



Public Employment (Consequential and Transitional) Regulations 1999

Statutory Rules 1999 No. 301 as amended

made under the

*Public Employment (Consequential and Transitional)
Amendment Act 1999*

This compilation was prepared on 27 March 2006
taking into account amendments up to SLI 2006 No. 50

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1	Preliminary	
1.1	Name of Regulations [see Note 1]	7
1.2	Commencement [see Note 1]	7
1.3	Definitions — the dictionary	7
Part 2	Transitional provisions relating to the application of the old Act (other than Part IV)	
2.1	Classifications	8
2.2	Appointments under the old Act made but not effective at commencing time	8
2.3	Appointments under certain other enactments made but not effective at commencing time	9
2.4	SES appointments in progress at commencing time	9
2.5	Employment opportunities notified before commencing time	10
2.6	Re-appointments made but not effective at commencing time	10
2.7	Persons on probation (termination decision made but not effective at commencing time)	11
2.8	Persons on probation at commencing time (no termination decision made before commencing time)	11
2.9	Transfers made but not effective at commencing time	12
2.10	Promotions made but not effective at commencing time	14
2.11	Transfers or promotions on advice of Joint Selection Committee	16
2.12	Fixed-term Secretaries	17
2.13	Acting Secretaries	18
2.14	Public Service Commissioner	18
2.15	Public Service Commissioner — annual report for the 1999-2000 financial year	18
2.16	Temporary performance of duties of SES officers	19
2.17	Temporary performance of duties of non-SES officers (non-appellable)	21

	Page
2.18 Temporary performance of duties of non-SES officers (appellable)	23
2.19 Pre-commencement misconduct	25
2.20 Conviction by court	26
2.21 Suspension	26
2.22 Delegations	26
2.23 Directions related to delegations	27
2.24 Determinations — SES employees' superannuation benefits	28
2.25 Notices — forfeiture of office or employment	28
2.26 Review proceedings — certain provisions continue	29
2.27 Retirement benefits — SES officers	29
2.28 Reduction of classification — non-SES officers	30
2.29 Retirements — non-SES officers	30
2.30 Arrangements, agreements and authorisations for reciprocal services	31
2.31 Determinations of special terms or conditions of employment	31
2.32 Engagements not completed at commencing time — continuing employees	32
2.33 Engagements not completed at commencing time — other employees	32
2.34 Terminations not completed at commencing time	33
2.35 Continuation of short- and fixed-term SES engagements	33
2.36 Gazettal of notices	34
2.37 Continuing authority for certain payments	34
2.38 Interpretation of certain awards, certified agreements and AWAs	34
2.39 Determination 162 of 1994	35
2.40 Attachment of salaries of officers	35
2.41 Deduction of pecuniary penalty from salary	35
2.42 Whistleblowing	36
2.43 Medical examinations	36
Part 3	Transitional provisions relating to rights under Part IV of the old Act
Division 3.1	First-tier persons
Subdivision 3.1.1	General rights
3.1	Mobility rights of first-tier persons 39
<hr/>	
	<i>Public Employment (Consequential and Transitional) Regulations 1999</i> 3

	Page
Subdivision 3.1.2 End of first-tier status	
3.2 Ceasing to be a first-tier person	39
Subdivision 3.1.3 Leave entitlements	
3.3 Leave	40
Subdivision 3.1.4 Return to APS while first-tier person	
3.4 Transitional period	41
3.5 Notice of return	41
Division 3.2 Second-tier persons	
Subdivision 3.2.1 General rights	
3.6 Mobility rights of second-tier persons	43
Subdivision 3.2.2 End of second-tier status	
3.7 Ceasing to be a second-tier person	43
Subdivision 3.2.3 Return to APS while second-tier person in certain circumstances	
3.8 Engagement as APS employee	44
3.9 Time limit for engagement	44
3.10 Entitlement to apply for engagement	44
3.11 Entitlement to be considered for engagement	45
3.12 Form of application	46
3.13 Decision on application	48
3.14 Effect of approval	48
3.15 Duties	49
3.16 Person excess to requirements	50
3.17 Reporting for duty	51
Subdivision 3.2.4 Return to APS by application for employment opportunity	
3.18 Return	52
Part 4 Transitional provisions relating to the application of the Merit Protection Act	
4.1 Definition for Part 4	53
4.2 Continued application of the Merit Protection Act for certain purposes	53
4.3 Promotion Appeal Committee matters	53
4.4 Disciplinary Appeal Committee matters	54
4.5 Redeployment and Retirement Appeal Committee matters	54
4.6 Re-appointment Review Committee matters	54

	Page
4.7 Re-integration Assessment Committee matters (application for determination made before commencing time)	55
4.8 Re-integration Assessment Committee matters (no application for determination made before commencing time)	55
4.9 Other appeals	56
4.10 Matters before other committees	56
4.11 Joint Selection Committees	57
4.12 Review of decisions under Division 3 of Part II of the Merit Protection Act (application made before commencing time)	57
4.13 Review of decisions under Division 3 of Part II of the Merit Protection Act (application authorised after commencing time)	58
4.14 Review of other decisions under Division 3 of Part II of the Merit Protection Act	58
4.15 Grievances (old Regulations)	58
4.16 Grievances (Merit Protection Act)	60
4.17 Other grievances	60
4.18 Inquiries	61
4.19 Provision of advice on grievances and appeals	61
4.20 Performance of functions on request	62
4.21 Merit Protection Commissioner	62
4.22 Final annual report	62
 Part 5	
Continuity of certain delegations, authorisations and instruments after commencing time	
5.1 Purpose of Part 5	64
5.2 Definitions for Part 5	64
5.3 Delegations by persons who are Agency Heads or delegates	65
5.4 Authorisations by persons who are Agency Heads or delegates	65
5.5 Delegations by reference to offices or positions created under the old Act	66
5.6 Delegations by reference to classifications	67
5.7 Authorisations by reference to offices or positions created under the old Act	68
5.8 Authorisations by reference to classifications	69
<hr/>	
<i>Public Employment (Consequential and Transitional) Regulations 1999</i>	5

	Page
5.9 Delegations to overseas engaged employees	69
5.10 Authorisations to overseas engaged employees	70
Part 6	
Other transitional provisions	
6.1 Amendments of Acts	71
6.2 Continued operation of section 80 of <i>Merit Protection (Australian Government Employees) Act 1984</i>	71
Schedule 1	
Amendments of Acts	72
Part 1	<i>Amendment of Administrative Decisions (Judicial Review) Act 1977</i>
Part 2	<i>Amendments of Australian Capital Territory Government Service (Consequential Provisions) Act 1994</i>
Part 3	<i>Amendment of Commonwealth Authorities and Companies Act 1997</i>
Part 4	<i>Amendments of Commonwealth Electoral Act 1918</i>
Part 5	<i>Amendment of Director of Public Prosecutions Act 1983</i>
Part 6	<i>Amendments of Federal Magistrates Act 1999</i>
Part 7	<i>Amendments of Members of Parliament (Staff) Act 1984</i>
Part 8	<i>Amendments of Remuneration Tribunal Act 1973</i>
Part 9	<i>Amendment of Safety, Rehabilitation and Compensation Act 1988</i>
Part 10	<i>Amendment of Superannuation Act 1976</i>
Dictionary	78
Notes	80

Part 1 Preliminary

1.1 Name of Regulations [see Note 1]

These Regulations are the *Public Employment (Consequential and Transitional) Regulations 1999*.

1.2 Commencement [see Note 1]

These Regulations commence on the commencement of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

1.3 Definitions — the dictionary

- (1) The dictionary at the end of these Regulations defines certain words and expressions.
- (2) The dictionary includes certain words and expressions that are defined in section 2 or 4 of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.
- (3) These words and expressions have the same meaning in these Regulations as they are given by section 2 or 4 of the Act.

Note These definitions are indicated by an asterisk (*) and have been included for information only to assist readers of the regulations. Minor changes from the Act definitions are indicated by square brackets ([]).

- (4) A definition in these Regulations applies to each use of the word or expression in these Regulations, unless the contrary intention appears.

Part 2 **Transitional provisions relating to the application of the old Act (other than Part IV)**

2.1 **Classifications**

- (1) In this regulation:
name, in relation to a classification under the old Act, does not include the salary, or range of salaries, applicable to the classification under that Act.
- (2) The classification of a person under the new Act is a classification that has the same name as his or her classification under the old Act immediately before the commencing time.
- (3) If, under the old Act, more than 1 classification had the same name as an approved classification under the Classification Rules, those classifications are taken to be the same approved classification.

2.2 **Appointments under the old Act made but not effective at commencing time**

- (1) This regulation applies if, before the commencing time:
 - (a) an instrument was made appointing a person to the APS under section 42 of the old Act; and
 - (b) the appointment was made in accordance with the old Act, the old Regulations and any other applicable instruments under the old Act; and
 - (c) the appointment had not taken effect.
- (2) The person is taken to be engaged as an ongoing APS employee under paragraph 22 (2) (a) of the new Act at the time stated in the instrument for the appointment to take effect.
- (3) However, if a determination was made under section 44 of the old Act in relation to the appointment of the person as a Senior Executive Service officer, the person is taken to be engaged as

an APS employee under paragraph 22 (2) (b) of the new Act at the time stated in the determination for the appointment to take effect.

2.3 Appointments under certain other enactments made but not effective at commencing time

- (1) This regulation applies if, before the commencing time:
 - (a) an instrument was made appointing a person to the APS under any of the following provisions:
 - (i) section 22 of the *Albury-Wodonga Development Act 1973*;
 - (ii) section 6 of the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994*;
 - (iii) section 90A of the *Australian Security Intelligence Organization Act 1979*;
 - (iv) section 63 of the *Australian Trade Commission Act 1985*; and
 - (b) the appointment had not taken effect.
- (2) The person is taken to be engaged as an ongoing APS employee under paragraph 22 (2) (a) of the new Act at the time the appointment would have taken effect under the relevant provision.
- (3) If, under the relevant provision, the appointment could not have been made on probation, the engagement must not be made subject to a condition that the person is on probation.
- (4) The provision under which the instrument was made continues in force to allow for the making of any appeals in relation to the appointment.

2.4 SES appointments in progress at commencing time

- (1) This regulation applies if, before the commencing time:
 - (a) a person was selected for:
 - (i) appointment, under section 42 of the old Act, as a Senior Executive Service officer; or

-
- (ii) appointment, under sections 42 and 44 of the old Act, as a Senior Executive Service officer with a fixed-term appointment; and
 - (b) the selection was made in accordance with the old Act, the old Regulations and any other applicable instruments under the old Act; and
 - (c) the instrument appointing the person to the APS had not been made.
- (2) The person is taken to have been selected for engagement as an APS employee, in compliance with the requirements of the new Act and the Commissioner's Directions.
- (3) The person may be engaged as an APS employee:
- (a) for a person mentioned in subparagraph (1) (a) (i) — under paragraph 22 (2) (a) of the new Act; and
 - (b) for a person mentioned in subparagraph (1) (a) (ii) — under paragraph 22 (2) (b) of the new Act.

Note Under subs 22 (6) of the new Act, engagements may be made subject to conditions notified to the employee.

2.5 Employment opportunities notified before commencing time

- (1) This regulation applies to an employment opportunity that was notified in the *Gazette* before the commencing time.
- (2) Clauses 4.2, 4.3 and 4.6 of the Commissioner's Directions do not apply for the purposes of selection processes carried out in relation to the employment opportunity within 12 months after it was notified in the *Gazette*.
- (3) A notification under subsection 33A (1) of the old Act that applied in respect of the employment opportunity continues to apply for the purposes of the employment opportunity until the end of 12 months after it was notified in the *Gazette*.

2.6 Re-appointments made but not effective at commencing time

If, before the commencing time:

-
- (a) an instrument was made re-appointing a person to the APS under section 47B or 47C of the old Act; and
 - (b) the re-appointment was made in accordance with the old Act, the old Regulations and any other applicable instruments under the old Act; and
 - (c) the re-appointment had not taken effect;
- the person is taken to be engaged as an ongoing APS employee under paragraph 22 (2) (a) of the new Act at the time stated in the instrument for the re-appointment to take effect.

