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**PUBLIC SERVICE**

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PS301\*

Public Sector Management Act 1994

**Public Sector Management (Breaches of Public Sector Standards) Amendment Regulations 2011**

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Public Sector Management (Breaches of Public Sector Standards) Amendment Regulations 2011*.

**2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 21 February 2011.

**3. Regulations amended**

These regulations amend the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*.

**4. Regulation 3 amended**

- (1) In regulation 3(1) delete the definition of *appointment pool*.
- (2) In regulation 3(1) insert in alphabetical order:

*acting movement* means the temporary movement of an employee from an office, post or position in a public

sector body to another office, post or position in the same body with an equivalent or higher level of classification;

***appointment pool*** means —

- (a) a number of persons selected by the employing authority of a public sector body as suitable to be considered for appointment to fill a future vacancy or future vacancies of a particular class in that public sector body; or
- (b) a shared appointment pool;

***notifiable employment decision*** means a reviewable decision in respect of —

- (a) the appointment of a person to fill a vacancy, otherwise than from an appointment pool or by way of acting movement or transfer —
  - (i) for a period of more than 6 months; or
  - (ii) for a period of 6 months or less if the vacancy was advertised on the basis that the period of the appointment could later be extended to more than 6 months or the person appointed could later become a permanent officer;

or

- (b) the appointment of a person to fill a temporary vacancy, by way of acting movement, if the vacancy was advertised on the basis that the person appointed could later become a permanent officer;

or

- (c) the selection of a person to form part of an appointment pool;

***public sector employment standard*** means the Commissioner's instructions issued under section 21(1)(a)(i) or (ii) of the Act establishing public sector standards in respect of recruitment, selection, appointment, transfer, secondment and temporary deployment (acting) of employees;

***shared appointment pool*** means a number of persons selected by employing authorities of public sector bodies as suitable to be considered for appointment to fill a vacancy or future vacancy of a particular class in those public sector bodies;

***transfer*** means the permanent movement of an employee from an office, post or position in a public sector body to another office, post or position with the same level of classification in a public sector body;

- (3) In regulation 3(1) in the definition of *reviewable decision* after “decision made by” insert:

the employing authority of

**5. Regulation 5A inserted**

At the end of Part 1 insert:

**5A. Shared appointment pools**

- (1) If a shared appointment pool is established for 2 or more public sector bodies, the employing authorities of the public sector bodies must designate in writing one of the public sector bodies, and its employing authority, as the body and employing authority responsible for compliance with regulation 5(3A) and for dealing with any claim made under these regulations in relation to the shared appointment pool.
- (2) A notice given under regulation 5(3A) in respect of a reviewable decision in relation to a shared appointment pool must specify the public sector body and employing authority responsible for dealing with any claim in relation to the reviewable decision.

**6. Regulation 5 amended**

Delete regulation 5(1) and (2) and insert:

- (1) If an employing authority makes a reviewable decision as the result of the completion of a process to which a public sector standard that is established in respect of the resolution of employees’ grievances applies, the employing authority must give written notice that complies with subregulation (3) to —
- (a) the person whose grievance resulted in the making of the reviewable decision; and
  - (b) each person (if any) who was the subject of the grievance.
- (2) If an employing authority makes a notifiable employment decision in respect of an appointment to fill a vacancy as the result of the completion of a process to which a public sector employment standard applies, the employing authority must give written notice that complies with subregulation (3) to any person who applied unsuccessfully to be appointed to fill the vacancy.

- (3A) If an employing authority makes a notifiable employment decision in respect of selection for inclusion in an appointment pool as the result of the completion of a process to which a public sector employment standard applies, the employing authority must give written notice that complies with subregulation (3) to any person who applied unsuccessfully to be selected to form part of the appointment pool.

**7. Regulation 6 amended**

- (1) In regulation 6(1)(a) after “public sector body” insert:

or an employing authority of a public sector body

- (2) Delete regulation 6(3) and insert:

- (3) Only the following persons may make a claim in respect of a breach of a public sector employment standard —

- (a) a person who has applied unsuccessfully to be appointed to fill a vacancy, otherwise than from an appointment pool or by way of acting movement or transfer —

- (i) for a period of more than 6 months; or  
(ii) for a period of 6 months or less if the vacancy was advertised on the basis that the period of the appointment could later be extended to more than 6 months or more or the person appointed could later become a permanent officer,

and claims there has been a breach of the standard in relation to the process of appointment;

- (b) a person who has applied unsuccessfully to be appointed to fill a temporary vacancy, by way of acting movement —

- (i) for a period of more than 6 months; or  
(ii) for a period of 6 months or less if the vacancy was advertised on the basis that the period of the appointment could later be extended to more than 6 months or more or the person appointed could later become a permanent officer,

and claims there has been a breach of the standard in relation to the process of appointment;

- (c) a person who has applied unsuccessfully to be selected to form part of an appointment pool, and claims there has been a breach of the standard in relation to the process of selection;
- (d) a person who has applied unsuccessfully to be appointed to fill a vacancy by way of transfer, or is being transferred, and claims there has been a breach of the standard in relation to the process of transfer.

