principal Regulations.

The Bargaining Framework recognises that, consistent with the amendments to the WR Act, AWAs can no longer be offered to existing or prospective APS employees and instead notes that in certain circumstances, common law arrangements or determinations under the Act can be used to set terms and conditions of employment for APS employees.

The Amendment Regulations reflect the changed terminology of the WR Act and the new arrangements for setting terms and conditions of employment as set out in the Bargaining Framework.

Details of the amendments to the Principal Regulations are set out in the Attachment.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority: Section 79 of the *Public Service Act 1999*

ATTACHMENT

Regulation 1 names the Regulations as the *Public Service Amendment Regulations 2008 (No. 1)*.

Regulation 2 provides that the Regulations will commence on the day after they are registered.

Regulation 3 provides that the *Public Service Regulations 1999* (the Principal Regulations) will be amended as set out in Schedule 1.

Schedule 1 Amendments

Item 1 Substitution of subregulation 3.11(2)

Regulation 3.11 of the Principal Regulations relates to the termination of employment of non-ongoing APS employees and provides that where an award, workplace agreement (i.e. a collective agreement or AWA), pre-reform certified agreement, or pre-reform AWA sets out procedures that apply to such terminations, those procedures must be followed unless they are prohibited content within the meaning given by the WR Act.

Subregulation 3.11(2) of the Principal Regulations has been redrafted to replace specific references to an award, a workplace agreement, a pre-reform certified agreement or a pre-reform AWA in subparagraphs (a), (b), (c), and (d) respectively with a generic reference to an ‘employment arrangement’.

The term ‘employment arrangement’ is defined in the Dictionary to the Regulations (see item 3 below) to mean an award; or a workplace agreement (as defined in the *Workplace Relations Act 1996* (WR Act)); or a pre-reform certified agreement; or an AWA; or a pre-reform AWA; or a determination under subsection 24(1) or 24(3) of the *Public Service Act 1999* (the Act); or a written contract of employment.

The effect of the amendment is to provide that if any of these employment arrangements sets out procedures to be followed in respect of the termination of a non-ongoing APS employee, then those procedures apply, unless they are prohibited content within the meaning given by the WR Act.

Item 2 Dictionary, definition of AWA

A new definition of AWA is included to align it with the new definition used in the Act and the WR Act as a result of the *Workplace Relations (Transition to Forward with Fairness) Act 2008*.

Item 3 Dictionary, definition of *employment arrangement*

This item inserts a definition of ‘employment arrangement’ for the purposes of the Principal Regulations, as outlined in item 1 above.

Item 4 Dictionary, definition of *Commissioner’s Directions*

This item updates the definition of the ‘Commissioner’s Directions’ to reflect the latest amendments to the *Public Service Commissioner’s Directions 1999*, with effect from 2 April 2008.

Item 5 Other amendments

Division 3.2 of the Principal Regulations relates to the re-engagement of election candidates. Regulation 3.15 provides that where a person is re-engaged in accordance with section 32 of the Act and this Division, the person's continuity of service for the purposes of calculation of leave entitlements and redundancy pay is not broken by the period between the person's resignation and being re-engaged as an employee, although the period does not count as service.

Regulations 8.1 and 8.2 relate to the variation of remuneration and other conditions of employment of staff affected by administrative re-arrangements made under section 72 of the Act. They impose some parameters on an Agency Head's powers to make a determination under subsection 24(1) of the Act in relation to employees' conditions of employment in these circumstances.

This item replaces various references in regulations 3.15, 8.1 and 8.2 to one or more of the terms 'award', 'workplace agreement', 'pre-reform certified agreement' or 'pre-reform AWA' with a reference to 'employment arrangement'.

In addition, this item amends the notes at the end of sub-regulation 8.1(3) and 8.2(2) to reflect amendments to the wording of subsection 24(1) of the Act made by the *Workplace Relations (Transition to Forward with Fairness) Act 2008*.