2.7 Persons on probation (termination decision made but not effective at commencing time)

- (1) This regulations applies to a person if, before the commencing time:
 - (a) a decision was made to terminate the person's appointment under section 47 of the old Act; and
 - (b) the decision had not taken effect.
- (2) The old Act continues in force to allow for the termination of the person's appointment.

2.8 Persons on probation at commencing time (no termination decision made before commencing time)

- (1) This regulation applies to a person who:
 - (a) immediately before the commencing time, was an officer on probation under section 47 of the old Act; and
 - (b) at the commencing time, becomes an APS employee; and
 - (c) is not a person to whom regulation 2.7 applies.
- (2) This regulation also applies to a person who is taken to be engaged as an ongoing APS employee under subregulation 2.2 (2) or 2.3 (2) if the appointment of the person, under the relevant instrument or provision, was a probationary appointment.
- (3) The conditions applying to the person's probationary appointment under section 47 of the old Act are taken to be conditions applying to the person's engagement under subsection 22 (6) of the new Act.

-
- (4) The person is taken to have been notified of the conditions for the purposes of subsection 22 (6) of the new Act.
 - (5) The old Act, the old Regulations and any other applicable instruments under the old Act continue in force for the purposes of determining whether the conditions are being met in relation to the person's engagement.
 - (6) The conditions applying to the person's engagement are conditions for the purposes of paragraph 29 (3) (f) of the new Act.

2.9 Transfers made but not effective at commencing time

- (1) This regulation applies if, before the commencing time:
 - (a) an instrument transferring a person to a vacant office under section 49 or 50 of the old Act was made; and
 - (b) the transfer had not taken effect.
- (2) The old Act and the old Regulations continue in force for the purposes of any of following matters that are relevant to the transfer:
 - (a) notification in the *Gazette*;
 - (b) date of effect;
 - (c) cancellation;
 - (d) right to apply to decline transfer.
- (3) Subregulation (4) applies if:
 - (a) a transfer would have taken effect under the old Act, after the completion of the relevant matters mentioned in subregulation (2); and
 - (b) the person's office and the vacant office would be regarded, under the new Act, as the equivalent of duties in different Agencies.
- (4) For the purposes of sections 25 and 26 of the new Act:
 - (a) the Agency Head of the Agency that includes the equivalent of the vacant office (the ***new Agency Head***) is taken to have entered into an agreement with the person to move to that Agency:

-
- (i) with effect from the time at which the transfer would have taken effect under the old Act and the old Regulations; and
 - (ii) with a classification corresponding to the classification of the vacant office under the old Act; and
 - (b) the requirement in section 26 of the new Act for the agreement to be in writing does not apply; and
 - (c) the requirement in regulation 3.9 of the new Regulations for the person to tell the person's current Agency Head about the agreement before the end of the next working day after the agreement is made does not apply; and
 - (d) the new Agency Head is taken to have:
 - (i) determined the person's duties in the Agency as the duties that applied to the vacant office; and
 - (ii) determined that the place or places at which the duties are to be performed are the same as the place or places applicable to the vacant office; and
 - (iii) assigned the person to the duties;with effect from the time at which the transfer would have taken effect under the old Act and the old Regulations.

Note See para 14 (4) (b) of the Act.

- (5) Subregulation (6) applies if:
 - (a) a transfer would have taken effect under the old Act, after the completion of the relevant matters mentioned in subregulation (2); and
 - (b) the person's office and the vacant office would be regarded, under the new Act, as the equivalent of duties in the same Agency.
- (6) For the purposes of section 25 of the new Act, the person's Agency Head is taken:
 - (a) to have determined the person's duties in the Agency as the duties that applied to the vacant office; and
 - (b) to have determined that the place or places at which the duties are to be performed are the same as the place or places applicable to the vacant office; and

-
- (c) to have assigned the person to the duties;
with effect from the time at which the transfer would have taken effect under the old Act and the old Regulations.

2.10 Promotions made but not effective at commencing time

- (1) This regulation applies if, before the commencing time:
- (a) an instrument promoting a person to a vacant office under section 49B or 50 of the old Act was made; and
 - (b) the promotion had not taken effect.
- (2) The old Act and the old Regulations continue in force for the purposes of any of the following matters that are relevant to the promotion:
- (a) notification in the *Gazette*;
 - (b) date of effect;
 - (c) appeal rights;
 - (d) review rights;
 - (e) cancellation.
- (3) Subregulation (4) applies if:
- (a) a transfer or promotion would have taken effect under the old Act, after the completion of the relevant matters mentioned in subregulation (2); and
 - (b) the person's office and the vacant office would be regarded, under the new Act, as the equivalent of duties in different Agencies.
- (4) For the purposes of sections 25 and 26 of the new Act:
- (a) the Agency Head of the Agency that includes the equivalent of the vacant office (the ***new Agency Head***) is taken to have entered into an agreement with the person to move to that Agency:
 - (i) with effect from the time at which the transfer or promotion would have taken effect under the old Act and the old Regulations; and

-
- (ii) with a classification corresponding to the classification of the vacant office under the old Act; and
 - (b) the requirement in section 26 of the new Act for the agreement to be in writing does not apply; and
 - (c) the new Agency Head is taken to have:
 - (i) determined the person's duties in the Agency as the duties that applied to the vacant office; and
 - (ii) determined that the place or places at which the duties are to be performed are the same as the place or places applicable to the vacant office; and
 - (iii) assigned the person to the duties;with effect from the time at which the transfer or promotion would have taken effect under the old Act and the old Regulations.

Note See para 14 (4) (b) of the Act.

- (5) Subregulation (6) applies if:
 - (a) a transfer or promotion would have taken effect under the old Act, after the completion of the relevant matters mentioned in subregulation (2); and
 - (b) the person's office and the vacant office would be regarded, under the new Act, as the equivalent of duties in the same Agency.
- (6) For the purposes of section 25 of the new Act, the person's Agency Head is taken:
 - (a) to have determined the person's duties in the Agency as the duties that applied to the vacant office; and
 - (b) to have determined that the place or places at which the duties are to be performed are the same as the place or places applicable to the vacant office; and
 - (c) to have assigned the person to the duties;with effect from the time at which the transfer or promotion would have taken effect under the old Act and the old Regulations.

2.11 Transfers or promotions on advice of Joint Selection Committee

- (1) This regulation applies if, before the commencing time:
 - (a) the Merit Protection and Review Agency was notified in writing that a Secretary had arranged for the establishment of a Joint Selection Committee under paragraph 50DA (4) (d) or 50DB (3) (c) of the old Act; or
 - (b) a vacancy was notified in the *Gazette* under paragraph 50DA (4) (c) or 50DB (3) (a) of the old Act.
- (2) The old Act and the old Regulations continue to apply for the purposes of the filling of the vacancy.
- (3) Subregulation (4) applies if:
 - (a) a transfer or promotion would have taken effect under the old Act, after the completion of the process mentioned in subregulation (2); and
 - (b) the person's office and the vacant office would be regarded, under the new Act, as the equivalent of duties in different Agencies.
- (4) For the purposes of sections 25 and 26 of the new Act:
 - (a) the Agency Head of the Agency that includes the equivalent of the vacant office (the *new Agency Head*) is taken to have entered into an agreement with the person to move to that Agency:
 - (i) with effect from the time at which the transfer or promotion would have taken effect under the old Act and the old Regulations; and
 - (ii) with a classification corresponding to the classification of the vacant office under the old Act; and
 - (b) the requirement in section 26 of the new Act for the agreement to be in writing does not apply; and
 - (c) if the move is not a promotion, the requirement in regulation 3.9 of the new Regulations for the person to tell the person's current Agency Head about the agreement before the end of the next working day after the agreement is made does not apply; and

-
- (d) the new Agency Head is taken to have:
- (i) determined the person's duties in the Agency as the duties that applied to the vacant office; and
 - (ii) determined that the place or places at which the duties are to be performed are the same as the place or places applicable to the vacant office; and
 - (iii) assigned the person to the duties;
- with effect from the time at which the transfer or promotion would have taken effect under the old Act and the old Regulations.

Note See para 14 (4) (b) of the Act.

- (5) Subregulation (6) applies if:
- (a) a transfer or promotion would have taken effect under the old Act, after the completion of the process mentioned in subregulation (2); and
 - (b) the person's office and the vacant office would be regarded, under the new Act, as the equivalent of duties in the same Agency.
- (6) For the purposes of section 25 of the new Act, the person's Agency Head is taken:
- (a) to have determined the person's duties in the Agency as the duties that applied to the vacant office; and
 - (b) to have determined that the place or places at which the duties are to be performed are the same as the place or places applicable to the vacant office; and
 - (c) to have assigned the person to the duties;
- with effect from the time at which the transfer or promotion would have taken effect under the old Act and the old Regulations.

2.12 Fixed-term Secretaries

- (1) This regulation applies to a person who is taken, under subsection 5 (1) of the Act, to be appointed as a Secretary under the new Act.

-
- (2) Until a determination is made under section 61 of the new Act, the appointment is taken to be subject to the terms and conditions applying to the person's appointment under the old Act immediately before the commencing time (including the terms and conditions provided for under Remuneration Tribunal Determination 1999/04).

2.13 Acting Secretaries

- (1) This regulation applies if, at the commencing time, a person holds an appointment under paragraph 39 (1) (a), (b) or (c) of the old Act.
- (2) The person is taken to be appointed under section 62 of the new Act on the terms that applied to the appointment, immediately before the commencing time, under the old Act.

2.14 Public Service Commissioner

- (1) This regulation applies to the person who is, under subsection 5 (2) of the Act, the Public Service Commissioner under the new Act.
- (2) Until a determination is made under section 46 of the new Act, the appointment is taken to be subject to the terms and conditions applying to the person's appointment under the old Act immediately before the commencing time (including those provided for under Remuneration Tribunal Determination 1999/04).
- (3) Subsection 11 (6) of the old Act continues to apply to the person.

2.15 Public Service Commissioner — annual report for the 1999-2000 financial year

The report required by section 44 of the new Act in relation to the financial year ending on 30 June 2000 must include the following reports:

- (a) a report on the activities of the Commissioner under the old Act during the period between 1 July 1999 and the commencing time;

-
- (b) a report in accordance with subregulation 12 (2) of the old Regulations on the state of the APS during the period between 1 July 1999 and the commencing time.

2.16 Temporary performance of duties of SES officers

- (1) Subregulation (2) applies if:
 - (a) a person was given a direction under regulation 108 of the old Regulations, before the commencing time, to perform temporarily the whole, or a specified part, of the duties of a Senior Executive Service office (the *other office*); and
 - (b) the period of effect of the direction had not ended at the commencing time; and
 - (c) the duties performed by the person immediately before he or she was given the direction, and the duties of the other office, would be treated under the new Act as corresponding to duties in different Agencies.
- (2) For the purposes of sections 25 and 26 of the new Act:
 - (a) the Agency Head of the Agency in which duties corresponding to the duties of the other office are performed is taken to have entered into an agreement with the person to move to that Agency; and
 - (b) the agreement starts:
 - (i) if the direction took effect before the commencing time — at the commencing time; and
 - (ii) if the direction is stated to take effect at or after the commencing time — when the direction is stated to take effect; and
 - (c) the agreement ends when the direction is stated to end; and
 - (d) the terms of the agreement are taken to include:
 - (i) terms to the same effect as the provisions of the direction; and
 - (ii) a condition that, on the day after the agreement ceases to have effect, the person will return to the Agency in which he or she would, apart from the direction, have been performing duties; and

-
- (e) the requirement in section 26 of the new Act for the agreement to be in writing does not apply; and
 - (f) the requirement under regulation 3.9 of the new Regulations for the person to notify the Agency Head does not apply; and
 - (g) the Agency Head is taken to have:
 - (i) determined the person's duties in the Agency as the duties of the other office; and
 - (ii) determined that his or her duties in the Agency are to be performed at the place, or places, applicable to performance of the duties of the other office; and
 - (iii) assigned those duties to the person;with effect from the relevant time mentioned in paragraph (b).

