

Public Service Amendment Regulation 2013 (No. 2)

Select Legislative Instrument No. 110, 2013

I, Professor Marie Bashir AC CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the Acts mentioned in section 3.

Dated 13 June 2013

Marie Bashir

Administrator

By Her Excellency’s Command

Mark Dreyfus QC

Minister for the Public Service and Integrity

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1 Name of regulation

 This regulation is the *Public Service Amendment Regulation 2013 (No. 2)*.

2 Commencement

 This regulation commences on the day after it is registered.

3 Authority

 This regulation is made under:

 (a) the *Public Service Act 1999*; and

 (b) the *Public Service Amendment Act 2013*.

4 Schedule(s)

 Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 Amendment Regulation 2013 (No. 1)

1 Item 52 of Schedule 1 (new regulation 6.6)

Omit the regulation, substitute:

6.6 Protected information

 For paragraph (c) of the definition of ***protected information*** in subsection 72A(1) of the Act, regulations 6.1 and 6.1A are prescribed.

2 Item 52 of Schedule 1 (new regulation 6.7)

Omit the regulation, substitute:

6.7 Compellability of entrusted persons to give evidence

 For paragraph 72A(7)(e) of the Act, regulations 6.1 and 6.1A are prescribed.

3 Item 52 of Schedule 1 (new regulation 6.8)

Omit “regulation 6.1 is prescribed”, substitute “regulations 6.1 and 6.1A are prescribed”.

4 Item 52 of Schedule 1 (new regulation 6.9)

Omit the regulation, substitute:

6.9 Immunity from civil proceedings

 For paragraph 78A(1)(h) of the Act, regulations 6.1 and 6.1A are prescribed.

5 Item 73 of Schedule 1 (after the definition of *commencement day* in new regulation 10.1)

Insert:

Note: The date is 1 July 2013.

6 Item 73 of Schedule 1 (at the end of new Part 10)

Add:

10.8 Review of matters relating to Code of Conduct as in force before commencement day

 If item 22, 23 or 24 of Schedule 4 to the *Public Service Amendment Act 2013* has applied in relation to conduct by an Agency Head relating to the Code of Conduct, the Merit Protection Commissioner must:

 (a) review a determination made by the Agency Head that the APS employee in the Agency has breached the Code of Conduct under the same requirements as the relevant item applied in relation to the Agency Head; and

 (b) review the sanction (if any) imposed on the APS employee under the same requirements as the relevant item applied in relation to the Agency Head.

Note: Item 22 of Schedule 4 to the *Public Service Amendment Act 2013* relates to an investigation, begun before the commencement time, to determine whether an APS employee in the Agency had breached the Code of Conduct. Item 23 relates to a finding, before the commencement time, that an APS employee in the Agency had breached the Code of Conduct, with no sanction having been imposed. Item 24 relates to an allegation, before the commencement time, that an APS employee in an Agency had breached the Code of Conduct.

10.9 Review of action lodged before commencement day

 (1) Subregulation (2) applies if:

 (a) before the commencement day, an APS employee applied for review of APS action; and

 (b) the application was not made in accordance with subregulation 5.24(2); and

 (c) the review had not been completed in accordance with that Division before the commencement day.

Note: The application may have been made to an Agency Head or the Merit Protection Commissioner. Also, the application may have been referred to the Merit Protection Commissioner by the Agency Head.

 (2) The old Public Service Regulations continue to apply, on and after the commencement day, in relation to the review.

 (3) Subregulation (4) applies if:

 (a) before the commencement day, an APS employee applied for review of APS action; and

 (b) the application was not made in accordance with subregulation 5.24(2); and

 (c) on or after the commencement day, the Merit Protection Commissioner proposes to review the reviewable action.

 (4) The old Public Service Regulations continue to apply, on and after the commencement day, in relation to the review by the Merit Protection Commissioner.

10.10 Conduct of ISAC and recommendation by ISAC

 (1) Subregulation (2) applies if:

 (a) before the commencement day, an ISAC was established; and

 (b) immediately before the commencement day:

 (i) the ISAC was still in existence and had not made a recommendation; or

 (ii) a recommendation by the ISAC, made within 12 months after the date of notification of the employment opportunity, was in force.

 (2) The new Public Service Regulations apply, on and after the commencement day, in relation to the ISAC and the recommendation.

 (3) However, if:

 (a) the employment opportunity was advertised or notified on the basis that the old Public Service Regulations would apply on and after the commencement day; or

 (b) official information provided in relation to the advertisement or notification of the employment opportunity stated that the old Public Service Regulations would apply on and after the commencement day;

the old Public Service Regulations continue to apply, on and after the commencement day, in relation to the ISAC and the recommendation.

Example: Official information provided in relation to the advertisement or notification of the employment opportunity would include a statement in an application pack or information provided by a contact person identified in the advertisement or notification.

10.11 Review of promotion notified before commencement day

 (1) Subregulation (2) applies if before the commencement day, a promotion was notified in accordance with the old Public Service Regulations.

 (2) The old Public Service Regulations continue to apply, on and after the commencement day, in relation to:

 (a) the promotion; and

 (b) any entitlement to have access to a statement given as part of a review of the promotion.