

Australian Public Service Commissioner's Directions 2013

FRLI ID: F2013L00448

Portfolio: Public Service and Integrity

Summary of committee view

2.15 The committee seeks clarification as to why it is necessary to publicise employment decisions in the *Public Service Gazette*, in particular publication of decisions to terminate employment and the grounds for termination, and how this is compatible with the right to privacy and the Convention on the Rights of Persons with Disabilities.

Overview

2.16 The Australian Public Service Commissioner's Directions 2013 (the Directions) prescribe the minimum standards with which agency heads and Australian Public Service (APS) employees must comply in order to meet their obligations under the *Public Service Act 1999* (the Act), and support agency heads to fulfil their responsibilities in respect of their employer powers.

2.17 Chapter 2 of the Directions provides, among other things, for notification in the *Public Service Gazette* of certain employment decisions. Subclause 2.29(2) of the Directions provides that such a notification must include the employee's name, unless the agency head decides that the name should not be included because of the person's work-related or personal circumstances (for example, if the agency is a security agency, or if the individual has a legal protection order).

Compatibility with human rights

2.18 The statement of compatibility states that *Public Service Gazette* notification provision promotes APS employees' right to privacy insofar as there is option for agency heads to decide that a name should not be included in a *Gazette* notice because of the person's work-related or personal circumstances.

2.19 However, the issue of the appropriateness of the provision in general is not addressed. Subclause 2.29(1) lists the employment decisions for which a notice must appear in the *Public Service Gazette*. These decisions include engagement decisions, promotion decisions, termination decisions and decisions relating to the retirement of an SES employee where a payment of an incentive to retire has been made. While notices relating to engagement decisions may not adversely impact on a person's right to privacy, it would appear that where an individual is named in a *Gazette* notice in relation to his or her termination from the APS this limits the right to privacy as guaranteed in article 17 of the International Covenant on Civil and Political Rights (ICCPR).

2.20 This limitation is made more severe by the requirement in paragraph 2.29(1)(i) that the grounds for termination is also to be included in the notice. It is therefore possible for any member of the public to access the *Gazette* on the internet and discover that an individual has been terminated from the APS and ascertain the grounds for that termination. Grounds for termination (outlined in section 29 of the Act) that can be publicised in the *Gazette* include:

- that the employee lacks, or has lost, an essential qualification for performing his or her duties;
- non-performance, or unsatisfactory performance, of duties;
- inability to perform duties because of physical or mental incapacity;
- failure to satisfactorily complete an entry-level training course;
- breach of the Code of Conduct;

2.21 In addition to engaging the right to privacy in general, public notification that a person is unable to perform duties because of physical or mental incapacity may engage rights under the Convention on the Rights of Persons with Disabilities (CRPD).

2.22 The committee intends to write to the Minister for the Public Service and Integrity to seek clarification as to why it is necessary to publicise employment decisions in the Public Service *Gazette*, in particular decisions to terminate employment and the grounds for termination, and how this is compatible with the right to privacy and the CRPD.