Note See para 14 (4) (b) of the Act.

- (3) Subregulation (4) applies if:
 - (a) a person was given a direction under regulation 108 of the old Regulations, before the commencing time, to perform temporarily the whole, or a specified part, of the duties of a Senior Executive Service office (the *other office*); and
 - (b) the period of effect of the direction had not ended at the commencing time; and
 - (c) the duties performed by the person immediately before he or she was given the direction, and the duties of the other office, would be treated under the new Act as corresponding to duties in different Agencies.
- (4) For the purposes of section 25 of the new Act, the person's Agency Head is taken to have:
 - (a) determined the person's duties in the Agency as the duties of the other office; and
 - (b) determined that his or her duties in the Agency are to be performed at the place, or places, applicable to performance of the duties of the other office; and

- (c) assigned those duties to the person;

with effect from the later of the commencing time and the time at which the direction takes effect.

Note See para 14 (4) (b) of the Act.

- (5) Subregulation (4) has effect for the remainder of the period mentioned in paragraph (3) (b).

2.17 Temporary performance of duties of non-SES officers (non-appellable)

- (1) Subregulation (2) applies if:
- (a) a person was given a direction under regulation 116A of the old Regulations, before the commencing time, to perform temporarily the whole, or a specified part, of the duties of an office (the *other office*); and
 - (b) any promotion to the other office would not, under section 50 of the old Act, have been an appellable promotion; and
 - (c) the period of effect of the direction had not ended at the commencing time; and
 - (d) the duties performed by the person before he or she was given the direction, and the duties of the other office, would be treated under the new Act as corresponding to duties in different Agencies.
- (2) For the purposes of sections 25 and 26 of the new Act:
- (a) the Agency Head of the Agency in which duties corresponding to the duties of the other office are performed is taken to have entered into an agreement with the person to move to that Agency; and
 - (b) the agreement starts:
 - (i) if the direction took effect before the commencing time — at the commencing time; and
 - (ii) if the direction is stated to take effect at or after the commencing time — when the direction is stated to take effect; and
 - (c) the agreement ends when the direction is stated to end; and

-
- (d) the terms of the agreement are taken to include:
 - (i) terms to the same effect as the provisions of the direction; and
 - (ii) a condition that, on the day after the agreement ceases to have effect, the person will return to the Agency in which he or she would, apart from the direction, have been performing duties; and
 - (e) the requirement in section 26 of the new Act for the agreement to be in writing does not apply; and
 - (f) the requirement under regulation 3.9 of the new Regulations for the person to notify the Agency Head does not apply; and
 - (g) the Agency Head is taken to have:
 - (i) determined the person's duties in the Agency as the duties of the other office; and
 - (ii) determined that his or her duties are to be performed at the place, or places, applicable to performance of the duties of the other office; and
 - (iii) assigned those duties to the person;
with effect from the relevant time mentioned in paragraph (b).

Note See para 14 (4) (b) of the Act.

- (3) Subregulation (4) applies if:
 - (a) a person was given a direction under regulation 116A of the old Regulations, before the commencing time, to perform temporarily the whole, or a specified part, of the duties of an office (the *other office*); and
 - (b) any promotion to the other office would not, under section 50 of the old Act, have been an appellable promotion; and
 - (c) the period of effect of the direction had not ended at the commencing time; and
 - (d) the duties performed by the person before he or she was given the direction and the duties of the other office would be treated under the new Act as corresponding to duties in the same Agency.

-
- (4) For the purposes of section 25 of the new Act, the person's Agency Head is taken to have:
- (a) determined the person's duties in the Agency as the duties of the other office; and
 - (b) determined that his or her duties are to be performed at the place, or places, applicable to performance of the duties of the other office; and
 - (c) assigned those duties to the person;
- with effect from the later of the commencing time and the time at which the direction takes effect.
- Note* See para 14 (4) (b) of the Act.
- (5) Subregulation (4) has effect only for the remainder of the period mentioned in paragraph (3) (c).

2.18 Temporary performance of duties of non-SES officers (appellable)

- (1) This regulation applies if, before the commencing time:
 - (a) a person was given a direction under regulation 116A of the old Regulations to perform temporarily the whole, or a specified part, of the duties of an office (the *higher office*); and
 - (b) any promotion to the higher office would, under section 50 of the old Act, have been an appellable promotion; and
 - (c) the period of effect of the direction had not ended.
- (2) If the direction was notified 14 days or less before the commencing time, regulations 116, 116C, 116D and 116E of the old Regulations continue to apply in relation to the direction.
- (3) For the purposes of sections 25 and 26 of the new Act, if the duties performed by the person before he or she was given the direction and the duties of the higher office would be treated under the new Act as corresponding to duties in different Agencies:
 - (a) the Agency Head of the Agency in which duties corresponding to the duties of the higher office are

-
- performed is taken to have entered into an agreement with the person to move to that Agency; and
- (b) the agreement starts:
 - (i) if the direction took effect before the commencing time — at the commencing time; and
 - (ii) if the direction is stated to take effect at or after the commencing time — when the direction is stated to take effect; and
 - (c) the agreement ends when the direction is stated to end; and
 - (d) the terms of the agreement are taken to include:
 - (i) terms to the same effect as the provisions of the direction; and
 - (ii) a condition that, on the day after the agreement ceases to have effect, the person will return to the Agency in which he or she would, apart from the direction, have been performing duties; and
 - (e) the requirement in section 26 of the new Act for the agreement to be in writing does not apply; and
 - (f) the requirement under regulation 3.9 of the new Regulations for the person to notify the Agency Head does not apply; and
 - (g) the Agency Head is taken to have:
 - (i) determined the person's duties in the Agency as the duties of the higher office; and
 - (ii) determined that his or her duties are to be performed at the place, or places, applicable to performance of the duties of the higher office; and
 - (iii) assigned those duties to the person;with effect from the relevant time mentioned in paragraph (b).

Note See para 14 (4) (b) of the Act.

- (4) For the purposes of section 25 of the new Act, if the duties performed by the person before he or she was given the direction and the duties of the higher office would be treated under the new Act as corresponding to duties in the same Agency, the person's Agency Head is taken to have:

-
- (a) determined the person's duties in the Agency as the duties of the higher office; and
 - (b) determined that his or her duties are to be performed at the place, or places, applicable to performance of the duties of the higher office; and
 - (c) assigned those duties to the person;
with effect from the later of the commencing time and the time at which the direction takes effect.

Note See para 14 (4) (b) of the Act.

- (5) If subregulation (3) or (4) applies to a direction mentioned in paragraph 116E (1) (b) of the old Regulations, that subregulation is taken to apply to the direction as if the direction were given before the commencing time.
- (6) Subregulations (2) and (4) have effect only for the remainder of the period mentioned in paragraph (1) (c).

2.19 Pre-commencement misconduct

- (1) This regulation applies if, immediately before the commencing time:
 - (a) an old Act officer or old Act employee had been charged with pre-commencement misconduct; and
 - (b) the charge had not been finally determined.
- (2) The old Act, and Divisions 1, 2 and 3 of Part 1A, Part IX and Part X of the old Regulations, continue to apply in relation to the pre-commencement conduct.
- (3) For the purposes of this regulation, a charge is finally determined when a decision, direction (including a disciplinary direction), finding or recommendation that has been made, or an action that has been taken, under the old Act or the Merit Protection Act, in respect of the charge:
 - (a) is not, or is no longer, subject to any form of appeal or review under either of those Acts; or
 - (b) was subject to some form of appeal or review under either of those Acts, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.

2.20 Conviction by court

- (1) This regulation applies to an APS employee if, before the commencing time:
 - (a) the APS employee was an old Act officer or old Act employee who had been convicted of, or found (without recording a conviction) to have committed, a criminal offence; and
 - (b) the APS employee, as an old Act officer or old Act employee, had been given an opportunity, under paragraph 63 (1) (b) of the old Act, to furnish to the relevant Secretary a written statement in relation to the offence.
- (2) Sections 63, 63F and 63M of the old Act continue to apply in relation to the APS employee.

2.21 Suspension

- (1) This regulation applies if:
 - (a) an old Act officer or old Act employee was suspended under section 63B of the old Act before the commencing time; and
 - (b) the suspension was in force immediately before the commencing time.
- (2) If the old Act officer or old Act employee was charged with misconduct under Division 6 of Part III of the old Act, sections 63B, 63C and 63JA of the old Act, and regulation 164A of the old Regulations, continue to apply until the end of the period of the suspension.
- (3) If the old Act officer or old Act employee was suspended without being charged with misconduct under Division 6 of Part III of the old Act, the suspension is taken to be a suspension under regulation 3.10 of the new Regulations.

2.22 Delegations

- (1) This regulation applies if:
 - (a) a power or function was delegated to a person, before the commencing time, under:
 - (i) subsection 18 (1), 18 (3) or 26 (1) of the old Act; or

-
- (ii) regulation 160 of the old Regulations; and
 - (b) the delegation was in force immediately before the commencing time.
 - (2) If the delegation was stated to have effect for a specified period, it continues in force:
 - (a) with respect to any exercise of the power, or performance of the function, by the person under the old Act or old Regulations that:
 - (i) was started, but not completed, before the commencing time; and
 - (ii) relates to a provision of the old Act or the old Regulations that continues to apply, or have effect, because of a provision of these Regulations; and
 - (b) until the end of the period.
 - (3) If the delegation was not stated to have effect for a specified period, it continues in force with respect to any exercise of the power, or performance of the function, by the person under the old Act or old Regulations that:
 - (a) was started, but not completed, before the commencing time; and
 - (b) relates to a provision of the old Act or the old Regulations that continues to apply, or have effect, because of a provision of these Regulations.

2.23 Directions related to delegations

- (1) This regulation applies if:
 - (a) a person:
 - (i) was given a direction under subsection 18 (8) or 26 (3A) of the old Act with respect to the exercise of a power, or the performance of a function; or
 - (ii) gave a direction to a sub-delegate of the person under paragraph 18 (8) (b) of the old Act with respect to the exercise of a power or the performance of a function; and
 - (b) the direction was in force immediately before the commencing time.

-
- (2) The direction continues in force with respect to any exercise of the power, or performance of the function, by the person under the old Act or old Regulations that:
 - (a) was started, but not completed, before the commencing time; and
 - (b) relates to a provision of the old Act or the old Regulations that continues to apply, or have effect, because of a provision of these Regulations.

2.24 Determinations — SES employees' superannuation benefits

- (1) This regulation applies if a determination was:
 - (a) made under section 45 of the old Act in relation to the provision to a person of superannuation benefits or benefits in the nature of superannuation benefits; and
 - (b) in force immediately before the commencing time.
- (2) The determination continues in force for the duration of the appointment of the person to which section 45 of the old Act relates.

2.25 Notices — forfeiture of office or employment

- (1) This regulation applies if:
 - (a) a notice was issued to an officer under section 66A of the old Act about the possibility of the officer being deemed to have retired from the Service; and
 - (b) immediately before the commencing time:
 - (i) the notice was still in force; and
 - (ii) the officer was still an officer.
- (2) This regulation also applies if:
 - (a) a notice was issued to an employee, or a continuing employee, under section 82AJ of the old Act about the possibility of that employee or continuing employee being deemed to have retired from the Service; and
 - (b) immediately before the commencing time:
 - (i) the notice had not been revoked; and

-
- (ii) the employee or continuing employee was still an employee or continuing employee.
 - (3) The notice continues in force after the officer or employee becomes an APS employee.
 - (4) The relevant section continues to apply in relation to the notice, and the APS employee until:
 - (a) the notice is revoked; or
 - (b) the APS employee ceases to be an APS employee.

2.26 Review proceedings — certain provisions continue

- (1) This regulation applies if:
 - (a) an application for review is made under section 66B or 82AK of the old Act; and
 - (b) review proceedings (including any appeal proceedings) are not completed before the commencing time.
- (2) The relevant section continues to apply to those proceedings after the commencing time until the proceedings are completed.