**8. Regulation 7 amended**

Delete regulation 7(5) and insert:

- (5) In this regulation —
- prescribed lodgement period* means —
- (a) for a notifiable employment decision — such period, being a period of not less than 4 days after the claimant was given notice under regulation 5(2) or (3A), as is specified in the notice;
  - (b) for a reviewable decision referred to in regulation 5(1) — 10 days after the claimant was given notice under that subregulation;
  - (c) for any other reviewable decision — 10 days after the claimant first became aware of the reviewable decision or 30 days after the reviewable decision was made, which period expires first.

**9. Regulation 8A deleted**

Delete regulation 8A.

**10. Regulation 8 amended**

- (1) In regulation 8(1):
- (a) delete paragraph (a) and insert:
    - (a) an employing authority of a public sector body makes —
      - (i) a notifiable employment decision in relation to the appointment of a person to fill a vacancy; or
      - (ii) a reviewable decision to transfer an employee;
- and

- (b) delete “the public sector body cannot” and insert:

the employing authority cannot

- (2) In regulation 8(3):

- (a) in paragraph (a) delete “public sector body makes” and insert:

employing authority of the public sector body makes

- (b) in paragraph (a) delete “public sector body should” and insert:

employing authority should

- (c) in paragraph (b) delete “public sector body” and insert:

employing authority

#### **11. Regulation 9 amended**

- (1) In regulation 9(1)(a):

- (a) delete “a public sector body” and insert:

the employing authority of a public sector body

- (b) delete “the public sector body — ” and insert:

the employing authority —

- (2) In regulation 9(3):

- (a) in paragraph (a) delete “public sector body makes” and insert:

employing authority of the public sector body makes

- (b) in paragraph (a) delete “public sector body should” and insert:

employing authority should

- (c) in paragraph (b) delete “public sector body” and insert:

employing authority

**12. Regulation 10 amended**

(1) Before regulation 10(a) insert:

(aa) is to make reasonable attempts to resolve the claim with the claimant before the claim must be sent to the Commissioner under paragraph (a); and

(2) In regulation 10(a) delete “is to send to the Commissioner as soon as is practicable but in any event within 15 days after the claim was lodged —” and insert:

if the claim is not resolved within 15 days after it is lodged, is to send to the Commissioner —

**13. Regulation 11A inserted**

After regulation 10 insert:

**11A. Commissioner may decide not to deal with a claim**

- (1) The Commissioner may, at any time after receiving a claim, decide not to deal with the claim, or to stop dealing with the claim, because —
- (a) the claim does not relate to a matter the Commissioner has power to deal with; or
  - (b) in the opinion of the Commissioner, the claim is vexatious, frivolous or lacking in substance or does not warrant further action; or
  - (c) the subject matter of the claim is being dealt with, or has already been dealt with, adequately by the Commissioner or another entity; or
  - (d) the claim is solely about the competitive merit of the claimant.
- (2) If the Commissioner decides not to deal with the claim, or to stop dealing with the claim, the Commissioner must inform the person who made the claim, in writing, of the decision and the reason for the decision.

**14. Regulation 12 amended**

(1) In regulation 12(1) delete “the public sector body” and insert:

the employing authority of the relevant public sector body

- (2) In regulation 12(2) delete “public sector body” and insert:
- employing authority
- 15. Regulation 14 amended**
- In regulation 14 delete “public sector body” and insert:
- employing authority of the relevant public sector body
- 16. Regulation 15 amended**
- In regulation 15 delete “public sector body” and insert:
- employing authority of the relevant public sector body
- 17. Regulation 18 amended**
- (1) In regulation 18(1):
- (a) in paragraph (a) delete “public sector body” and insert:
- employing authority of the relevant public sector body
- (b) in paragraph (c) delete “public sector body” and insert:
- employing authority
- (2) In regulation 18(2) delete “public sector body —” and insert:
- employing authority —
- 18. Regulation 19 amended**
- In regulation 19(c) after “public sector body” insert:
- or its employing authority
- 19. Regulation 20 amended**
- In regulation 20(2):
- (a) in paragraph (a) after “that the public sector body” insert:
- or its employing authority

- (b) in paragraph (b) delete “public sector body has” and insert:

public sector body and its employing authority have

**20. Regulation 22 amended**

- (1) In regulation 22(1) delete “the public” (each occurrence) and insert:

the employing authority of the public

- (2) In regulation 22(2) and (3) delete “public sector body” (each occurrence) and insert:

employing authority

- (3) In regulation 22(1) after paragraph (a) insert:

or

**21. Regulation 23 amended**

In regulation 23(2) delete “the public” and insert:

the employing authority of the public

**22. Regulation 27 amended**

In regulation 27(2) after “public sector body” (each occurrence) insert:

or employing authority

**23. Part 5 replaced**

Delete Part 5 and insert:

**Part 5 — Transitional matters**

**31. Transitional**

- (1) In this regulation —

*commencement day* means the day on which the  
*Public Sector Management (Breaches of Public Sector*

*Standards) Amendment Regulations 2011* come into operation;

**former regulations** means these regulations as in force immediately before commencement day.

- (2) If—
- (a) a claim has been lodged under Part 2 before commencement day; and
  - (b) immediately before commencement day, the claim has not been completely dealt with under these regulations or withdrawn by the claimant,

then the former regulations, and the Commissioner's instructions as in force before the commencement day continue to have effect for the purposes of dealing with the claim.

By Command of the Governor,

R. KENNEDY, Clerk of the Executive Council.

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