

## EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No.

Issued by the authority of the Prime Minister

### *Public Service Act 1999*

### **Revocation of the *Prime Minister's Public Service Directions 1999***

#### **Background**

Section 21 of the *Public Service Act 1999* (the Act) provides that the Prime Minister may issue general directions in writing to Agency Heads relating to the management and leadership of Australian Public Service (APS) employees.

The original *Prime Minister's Public Service Directions 1999* (the PM's Directions) came into effect on 5 December 1999. Amendments were made to the PM's Directions on 6 October 2005 to remove the requirement that an APS Agency Head must grant leave without pay to an APS employee who applies for such leave to take up a full-time statutory appointment.

The PM's Directions are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA), but are not subject to the disallowance or sunset provisions of that Act (as provided by section 44 LIA, item 32 and section 54 LIA, item 37 respectively). In accordance with subsection 56(1) of the LIA, the PM's Directions are not required to be published in the Gazette, notwithstanding subsection 21(2) of the Act.

The *Public Service Amendment Act 2013* amends the Act with effect from 1 July 2013 and provides authority for the Australian Public Service Commissioner (the Commissioner) to make directions on Agency Heads about a broad range of matters relating to employment in the APS. The *Australian Public Service Commissioner's Directions 2013* (Commissioner's Directions) were tabled on 14 March 2013 and come into effect on 1 July 2013. In addition, certain amendments have been made to the Public Service Regulations 1999 (the Regulations) which also come into effect at this time.

#### **Purpose of the legislative instrument**

The purpose of the legislative instrument is to revoke the current PM's Directions as the subject matters they convey are captured by arrangements that are made under the amendments made to the Act, the Commissioner's Directions and by the Regulations.

The Act (as amended) retains the capacity for the Prime Minister to issue general directions in writing relating to management and leadership of APS employees in the future (e.g. for emergencies or as yet unforeseen circumstances). The Act also makes it clear that Directions made by the Commissioner in relation to employment matters are not to be inconsistent with any Directions issued by the Prime Minister.

The PM's Directions being revoked:

- provide an automatic right for leave without pay, on application, to ongoing APS employees who take up employment under either the *Members of Parliament (Staff) Act 1984* (MoPS Act) or the *Governor-General Act 1974* (G-G Act); and
- prescribe a number of APS-wide training schemes under which agencies can engage persons as non-ongoing APS employees for the purpose of gaining skills and experience

### *Leave without pay arrangements*

The Commissioner's Directions that come into effect on 1 July 2013 mirror the current PM's Directions, including mandatory leave without pay provisions for APS employees wanting to take up employment under the *Members of Parliament (Staff) Act 1984* or the *Governor-General Act 1974*. Following the revocation of the PM's Directions that take effect from the end of 30 June 2013, the Commissioner's Directions will continue the right of return to the APS for persons already on leave to take up such employment. The rights of current or future employees to access leave and return to the APS are not adversely impacted under the new arrangements.

### *APS wide training schemes*

The current arrangements prescribed in the PM's Directions are no longer required. A new provision has been included in amendments made to the Regulations which will allow the Commissioner (and APS Agency Heads) to approve employment schemes for the purpose of enabling persons to gain skills and experience by participating in the workforce. Non-ongoing employment matters are generally included in the Regulations, so this provides an appropriate mechanism for approving any such schemes that are developed in the future. In addition, the new direction making power in the Act will enable the Commissioner to issue directions on APS-wide training matters, should this be considered necessary.

### **Consultation**

The Australian Public Service Commission undertook broad consultations across the APS and the Community and Public Sector Union on the recent amendments to the *Public Service Act 1999*, including in relation to the Commissioner's Directions.

### **Statement of compatibility with Human Rights**

A statement of compatibility is not required for these Directions as this legislative instrument is not subject to disallowance (provided by section 44 of the *Legislative Instruments Act 2003*, item 32).

### **Notes on legislative instrument**

The authority to revoke the PM's Directions is provided under subsection 21(1) of the *Public Service Act 1999*, read concurrently with section 33(3) of the *Acts Interpretation Act 1901*.