2.27 Retirement benefits — SES officers

- (1) This regulation applies if:
 - (a) a notice was issued to a Senior Executive Service officer under section 76R of the old Act that if the officer retires from the Service within the period specified in the notice the officer will be entitled to a specified benefit; and
 - (b) immediately before the commencing time:
 - (i) the notice was still in force; and
 - (ii) the officer was still an officer.
- (2) The notice continues in force after the SES officer becomes an SES employee.
- (3) Section 76R of the old Act continues to apply in relation to the notice, and the SES employee, until:
 - (a) the end of the period specified in the notice; or
 - (b) the SES employee ceases to be an SES employee; or

-
- (c) action taken for the purposes of the notice is discontinued.

2.28 Reduction of classification — non-SES officers

- (1) This regulation applies if:
- (a) a notice to reduce the classification of a person was issued to the person under section 76W of the old Act; and
 - (b) immediately before the commencing time:
 - (i) his or her classification had not been reduced; and
 - (ii) the notice was still in force.
- (2) The notice continues in force after the person becomes an APS employee.
- (3) Whichever of sections 76S, 76T, 76W, 76X, 76Z and 92 of the old Act, and regulations 46 to 51 and regulations 120A, 120C and 120D of the old Regulations, are relevant continue to apply in relation to the notice and the person.
- (4) If a result of the operation of subregulation (3) is the reduction of the classification that applied, immediately before the commencing time, to the person, his or her Agency Head is taken to have:
- (a) determined that the duties of the person in the Agency:
 - (i) have a classification corresponding to an office of the reduced classification; and
 - (ii) are to be performed at the place, or places, applicable to an office of the reduced classification; and
 - (b) assigned those duties to the person.
- (5) If the classification that applied immediately before the commencing time to the person is not reduced as a result of the operation of subregulation (3), the notice ceases to have effect.

2.29 Retirements — non-SES officers

- (1) This regulation applies if:
- (a) a notice to retire a person from the Service was issued to the person under section 76W of the old Act; and

-
- (b) immediately before the commencing time:
 - (i) the notice had not been revoked; and
 - (ii) the person was still an officer.
 - (2) The notice continues in force after the person becomes an APS employee.
 - (3) Whichever of sections 76S, 76T, 76W, 76X, 76Z and 92 of the old Act, and regulations 46 to 51 and regulations 120A, 120C and 120D of the old Regulations, are relevant continue to apply in relation to the notice, and the person, until:
 - (a) the end of the period specified in the notice; or
 - (b) the person ceases to be an APS employee.

2.30 Arrangements, agreements and authorisations for reciprocal services

- (1) This regulation applies if any of the following matters was in force immediately before the commencing time:
 - (a) an arrangement or agreement under section 78 of the old Act;
 - (b) an authorisation or agreement under section 80 of the old Act;
 - (c) an arrangement under section 81 of the old Act.
- (2) The arrangement, agreement or authorisation continues in force after the commencing time, to the extent that its provisions require or permit it to continue in force.
- (3) Division 9 of Part III of the old Act continues to apply in relation to the arrangement, agreement or authorisation after the commencing time.

2.31 Determinations of special terms or conditions of employment

- (1) This regulation applies if a determination of special terms or conditions of employment under subsection 81B (5) or 81C (3) of the old Act is in force immediately before the commencing time.

-
- (2) The determination continues in force.
 - (3) The relevant subsection continues in force in relation to the determination.

2.32 Engagements not completed at commencing time — continuing employees

- (1) Subregulation (2) applies if, before the commencing time:
 - (a) an instrument to give effect to the engagement of a person as a continuing employee in a Department under section 82AC of the old Act was signed on behalf of the Secretary of the Department; but
 - (b) the engagement of the person did not take effect.
- (2) The person is taken to be engaged as an APS employee under paragraph 22 (2) (a) of the new Act when the engagement takes effect in accordance with the instrument.
- (3) Subregulation (4) applies if, before the commencing time:
 - (a) action was taken in relation to the engagement of a person as a continuing employee in a Department under section 82AC of the old Act; but
 - (b) an instrument to give effect to the engagement was not signed on behalf of the Department.
- (4) If the engagement of the person is to take effect within 12 months of the commencement of the action in relation to the engagement, the action is taken to meet the requirements of Chapter 4.2 of the Commissioner's Directions.

2.33 Engagements not completed at commencing time — other employees

- (1) Subregulations (2) and (3) apply if, before the commencing time:
 - (a) an instrument to give effect to the engagement of a person as an employee in a Department under section 82AD, 82AE or 82AG of the old Act was signed on behalf of the Secretary of the Department; but
 - (b) the engagement of the person did not take effect.

-
- (2) If the engagement was for a specified period the person is taken to be engaged, as an APS employee under paragraph 22 (2) (b) of the new Act when the engagement takes effect in accordance with the instrument.
 - (3) Subregulation (4) applies if, before the commencing time:
 - (a) action was taken in relation to the engagement of a person as an employee in a Department under section 82AD, 82AE or 82AG of the old Act; but
 - (b) an instrument to give effect to the engagement was not signed on behalf of the Secretary of the Department.
 - (4) If the engagement of the person:
 - (a) was for a specified period; and
 - (b) is to take effect within 12 months of the commencement of the action in relation to the engagement;the action is taken to meet the requirements of Chapter 4.3 of the Commissioner's Directions.

2.34 Terminations not completed at commencing time

- (1) This regulation applies if, before the commencing time:
 - (a) the termination of an employee's employment under section 82AH of the old Act was approved by, or on behalf, of a Secretary; but
 - (b) the employment was not terminated.
- (2) The person's employment is taken to terminate at the time approved by, or on behalf of, the Secretary under section 82AH of the old Act.

2.35 Continuation of short- and fixed-term SES engagements

- (1) This regulation applies to a person who, immediately before the commencing time, was an SES officer engaged under section 82AD or 82AE of the old Act.
- (2) At the commencing time, the SES officer becomes an SES employee:
 - (a) in the corresponding Agency; and

-
- (b) with a corresponding classification;
as if he or she had been engaged under the new Act as an SES employee for a period equal to the unexpired part of the term of the engagement under the old Act.

Note See para 14 (4) (b) of the Act.

2.36 Gazettal of notices

- (1) Subregulation (2) applies if notice of an appointment, promotion, transfer, retirement or dismissal that is mentioned in subsection 92 (2) of the old Act was not published in the *Gazette* before the commencing time.
- (2) The subsection continues to have effect in relation to the appointment, promotion, transfer, retirement or dismissal.
- (3) Subregulation (4) applies if a transfer mentioned in regulation 106D of the old Regulations was not notified in the *Gazette* before the commencing time.
- (4) The regulation continues to have effect after that time in relation to the transfer.

2.37 Continuing authority for certain payments

- (1) This regulation applies if the payment of money to an officer or employee:
 - (a) was authorised under subsection 90 (3) of the old Act; and
 - (b) was to be made after the commencing time.
- (2) The payment is taken to have been authorised under section 73 of the new Act.

2.38 Interpretation of certain awards, certified agreements and AWAs

- (1) This regulation applies if an award, certified agreement or AWA:
 - (a) is in force at the commencing time in relation to an APS employee; and

-
- (b) contains a provision that refers to a provision of the old Act or old Regulations to which a provision of the new Act or new Regulations corresponds.
 - (2) The reference in the provision of the award, certified agreement or AWA to the provision of the old Act or old Regulations is to be read as including a reference to the corresponding provision of the new Act or new Regulations.
 - (3) Also, the provision is to be read in a way that is consistent with, and promotes, the transition from the application of the old Act and old Regulations to the new Act and new Regulations.

2.39 Determination 162 of 1994

Determination 162 of 1994 (made under section 82D of the old Act) applies in relation to an Agency only to the extent that it is capable of applying to the Agency in accordance with the provisions of the Determination.

2.40 Attachment of salaries of officers

- (1) This regulation applies if, before the commencing time:
 - (a) an amount was deducted, under section 64 of the old Act, each pay-day from the salary of an old Act officer or old Act employee to satisfy a judgment debt; and
 - (b) an amount remains owing on the judgment debt.
- (2) Section 64 of the old Act continues to apply until the remaining balance of the judgment debt is satisfied.

2.41 Deduction of pecuniary penalty from salary

- (1) This regulation applies if, before the commencing time:
 - (a) an amount was deducted, under section 65 of the old Act, from the salary of an old Act officer or old Act employee to pay a pecuniary penalty; and
 - (b) an amount remains owing on the penalty.
- (2) Section 65 of the old Act continues to apply until the remaining balance of the pecuniary penalty is paid.

2.42 Whistleblowing

- (1) This regulation applies if, before the commencing time:
 - (a) an APS employee made a report under regulation 9 of the old Regulations; and
 - (b) the report had not been finally dealt with under regulations 10 and 11 of the old Regulations.
- (2) Regulations 10 and 11 of the old Regulations continue to apply in relation to the report.

2.43 Medical examinations

- (1) This regulation applies if, before the commencing time:
 - (a) a Secretary gave a written notice to an old Act officer or old Act employee under regulation 48 or 51 of the old Regulations, directing the officer or employee to submit to a medical examination; and
 - (b) the officer or employee had not attended a medical examination.
- (2) The written notice is taken to be a written notice under regulation 3.2 of the new Regulations.

Part 3 **Transitional provisions relating to rights under Part IV of the old Act**

Division 3.1 **First-tier persons**

Subdivision 3.1.1 **General rights**

Outline of first-tier concept

Section 6 of the Act makes arrangements for first-tier persons.

6 **Rights under Part IV of the old Act—first tier**

- (1) During the transitional period, a first-tier person is taken to be absent from duty as an APS employee, on leave without pay.
- (2) Service by a first-tier person in eligible public employment during the transitional period is counted, for the purposes of accrual of recreation leave credits and sick leave credits, as if it were service as an APS employee.
- (3) A first-tier person is taken to have resigned as an APS employee at the end of the transitional period unless, before the end of the transitional period:
 - (a) the person has given notice in writing to the Agency Head, stating that the person intends to resume duties as an APS employee on the first working day after the end of the transitional period; or
 - (b) the person has been granted leave for a period that consists of, or includes, the first working day after the end of the transitional period.
- (4) If a person:
 - (a) gives a notice under paragraph (3) (a) of this section; and
 - (b) is absent from duty without leave on the first working day after the end of the transitional period;

the person is taken to have resigned as an APS employee at the end of that first working day.

- (5) If a person would have ceased to be an officer under the old Act at a particular time because of section 87JA or 87JB of the old Act (if the old Act had not been repealed), then the person is taken to have resigned as an APS employee at that time.
- (6) If the transitional period for a first-tier person ends at the end of the relevant period (as defined in subsection 87D(5) of the old Act), then the person becomes a second-tier person at the end of that relevant period.

For reference, the definitions of ***first-tier person*** and ***transitional period*** are as follows:

first-tier person means:

- (a) a person to whom Division 2 of Part IV of the old Act applied immediately before the commencing time; and
- (b) a person to whom the *Officers' Rights Declaration Act 1928* applied immediately before the commencing time because of section 87TA of the old Act.

transitional period, in relation to a first-tier person, means the period that starts at the commencing time and ends at the earliest of the following times:

- (a) the period prescribed by the regulations for the purposes of this paragraph;
- (b) the time when the person ceases to be engaged in eligible public employment;
- (c) the time when the person resigns or retires as an APS employee;
- (d) the end of the relevant period (as defined in subsection 87D(5) of the old Act).

3.1 Mobility rights of first-tier persons

- (1) Section 6 of the Act sets out rights of a first-tier person, under Division 2 of Part IV of the old Act, after the commencing time.
- (2) These Regulations set out additional rights.
- (3) A first-tier person has no other rights under Division 2 of Part IV after the commencing time.

Subdivision 3.1.2 End of first-tier status

3.2 Ceasing to be a first-tier person

- (1) A first-tier person who:
 - (a) has given notice in writing to the Agency Head in accordance with paragraph 6 (3) (a) of the Act; and
 - (b) resumes duties on the first working day after the end of the transitional period;ceases to be a first-tier person at the end of the transitional period.
- (2) A first-tier person who has been granted leave:
 - (a) for the purposes of paragraph 6 (3) (b) of the Act; and
 - (b) for a period that consists of, or includes, the first working day after the end of the transitional period;ceases to be a first-tier person at the start of that first working day.
- (3) A first-tier person who is taken to have resigned from the APS because neither of paragraphs 6 (3) (a) and (b) of the Act has been complied with ceases to be a first-tier person at the end of the transitional period.
- (4) A first-tier person who is taken to have resigned from the APS in accordance with subsection 6 (4) of the Act ceases to be a first-tier person at the end of the first working day after the end of the transitional period.

Regulation 3.3

- (5) A first-tier person who is taken to have resigned from the APS in accordance with subsection 6 (5) of the Act ceases to be a first-tier person at the time described in the subsection.
- (6) If:
 - (a) the transitional period for a first-tier person is described in subsection 6 (6) of the Act; and
 - (b) the person resigns from the APS, or is taken to have resigned, before the end of that transitional period;the person ceases to be a first-tier person when the resignation takes effect.
- (7) A first-tier person who:
 - (a) has given notice in writing to the Agency Head, stating that the person intends to resume duties as an APS employee before the end of the transitional period; and
 - (b) resumes duties before the end of the transitional period;ceases to be a first-tier person when the person resumes duties.

Note See r 3.5.
- (8) A first-tier person who resigns from the APS in a way that is not described in section 6 of the Act ceases to be a first-tier person when the resignation takes effect.
- (9) A first-tier person who retires from the APS ceases to be a first-tier person when the retirement takes effect.

Subdivision 3.1.3 Leave entitlements

3.3 Leave

A first-tier person retains all recreation leave credits and sick leave credits that the person accrued in the period:

- (a) starting when the person started the employment that gave him or her the status of first-tier person; and
- (b) ending immediately before the commencing time.

Subdivision 3.1.4 Return to APS while first-tier person

3.4 Transitional period

For the purposes of paragraph (a) of the definition of *transitional period* in section 4 of the Act, the period of 3 years is prescribed.

Note 1 In accordance with the definition of *transitional period*, the transitional period starts at the commencing time.

Note 2 While the 3 year transitional period is in effect, first-tier persons have the right to resume duties in the APS, and to apply for employment opportunities advertised in the *Gazette*.

3.5 Notice of return

- (1) A first-tier person may, at any time while the person is a first-tier person, give notice in writing, stating that the person intends to resume duties as an APS employee:
 - (a) before the end of the transitional period; or
 - (b) on the first working day after the end of the transitional period.
- (2) The notice must be given to:
 - (a) the Agency Head of the person's corresponding Agency for the purposes of section 5 of the Act; or
 - (b) if the person's duties are no longer performed in the Agency that was the corresponding Agency — the Agency Head of the Agency where the duties are currently performed.
- (3) Subject to subregulation (4), the first-tier person is entitled to resume duties in the appropriate Agency described in subregulation (2).
- (4) The first-tier person is not entitled to resume duties in the appropriate Agency if the person:
 - (a) has ceased the employment that gave him or her the status of first-tier person because the person has reached the maximum age for that employment; or

Regulation 3.5

- (b) is to cease the employment that gave him or her the status of first-tier person because the person will reach the maximum age for that employment.

Note If a maximum employment age applies to a type of employment, it is likely to be set out in the legislation creating the type of employment.

- (5) The first-tier person is entitled to resume duties at the person's corresponding classification for the purposes of section 5 of the Act.
- (6) The Agency Head must make arrangements for:
- (a) the person's return to the Agency; and
 - (b) the person's resumption of duties; and
 - (c) the acceptance of all of the person's accrued recreation leave credits and sick leave credits.

Division 3.2 Second-tier persons

Subdivision 3.2.1 General rights

Outline of second-tier concept

Section 7 of the Act makes arrangements for second-tier persons.

7 Rights under Part IV of the old Act—second tier

- (1) A second-tier person is entitled to be engaged as an APS employee, in accordance with the regulations, within the time limits prescribed by the regulations.
- (2) Regulations made for the purposes of subsection (1) may prescribe exceptions to the entitlement.

For reference, the definition of ***second-tier person*** is:

second-tier person means:

- (a) a person to whom Division 3 of Part IV of the old Act applied immediately before the commencing time; or
- (b) a person who becomes a second-tier person under subsection 6 (6) of this Act.

3.6 Mobility rights of second-tier persons

- (1) Section 7 of the Act sets out rights of a second-tier person after the commencing time.
- (2) These Regulations set out additional rights.
- (3) A second-tier person has no other rights relating specifically to his or her status as a second-tier person after the commencing time.
- (4) However, if:
 - (a) the transitional period for a first-tier person is described in subsection 6 (6) of the Act; and
 - (b) the person resigns from the APS, or is taken to have resigned, before the end of that transitional period;the person does not become a second-tier person.

Subdivision 3.2.2 End of second-tier status

3.7 Ceasing to be a second-tier person

- (1) A second-tier person who resumes duties in the APS ceases to be a second-tier person when the person resumes duties.
Note See Subdiv 3.2.3 and 3.2.4.
- (2) A second-tier person who resigns from his or her eligible public employment ceases to be a second-tier person when the resignation takes effect.
- (3) A second-tier person who retires from his or her eligible public employment ceases to be a second-tier person when the retirement takes effect.
- (4) If:
 - (a) a second-tier person's eligible public employment is related to the Commonwealth having a controlling interest in a body or thing; and
 - (b) the Commonwealth ceases to have the controlling interest;the person ceases to be a second-tier person when the Commonwealth ceases to have the controlling interest.

Regulation 3.8

- (5) If:
- (a) a second-tier person's eligible public employment is related to the ownership of a body or thing; and
 - (b) the Commonwealth sells or otherwise disposes of the body or thing;
- the person ceases to be a second-tier person when the Commonwealth sells or otherwise disposes of the body or thing.

Subdivision 3.2.3 Return to APS while second-tier person in certain circumstances

3.8 Engagement as APS employee

For the purposes of subsection 7 (1) of the Act, a second-tier person who wishes to be engaged as an APS employee must:

- (a) apply for engagement within the time limit mentioned in regulation 3.9; and
- (b) be entitled to apply for engagement under regulation 3.10; and
- (c) be entitled to be considered for engagement under regulation 3.11; and
- (d) apply for engagement in accordance with regulation 3.12.

3.9 Time limit for engagement

For the purposes of subsection 7 (1) of the Act, the period of 3 years, starting at the commencing time, is prescribed as the time limit within which a second-tier person is entitled to be engaged as an APS employee in accordance with this Subdivision.

3.10 Entitlement to apply for engagement

A second-tier person is entitled to apply for engagement as an APS employee only if the person has been in the same eligible public employment at all times in the period described in regulation 3.9.

3.11 Entitlement to be considered for engagement

- (1) A second-tier person is entitled to be considered for engagement as an APS employee if the person's employment in a public office is to be, or has been, terminated:
 - (a) otherwise than on the ground of the person's invalidity; and
 - (b) before the expiration of the term for which the person was appointed.
- (2) A second-tier person is entitled to be considered for engagement as an APS employee if the person's employment in a public office has been terminated upon the expiration of the term for which the person was appointed, and the person has not been:
 - (a) re-appointed, or offered re-appointment, to the office;
 - (b) appointed, or offered appointment, to another public office; or
 - (c) employed, or offered employment, by a public authority.
- (3) A second-tier person is entitled to be considered for engagement as an APS employee if the person's employment by a public authority is to be, or has been, terminated because the person is excess to the authority's requirements.
- (4) A second-tier person is entitled to be considered for engagement as an APS employee if the person's employment by a public authority is to be, or has been, terminated otherwise than on the ground of the person's invalidity or by reason of the person's resignation.
- (5) A second-tier person is entitled to be considered for engagement as an APS employee if a function previously carried out by the APS has been transferred to a public authority, and:
 - (a) the employment that gave him or her the status of second-tier person included functions associated with the transfer; and
 - (b) the person's employment still includes those functions; and

Regulation 3.12

- (c) the person's career has been adversely affected because of a reduction in, or an alteration of, the functions or activities of the public authority.
- (6) However, a second-tier person is not entitled to be considered for engagement as an APS employee in any of the following circumstances:
 - (a) the person's employment by a public authority is to be, or has been, terminated on the ground of the person's invalidity or by reason of the person's resignation;
 - (b) the person has received, or become entitled to, the payment of a redundancy benefit from an eligible public employer;
 - (c) the person has ceased the employment that gave him or her the status of second-tier person because the person has reached the maximum age for that employment;
 - (d) the person is to cease the employment that gave him or her the status of second-tier person because the person will reach the maximum age for that employment;
 - (e) the person's employment in a public office or by a public authority was terminated on a ground of misconduct, and the Agency Head is satisfied that the same conduct, if committed in the Agency Head's Agency, would be a ground for termination under subsection 29 (3) of the new Act;
 - (f) any other circumstance not mentioned in subregulations (1) to (5).

3.12 Form of application

- (1) A second-tier person must apply for engagement to the Agency Head of the Agency that corresponds to the Department in which the person last performed duties as an officer.
- (2) The application must:
 - (a) be in writing; and
 - (b) state the reason why the person claims to be entitled to be considered for engagement; and
 - (c) include any additional information or statements required by this regulation; and

Regulation 3.12

- (d) identify:
 - (i) the person's classification before the person started the person's eligible public employment; and
 - (ii) the place where the person last performed duties as an officer.
- (3) If the person is entitled to be considered for engagement because of subregulation 3.11 (1) or (2), the application must:
 - (a) state whether the person's employment in a public office is to be, or has been, terminated on the ground of the person's misconduct; and
 - (b) be made within:
 - (i) 30 days after the day on which the person's employment is terminated; or
 - (ii) a further period that the Agency Head allows.
- (4) If the person is entitled to be considered for engagement because of subregulation 3.11 (3), the application must be made not later than 28 days after the later of:
 - (a) the day on which the person became excess to the authority's requirements; and
 - (b) the day on which the person was notified that he or she was excess to the authority's requirements.
- (5) If the person is entitled to be considered for engagement because of subregulation 3.11 (4), the application must:
 - (a) state whether the person's employment by a public authority is to be, or has been, terminated on the ground of the person's misconduct; and
 - (b) be made not later than 30 days after the later of:
 - (i) the day on which the person's employment is terminated; and
 - (ii) the day on which the person was notified that the person's employment was to be terminated.
- (6) If the person is entitled to be considered for engagement because of subregulation 3.11 (5), the application must be made within 30 days after the day on which the reduction in, or alteration of, the functions or activities of the public authority happened.

Regulation 3.13

3.13 Decision on application

- (1) An Agency Head who receives an application by a second-tier person for engagement must decide the application within 28 days after receiving it.
- (2) However, if a second-tier person who makes an application resigns or retires from his or her eligible public employment, the Agency Head is to treat the application as having no effect.
- (3) The Agency Head must approve the application if the Agency Head is satisfied that the person:
 - (a) applied for engagement within the time limit mentioned in regulation 3.9; and
 - (b) is entitled to apply for engagement; and
 - (c) is entitled to be considered for engagement; and
 - (d) applied in accordance with regulation 3.12.
- (4) If the Agency Head is not satisfied about 1 or more of the matters in subregulation (3), the Agency Head must refuse the application.
- (5) The Agency Head must, as soon as practicable, notify the person in writing whether the application has been approved or refused.
- (6) The notification must also include the following information:
 - (a) the nature of the duties that the person will perform on engagement;
 - (b) the classification that the person will have on engagement;
 - (c) the place where the person is to report for duty;
 - (d) the day when the person is to report for duty;
 - (e) the proposed salary rate applicable to the person.

3.14 Effect of approval

- (1) If an Agency Head approves an application for engagement under regulation 3.13, the second-tier person to whom the approval relates is entitled to be engaged, by the Agency Head, as an ongoing APS employee:

Regulation 3.15

- (a) if the person reports for duty in accordance with regulation 3.17; and
 - (b) with effect from the time worked out in accordance with that regulation.
- (2) The Agency Head, and the Agency, have no liability for any salary, allowances or other remuneration in respect of the person for the period before the person reports for duty.

3.15 Duties

- (1) If an Agency Head approves an application by a second-tier person for engagement, the Agency Head must comply with this regulation as part of determining the person's duties for the purposes of section 25 of the new Act.
- (2) The Agency Head must determine the person's duties on the basis of:
- (a) the person's corresponding classification for the purposes of section 5 of the Act; or
 - (b) if the classification no longer exists — an equivalent classification determined by the Agency Head.
- (3) However, subregulation (4) applies if:
- (a) a second-tier person was entitled to be considered for engagement as an APS employee because the person's employment by a public authority was to be, or had been, terminated because the person is excess to the authority's requirements; and
 - (b) an Agency Head accepts the person's application for engagement.
- (4) The Agency Head:
- (a) is to regard the person as excess to the Agency's requirements at the time the person is engaged; and
 - (b) is not required to determine the person's duties in the Agency, for the purposes of section 25 of the new Act, until the Agency Head is satisfied that there is an operational requirement that justifies determining duties.

Regulation 3.16

3.16 Person excess to requirements

- (1) This regulation applies if:
 - (a) a second-tier person was entitled to be considered for engagement as an APS employee because the person's employment by a public authority was to be, or had been, terminated because the person is excess to the authority's requirements; and
 - (b) an Agency Head accepts the person's application for engagement; and
 - (c) the Agency Head does not determine the person's duties in the Agency, for the purposes of section 25 of the new Act, because the Agency Head is satisfied that there is an operational requirement that justifies determining duties.
- (2) For the period during which the person's duties are not determined, the person is subject to the procedures in force in the Agency for dealing with APS employees who are excess to the Agency's requirements.
- (3) Despite subregulation (2), if the person:
 - (a) was offered a redundancy package, or an arrangement of similar effect, as part of the person's employment by a public authority; and
 - (b) declined to accept the offer;the person is not entitled to be offered a redundancy package, or an arrangement of similar effect, by or on behalf of the Agency Head.
- (4) Despite subregulation (2), the period during which the person was excess to the authority's requirements is to be counted as time during which the person is taken to be excess to the Agency's requirements.
- (5) Despite subregulation (2), if:
 - (a) the period during which the person is taken to be excess to the Agency's requirements is greater than the period allowed under the procedures in force in the Agency for dealing with APS employees who are excess to the Agency's requirements; or

Regulation 3.17

- (b) there is no minimum period for the person to be excess to the Agency's requirements under the procedures;

the Agency Head is entitled to terminate the person's engagement as an APS employee in accordance with section 29 of the new Act and the procedures in force in the Agency.

3.17 Reporting for duty

- (1) A second-tier person who is engaged as an APS employee must report for duty in accordance with this regulation.
- (2) The person is not entitled to report for duty until the person has ceased his or her eligible public employment.
- (3) The person must report for duty within 28 days after the day on which the person is notified under subregulation 3.13 (5) that his or her application for engagement has been approved.
- (4) If the person:
- (a) ceases his or her eligible public employment; and
 - (b) reports for duty within the 28 days;
- the person is entitled to be engaged as an ongoing APS employee.
- (5) The engagement takes effect as follows:
- (a) the person is taken to have been engaged with effect from the day after the day when the person ceased his or her eligible public employment;
 - (b) the person is taken to have been engaged at the classification mentioned in the notification under subregulation 3.13 (5);
 - (c) the person is taken to have been granted leave without pay for the period:
 - (i) starting when the person is taken to have been engaged; and
 - (ii) ending immediately before the day when the person reports for duty.

Regulation 3.18

- (6) The person's entitlement to accrued recreation leave credits and sick leave credits, and to future credits, is to be worked out in accordance with:
 - (a) the certified agreement or Australian workplace agreement in force in the Agency; or
 - (b) if there is no agreement — a determination by the Agency Head.
- (7) The person ceases to be entitled to be engaged as an ongoing APS employee if:
 - (a) the person:
 - (i) does not cease his or her eligible public employment by the end of the 28 days mentioned in subregulation (3); or
 - (ii) does not report for duty within the 28 days; and
 - (b) the person has not been granted leave by the Agency Head for the period starting after the 28 days.

Subdivision 3.2.4 Return to APS by application for employment opportunity

3.18 Return

- (1) Nothing in this Division prevents a first-tier person or a second-tier person from applying for engagement in the APS to perform duties other than those that the person would perform if the person returned to the APS in accordance with Subdivision 3.1.4 or 3.2.3.
- (2) The application is to be considered on its merits, without any regard to the person's status as a first-tier person or a second-tier person.
- (3) However, the person is not entitled to be engaged until the person has ceased his or her eligible public employment.

Part 4 **Transitional provisions relating to the application of the Merit Protection Act**

4.1 **Definition for Part 4**

In this Part:

Agency means the Merit Protection and Review Agency established under section 5 of the Merit Protection Act.

4.2 **Continued application of the Merit Protection Act for certain purposes**

- (1) This Part provides for the Merit Protection Act to continue in force after the commencing time for certain purposes.
- (2) However, the functions of the Merit Protection and Review Agency under the Merit Protection Act as it is continued in force are to be performed by:
 - (a) the Merit Protection Commissioner appointed, or taken to be appointed, under the new Act; or
 - (b) a delegate of the Merit Protection Commissioner.
- (3) If a provision of this Part (other than subregulation (2)) refers to the Merit Protection Commissioner, the reference includes a reference to a delegate of the Merit Protection Commissioner.
- (4) The Merit Protection (Australian Government Employees) Regulations are continued in force to the extent necessary for the continued operation of the Merit Protection Act under this Part.

4.3 **Promotion Appeal Committee matters**

- (1) This regulation applies if an appeal mentioned in paragraph 9 (a) of the Merit Protection Act:
 - (a) was made, but not completed, before the commencing time; or

Regulation 4.4

- (b) was made after the commencing time under these Regulations.
- (2) This regulation also applies if an appeal mentioned in paragraph 9 (b) of the Merit Protection Act:
 - (a) was made, but not completed, before the commencing time; or
 - (b) relates to a direction notified under regulation 116B of the old Regulations not more than 14 days before the commencing time.
- (3) The Merit Protection Act continues in force to allow for the determination of the appeal.

4.4 Disciplinary Appeal Committee matters

The Merit Protection Act continues in force to allow for the determination of any appeals, under Division 6 of Part III of the old Act, in relation to disciplinary matters to which the old Act continues to apply.

Note See Pt 2 for disciplinary matters to which the old Act continues to apply.

4.5 Redeployment and Retirement Appeal Committee matters

The Merit Protection Act continues in force to allow for the determination of any appeals, under Division 8C of Part III of the old Act, in relation to redeployment and retirement matters to which the old Act continues to apply.

Note See Pt 2 for redeployment and retirement matters to which the old Act continues to apply.

4.6 Re-appointment Review Committee matters

The old Act and the Merit Protection Act continue in force to allow for:

- (a) the determination by a Re-appointment Review Committee of any application referred to the committee under Division 3 of Part IV of the old Act; and
- (b) any related re-appointment.

Regulation 4.8**4.7 Re-integration Assessment Committee matters (application for determination made before commencing time)**

- (1) This regulation applies if, before the commencing time, a person employed under the *Members of Parliament (Staff) Act 1984* (the *MoPS Act*) applied for a determination to be made under section 17 or 24 of the MoPS Act.
- (2) Despite the repeal of sections 17 and 24 of the MoPS Act by Schedule 1 to the Act:
 - (a) the determination may be made as if the MoPS Act were still in force; and
 - (b) the Merit Protection Act continues in force to allow for the determination of the application by a Re-integration Assessment Committee.
- (3) A determination made in respect of the application takes effect, or is taken to have taken effect, when the employment to which it relates terminates, or was terminated, under section 16 or 23 of the MoPS Act.
- (4) Section 5 of the Act has effect in accordance with the determination.

Note See para 14 (3) (a) of the Act.

4.8 Re-integration Assessment Committee matters (no application for determination made before commencing time)

- (1) This regulation applies if, before the commencing time:
 - (a) a person's employment under the MoPS Act was terminated under section 16 or 23 of the MoPS Act; and
 - (b) the person had not applied for a determination to be made under section 17 or 24 of the MoPS Act.
- (2) Despite the repeal of sections 17 and 24 of the MoPS Act by Schedule 1 to the Act:
 - (a) the person may apply for a determination to be made; and
 - (b) the determination may be made as if the MoPS Act were still in force; and

Regulation 4.9

- (c) the Merit Protection Act continues in force to allow for the determination of the application by a Re-integration Assessment Committee.
- (3) However, the application must be made to the Merit Protection Commissioner:
 - (a) before the end of 30 days after the employment is terminated; or
 - (b) if the Merit Protection Commissioner allows a longer period, before the end of the longer period allowed.
- (4) If the person applies for a determination, the determination takes effect, or is taken to have taken effect, when the employment to which it relates terminates, or was terminated, under section 16 or 23 of the MoPS Act.
- (5) Section 5 of the Act has effect in accordance with the determination.

Note See para 14 (3) (a) of the Act.

4.9 Other appeals

The Merit Protection Act continues in force until the end of 4 December 2000 to allow for the determination of an appeal mentioned in any of the following provisions of the Merit Protection Act, made before or after the commencing time:

- (a) section 15 (certain promotion appeals);
- (b) section 21 (certain disciplinary appeals);
- (c) section 26A (certain redeployment or retirement appeals).

4.10 Matters before other committees

- (1) Subregulation (2) applies if, before the commencing time:
 - (a) a committee was established under section 35A of the Merit Protection Act to perform stated functions; and
 - (b) the committee had not fully performed the functions.
- (2) The Merit Protection Act continues in force to allow the committee to continue in existence and perform the functions.

Regulation 4.12

- (3) Subregulation (4) applies if, before the commencing time:
 - (a) a request was made to the Agency under section 35A of the Merit Protection Act to perform stated functions; and
 - (b) a committee had not been established in relation to the request; and
 - (c) the Agency had not refused the request.
- (4) The Merit Protection Act continues in force to allow for:
 - (a) the consideration of the request by the Merit Protection Commissioner; and
 - (b) if the request is approved, the performance of the functions by the Merit Protection Commissioner.

4.11 Joint Selection Committees

- (1) This regulation applies if a Joint Selection Committee is:
 - (a) in existence immediately before the commencing time; or
 - (b) established after the commencing time.

Note See r 2.11 for circumstances in which a Joint Selection Committee may be established after the commencing time.
- (2) The Merit Protection Act continues in force until the end of 4 December 2000 to allow the committee to continue in existence and perform its functions.

4.12 Review of decisions under Division 3 of Part II of the Merit Protection Act (application made before commencing time)

- (1) This regulation applies if, before the commencing time:
 - (a) an application for review of a decision under Division 3 of Part II of the Merit Protection Act was made under section 39 of the Merit Protection Act; and
 - (b) the application had not been determined.
- (2) The Merit Protection Act continues in force to allow for the review and implementation of the decision under Division 3 of Part II of the Merit Protection Act by the Merit Protection Commissioner.

Regulation 4.13

4.13 Review of decisions under Division 3 of Part II of the Merit Protection Act (application authorised after commencing time)

- (1) This regulation applies if, under these Regulations, an application for review of a decision under Division 3 of Part II of the Merit Protection Act may be made under section 39 of the Merit Protection Act after the commencing time.
- (2) The Merit Protection Act continues in force to allow for the review and implementation of the decision under Division 3 of Part II of the Merit Protection Act by the Merit Protection Commissioner.

4.14 Review of other decisions under Division 3 of Part II of the Merit Protection Act

- (1) This regulation applies if:
 - (a) an application for review of a decision under Division 3 of Part II of the Merit Protection Act may be made under section 39 of the Merit Protection Act; and
 - (b) the application is authorised in a way that is not described in regulation 4.12 or 4.13.

Note Review under the Merit Protection Act may be authorised by an enactment other than the Merit Protection Act or these Regulations.

- (2) The Merit Protection Act continues in force until the end of 4 December 2000 to allow for the review and implementation of the decision under Division 3 of Part II of the Merit Protection Act by the Merit Protection Commissioner.

4.15 Grievances (old Regulations)

- (1) Subregulation (2) applies if, before the commencing time:
 - (a) a request was made under regulation 83 of the old Regulations for investigation of an action by an authority; and
 - (b) the investigation had not commenced or, if commenced, had not been completed.
- (2) The old Regulations continue in force to allow for the completion of the investigation by the relevant Agency Head

Regulation 4.15

(including the taking of any action mentioned in subregulations 83 (5), (6) and (7) by the Agency Head or the Merit Protection Commissioner).

- (3) Subregulation (4) applies if, before the commencing time:
 - (a) an application for investigation of an action was made under regulation 83 of the old Regulations by an officer aggrieved by the action; and
 - (b) an application was made under regulation 84 of the old Regulations for the investigation of that action because the officer remained aggrieved by the action; and
 - (c) the investigation for the purposes of regulation 84 had not been completed.
- (4) The old Regulations, and the Merit Protection Act, continue in force to allow for any of the following matters:
 - (a) the giving of documents mentioned in paragraph 85 (a) of the old Regulations by an Agency Head to the Merit Protection Commissioner;
 - (b) the giving of documents mentioned in paragraph 85 (b) of the old Regulations by an Agency Head to the applicant;
 - (c) the obligation under regulation 86 of the old Regulations to carry out an official direction;
 - (d) the making of a decision by the Merit Protection Commissioner not to investigate, or not to investigate further;
 - (e) the completion of the investigation, and the making of a report, under Division 4 of Part II of the Merit Protection Act by the Merit Protection Commissioner.
- (5) Subregulation (6) applies if, before the commencing time:
 - (a) an application for investigation of an action was made under regulation 83 of the old Regulations by an officer aggrieved by the action; and
 - (b) an application had not been made under regulation 84 of the old Regulations for the investigation of that action.
- (6) The old Regulations, and the Merit Protection Act, continue in force to allow for any of the following matters:
 - (a) the making of an application under regulation 84;

Regulation 4.16

- (b) the giving of documents mentioned in paragraph 85 (a) of the old Regulations by an Agency Head to the Merit Protection Commissioner;
- (c) the giving of documents mentioned in paragraph 85 (b) of the old Regulations by an Agency Head to the applicant;
- (d) the obligation under regulation 86 of the old Regulations to carry out an official direction;
- (e) the making of a decision by the Merit Protection Commissioner not to investigate, or not to investigate further;
- (f) the completion of the investigation, and the making of a report, under Division 4 of Part II of the Merit Protection Act by the Merit Protection Commissioner.

4.16 Grievances (Merit Protection Act)

- (1) This regulation applies if, before the commencing time:
 - (a) an application was made under section 50 of the Merit Protection Act for investigation of an action; and
 - (b) the investigation had not been completed.
- (2) The Merit Protection Act continues in force to allow for:
 - (a) the making of a decision by the Merit Protection Commissioner not to investigate, or not to investigate further; or
 - (b) the completion of the investigation, and the making of a report, under Division 4 of Part II of the Merit Protection Act by the Merit Protection Commissioner.

4.17 Other grievances

- (1) This regulation applies if:
 - (a) an application for review in accordance with Division 4 of Part II of the Merit Protection Act may be made; and
 - (b) the application is authorised in a way that is not described in regulation 4.15 or 4.16.

Note Review under the Merit Protection Act may be authorised by an enactment other than the Merit Protection Act or these Regulations.

Regulation 4.19

- (2) The Merit Protection Act continues in force until the end of 4 December 2000 to allow for the review in accordance with Division 4 of Part II of the Merit Protection Act by the Merit Protection Commissioner.

4.18 Inquiries

- (1) Subregulation (2) applies if, before the commencing time:
 - (a) an inquiry was commenced under section 56 of the Merit Protection Act; and
 - (b) the inquiry had not been completed.
- (2) The Merit Protection Act continues in force to allow for the conduct and completion of the inquiry by the Merit Protection Commissioner.
- (3) Subregulation (4) applies if, before the commencing time:
 - (a) a request was made to the Agency under section 56 of the Merit Protection Act to conduct an inquiry; and
 - (b) the inquiry had not commenced; and
 - (c) the Agency had not refused the request.
- (4) The Merit Protection Act continues in force to allow for:
 - (a) the consideration of the request by the Merit Protection Commissioner; and
 - (b) if the request is approved, the conduct of the inquiry by the Merit Protection Commissioner.

4.19 Provision of advice on grievances and appeals

- (1) The Merit Protection Act continues in force until the end of 4 December 2000 to allow the Merit Protection Commissioner to provide advice that was requested under subsection 57 (1) of the Merit Protection Act before the commencing time.
- (2) The Merit Protection Act continues in force until the end of 4 December 2000 to allow for:
 - (a) the making of requests to the Merit Protection Commissioner for advice under subsection 57 (1) of the Merit Protection Act after the commencing time; and
 - (b) the provision of the advice.

Regulation 4.20

4.20 Performance of functions on request

- (1) Subregulation (2) applies if, before the commencing time:
 - (a) functions were being performed in response to a request made to the Agency under section 57A of the Merit Protection Act; and
 - (b) the functions had not been fully performed.
- (2) The Merit Protection Act continues in force to allow for the performance of the functions by the Merit Protection Commissioner.
- (3) Subregulation (4) applies if, before the commencing time:
 - (a) a request was made to the Agency under section 57A of the Merit Protection Act to perform stated functions; and
 - (b) the functions had not been performed; and
 - (c) the Agency had not refused the request.
- (4) The Merit Protection Act continues in force to allow for:
 - (a) the consideration of the request by the Merit Protection Commissioner; and
 - (b) if the request is approved, the performance of the functions by the Merit Protection Commissioner.

4.21 Merit Protection Commissioner

- (1) This regulation applies to the person who is, under subsection 5 (3) of the Act, the Merit Protection Commissioner under the new Act.
- (2) Until a determination is made under section 53 of the new Act, the appointment is taken to be subject to the terms and conditions applying to the person's appointment under the Merit Protection Act immediately before the commencing time (including those provided for under Remuneration Tribunal Determination 1999/05).

4.22 Final annual report

- (1) The Merit Protection Act continues in force to allow for the preparation of a report on the Agency's operations during the

Regulation 4.22

period starting on 1 July 1999 and ending at the commencing time.

- (2) The information required by subsection 83 (3) of the Merit Protection Act to be included in a report as at 30 June in a year, is to be included in the report as at the commencing time.
- (3) The report must be given to the Minister no later than the time the Merit Protection Commissioner gives the first report under section 51 of the new Act to the Public Service Minister.

Regulation 5.1

Part 5

Continuity of certain delegations, authorisations and instruments after commencing time

5.1 Purpose of Part 5

- (1) This Part makes arrangements to preserve the effectiveness of delegations made under Commonwealth laws.
- (2) This Part also makes arrangements to preserve the effectiveness of authorisations given in respect of powers and functions conferred by Commonwealth laws.
- (3) This Part also makes arrangements to preserve the effectiveness of other instruments relating to delegations and authorisations.

5.2 Definitions for Part 5

In this Part:

Commonwealth law includes:

- (a) an Act or regulation; and
- (b) another instrument issued under or created pursuant to an Act or regulation; and
- (c) a State or Territory law under which powers or functions could be delegated to a Commonwealth officer or employee before the commencing time.

delegation includes a sub-delegation.

Secretary has the meaning given by subsection 7 (1) of the old Act.

Note Under the old Act, a *Secretary* was a person for the time being holding, or performing the duties of:

- (a) an office (other than an office that was abolished or the name of which was altered) the name of which was specified, or deemed by virtue of subs 25 (1) of the old Act to be specified, in Sch 3 to the old Act; or

Regulation 5.4

- (b) an office the holder of which had, under the old Act or another Act, in relation to a branch or part of the Service, the powers of, or exercisable by, a Secretary.

5.3 Delegations by persons who are Agency Heads or delegates

- (1) Subregulation (2) applies if:
 - (a) a Secretary of an old Act Department delegated a power or function, under a Commonwealth law; and
 - (b) the delegation:
 - (i) was in force immediately before the commencing time; or
 - (ii) had not commenced before the commencing time.
- (2) At the commencing time, the delegation is taken to have been made by the person who was, at that time, the Agency Head of the corresponding Agency.
- (3) Subregulation (4) applies if a Secretary issued an instrument, before the commencing time, that:
 - (a) purports to have been issued under the new Act; and
 - (b) relates to the preservation of a delegation mentioned in subregulation (1).
- (4) The instrument continues in force, and is taken to have been issued by the person in the capacity of an Agency Head.
- (5) If:
 - (a) a person delegated a power or function as the delegate of a Secretary of an old Act Department; and
 - (b) the delegation is described in paragraph (1) (b);the delegation is taken to have been made by the person at the commencing time.

5.4 Authorisations by persons who are Agency Heads or delegates

- (1) Subregulation (2) applies if:

Regulation 5.5

- (a) a Secretary of an old Act Department gave an authorisation, in respect of a power or function conferred by a Commonwealth law; and
- (b) the authorisation:
 - (i) was in force immediately before the commencing time; or
 - (ii) had not commenced before the commencing time.
- (2) At the commencing time, the authorisation is taken to have been given by the person who was, at that time, the Agency Head of the corresponding Agency.
- (3) Subregulation (4) applies if a Secretary issued an instrument, before the commencing time, that:
 - (a) purports to have been issued under the new Act; and
 - (b) relates to the preservation of an authorisation mentioned in subregulation (1).
- (4) The instrument continues in force, and is taken to have been issued by the person in the capacity of an Agency Head.
- (5) If:
 - (a) a person gave an authorisation as the delegate of a Secretary of an old Act Department; and
 - (b) the authorisation is described in paragraph (1) (b);the authorisation is taken to have been given by the person at the commencing time.

5.5 Delegations by reference to offices or positions created under the old Act

- (1) This regulation applies if:
 - (a) a delegation was made under a Commonwealth law other than the *Maternity Leave (Commonwealth Employees) Act 1973* or the *Long Service Leave (Commonwealth Employees) Act 1976*; and
 - (b) the delegation:
 - (i) was in force immediately before the commencing time; or

Regulation 5.6

- (ii) had not commenced before the commencing time; and
 - (c) the delegation identifies a delegate who was an old Act officer, or an old Act employee other than an overseas engaged employee; and
 - (d) the delegation identifies that delegate by reference to holding, or performing the duties of, or words of similar effect:
 - (i) an office, in an old Act Department, created under the old Act (however described); or
 - (ii) a position (the *old position*) in an old Act Department (however described).
- (2) The reference to the office or old position is taken to be a reference to a position (the *new position*) in the corresponding Agency that is taken to have been created by the Agency Head under subsection 77 (1) of the new Act at the commencing time.
- (3) If the office or old position was identified by a number, the new position has the same number.
- (4) If the office or old position was identified by a title or another unique identifier, the new position has the same title or identifier.
- (5) The person who held the office, performed the duties of the office, or performed the duties of the old position, immediately before the commencing time is taken to be the person nominated under subsection 77 (2) of the new Act to occupy the new position.

5.6 Delegations by reference to classifications

- (1) This regulation applies if:
- (a) a delegation was made under a Commonwealth law other than the *Maternity Leave (Commonwealth Employees) Act 1973* or the *Long Service Leave (Commonwealth Employees) Act 1976*; and
 - (b) the delegation:

Regulation 5.7

- (i) was in force immediately before the commencing time; or
 - (ii) had not commenced before the commencing time; and
 - (c) the delegation identifies a delegate by reference to the delegate's classification and Department under the old Act.
- (2) The reference to the delegate is taken to be a reference to an APS employee:
- (a) in the corresponding Agency; and
 - (b) with a corresponding classification.

Note Delegations identified by classification will be preserved whether or not a delegate was employed prior to the commencing time.

5.7 Authorisations by reference to offices or positions created under the old Act

- (1) This regulation applies if:
- (a) an authorisation was given to a person in respect of a power or function conferred by a Commonwealth law; and
 - (b) the authorisation:
 - (i) was in force immediately before the commencing time; or
 - (ii) had not commenced before the commencing time; and
 - (c) the authorisation identifies an authorised person who was an old Act officer, or an old Act employee other than an overseas engaged employee; and
 - (d) the authorisation identifies that authorised person by reference to holding, or performing the duties of, or words of similar effect:
 - (i) an office created under the old Act (however described); or
 - (ii) a position (the *old position*) (however described).
- (2) The reference to the office or old position is taken to be a reference to a position (the *new position*) that is taken to have

Regulation 5.9

been created by the Agency Head under subsection 77 (1) of the new Act at the commencing time.

- (3) If the office or old position was identified by a number, the new position has the same number.
- (4) If the office or old position was identified by a title or another unique identifier, the new position has the same title or identifier.
- (5) The person who held the office, performed the duties of the old office, or performed the duties of the old position, immediately before the commencing time is taken to be the person nominated under subsection 77 (2) of the new Act to occupy the new position.

5.8 Authorisations by reference to classifications

- (1) This regulation applies if:
 - (a) an authorisation was given to a person in respect of a power or function conferred by a Commonwealth law; and
 - (b) the authorisation:
 - (i) was in force immediately before the commencing time; or
 - (ii) had not commenced before the commencing time; and
 - (c) the authorisation identifies an authorised person by reference to the person's classification and Department under the old Act.
- (2) The reference to the authorised person is taken to be a reference to an APS employee:
 - (a) in the corresponding Agency; and
 - (b) with a corresponding classification.

Note Authorisations identified by classification will be preserved whether or not an authorised person was employed prior to the commencing time.

5.9 Delegations to overseas engaged employees

- (1) This regulation applies if:

Regulation 5.10

- (a) a power or function was delegated under a Commonwealth law to an overseas engaged employee in an old Act Department; and
 - (b) the delegation:
 - (i) was in force immediately before the commencing time; or
 - (ii) had not commenced before the commencing time.
- (2) The employee continues to hold the delegation, in the capacity of a locally engaged employee, until:
- (a) the delegation is revoked; or
 - (b) he or she ceases to be a locally engaged employee in the corresponding Agency.

Note At the commencing time, an overseas engaged employee is treated as if he or she were a locally engaged employee under the *Public Service Act 1999*: see subs 5 (9) of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

5.10 Authorisations to overseas engaged employees

- (1) This regulation applies if:
- (a) an authorisation was given to an overseas engaged employee in an old Act Department in respect of a power or function conferred by a Commonwealth law; and
 - (b) the authorisation:
 - (i) was in force immediately before the commencing time; or
 - (ii) had not commenced before the commencing time.
- (2) The employee continues to hold the authorisation, in the capacity of a locally engaged employee, until:
- (a) the authorisation is revoked; or
 - (b) he or she ceases to be a locally engaged employee in the corresponding Agency.

Note At the commencing time, an overseas engaged employee is treated as if he or she were a locally engaged employee under the *Public Service Act 1999*: see subs 5 (9) of the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

Part 6 Other transitional provisions

6.1 Amendments of Acts

For subsection 14 (5) of the Act:

- (a) the *Administrative Decisions (Judicial Review) Act 1977* is amended as set out in Part 1 of Schedule 1; and
- (b) the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* is amended as set out in Part 2 of Schedule 1; and
- (c) the *Commonwealth Authorities and Companies Act 1997* is amended as set out in Part 3 of Schedule 1; and
- (d) the *Commonwealth Electoral Act 1918* is amended as set out in Part 4 of Schedule 1; and
- (e) the *Director of Public Prosecutions Act 1983* is amended as set out in Part 5 of Schedule 1; and
- (f) the *Federal Magistrates Act 1999* is amended as set out in Part 6 of Schedule 1; and
- (g) the *Members of Parliament (Staff) Act 1984* is amended as set out in Part 7 of Schedule 1; and
- (h) the *Remuneration Tribunal Act 1973* is amended as set out in Part 8 of Schedule 1; and
- (i) the *Safety, Rehabilitation and Compensation Act 1988* is amended as set out in Part 9 of Schedule 1; and
- (j) the *Superannuation Act 1976* is amended as set out in Part 10 of Schedule 1.

6.2 Continued operation of section 80 of *Merit Protection (Australian Government Employees) Act 1984*

Section 80 of the *Merit Protection (Australian Government Employees) Act 1984* continues to apply to any action taken under that section before the commencing time, as if that Act had not been repealed.

Schedule 1 Amendments of Acts

(regulation 6.1)

Part 1 Amendment of *Administrative Decisions (Judicial Review) Act 1977*

1 Schedule 2, paragraph (r)

substitute

(r) decisions relating to assignment of duties, voluntary moves between Agencies, compulsory moves between Agencies, promotions or decisions of Promotion Review Committees, of or by individual APS employees;

Part 2 Amendments of *Australian Capital Territory Government Service (Consequential Provisions) Act 1994*

1 Subsection 25 (5)

omit

the APS General Employment Conditions Award 1995,

insert

the APS Award 1998,

2 Subsection 25 (6)

omit

the APS General Employment Conditions Award 1995.

insert

the APS Award 1998.

**Part 3 Amendment of *Commonwealth
Authorities and Companies Act 1997***

1 Subsection 23 (2)

omit everything after

means

insert

a person appointed or engaged under the *Public Service Act 1999*.

2 Subsection 27A (2)

omit everything after

means

insert

a person appointed or engaged under the *Public Service Act 1999*.

**Part 4 Amendments of *Commonwealth
Electoral Act 1918***

1 Paragraph 60 (4) (b)

omit

senior officer of the Australian Public Service

substitute

senior person appointed or engaged under the *Public Service Act 1999*

2 Paragraph 273A (7) (a)

omit

an officer of the Australian Public Service

insert

a person appointed or engaged under the *Public Service Act 1999*

Part 5 Amendment of *Director of Public Prosecutions Act 1983*

1 Paragraph 31 (1A) (b)

substitute

(b) is an SES employee; and

Part 6 Amendments of *Federal Magistrates Act 1999*

1 Subsection 97 (1)

substitute

(1) For the purposes of the *Public Service Act 1999*:

- (a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and
- (b) the Chief Executive Officer is the Head of that Statutory Agency.

2 Section 100

substitute

100 Arrangements relating to Commonwealth staff

The Chief Executive Officer may, on behalf of the Federal Magistrates Court, arrange with:

- (a) an Agency Head (within the meaning of the *Public Service Act 1999*); or
- (b) an authority of the Commonwealth;

for the services of officer or employees of the Agency or authority to be made available for the purposes of the Federal Magistrates Court.

3 Section 101

omit everything after

persons

insert

engaged under the *Public Service Act 1999*.

4 Subsection 104 (1)

omit

Public Service Act 1922

insert

Public Service Act 1999

5 Subsection 106 (1)

omit everything after

person

insert

engaged under the *Public Service Act 1999*.

6 Subsection 109 (1)

omit everything after

person

insert

engaged under the *Public Service Act 1999*.

7 Subsection 112 (2)

omit everything after

persons

insert

engaged under the *Public Service Act 1999*.

Part 7 Amendments of *Members of Parliament (Staff) Act 1984*

1 Section 3, definition of *officer*

omit

2 Section 3, definition of *Public Service Act*

omit

3 Subsection 14 (1)

omit

are the same as

4 Subsection 21 (1)

omit

are the same as

Part 8 Amendments of *Remuneration Tribunal Act 1973*

1 Paragraph 4 (4) (b)

substitute

(b) a person appointed or engaged under the *Public Service Act 1999*;

2 Subsection 8 (4)

substitute

- (4) In subsections (2), (2A) and (3), *office* means a public office.

Part 9 Amendment of *Safety, Rehabilitation and Compensation Act 1988*

1 After subsection 23 (1)

insert

- (1A) However, if an APS employee who has reached 63 suffers an injury (whether before or after the commencement of this subsection):
- (a) subsection (1) does not apply; and
 - (b) compensation is payable under section 19, 20, 21, 21A or 22 in respect of the injury:
 - (i) to the extent that this Act (other than subsection (1)) allows; and
 - (ii) for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated.

Part 10 Amendment of *Superannuation Act 1976*

1 Paragraph 14A (1) (a)

omit

Division 2 or 3 of the *Public Service Act 1922*

insert

Division 2 or 3 of Part IV of the *Public Service Act 1922*

Dictionary

(regulation 1.3)

Note Words and expressions defined in the *Public Employment (Consequential and Transitional) Amendment Act 1999* are indicated by an asterisk (*) (see subr 1.3 (3)). Except where otherwise indicated, the definitions are found in s 4 of the Act.

Act means the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

***APS employee** means an APS employee within the meaning of the new Act.

AWA has the meaning it had under the *Workplace Relations Act 1996* at the commencing time.

award has the meaning it had under the *Workplace Relations Act 1996* at the commencing time.

certified agreement has the meaning it had under the *Workplace Relations Act 1996* at the commencing time.

Classification Rules means the *Public Service Classification Rules 1999*, as in force at the commencement of these Regulations.

***commencing time** means the time when the *Public Service Act 1999* commences.

Note This expression is defined in subs 2 (1) of the Act.

Commissioner's Directions means the *Public Service Commissioner's Directions 1999*, as in force at the commencement of these Regulations.

eligible public employment, for Part 3 means:

- (a) eligible public employment within the meaning of Part IV of the old Act; and
- (b) if Division 3 of Part IV of the old Act applied because of subsection 87K (2A) of that Act — employment with a Commonwealth authority as defined in section 7 of that Act.

Joint Selection Committee has the meaning given in section 3 of the Merit Protection Act.

***Merit Protection Act** means the *Merit Protection (Australian Government Employees) Act 1984*.

Merit Protection and Review Agency means the Merit Protection and Review Agency established under section 5 of the Merit Protection Act.

***new Act** means the *Public Service Act 1999*.

new Regulations means the *Public Service Regulations 1999*.

***old Act** means the *Public Service Act 1922*.

***old Act employee** means an employee within the meaning of the old Act.

***old Act officer** means an officer within the meaning of the old Act.

old Regulations means the *Public Service Regulations 1935*.

***pre-commencement misconduct** means conduct of an old Act officer or old Act employee before the commencing time that was misconduct for the purposes of Subdivision C, D or E of Division 6 of Part III of the old Act.

public authority, for Part 3, means:

- (a) a person or body, employment with which creates eligible public employment; or
- (b) an office, the holding of which creates eligible public employment; or
- (c) if Division 3 of Part IV of the old Act applied because of subsection 87K (2A) of that Act — a Commonwealth authority as defined in section 7 of that Act.

redundancy benefit, for Part 3:

- (a) means a severance payment, or similar payment, made to an employee on cessation of the employee's employment in an Agency or with a non-APS Commonwealth employer; and
- (b) includes:
 - (i) any payment made to an employee as a result of the shortening of a retention period; and
 - (ii) any payment made to an SES employee under section 37 of the Act or section 76R of the *Public Service Act 1922*.

Table of Instruments

Notes to the *Public Employment (Consequential and Transitional) Regulations 1999***Note 1**

The *Public Employment (Consequential and Transitional) Regulations 1999* (in force under the *Public Employment (Consequential and Transitional) Amendment Act 1999*) as shown in this compilation comprise Statutory Rules 1999 No. 301 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
1999 No. 301	4 Dec 1999	5 Dec 1999 (see r. 1.2)	
2000 No. 332	8 Dec 2000	Rr. 1–3 and Schedule 1: 5 Dec 1999 Schedule 2: 23 Dec 1999 Schedule 3: 13 Mar 2000	—
2002 No. 87	9 May 2002	5 Dec 1999	—
2006 No. 50	17 Mar 2006 (see F2006L00820)	27 Mar 2006 (see r. 2)	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 6	
R. 6.1	rs. 2000 No. 332 am. 2000 No. 332
R. 6.2	ad. 2000 No. 332
Schedule 1	
Schedule 1	rs. 2000 No. 332 am. 2000 No. 332
Dictionary	
Dictionary	am. 2002 No. 87; 2006 No. 50