

Australian Capital Territory

Public Sector Management Amendment Standard 2004 (No 2)

Disallowable instrument DI2004—28

made under the

Public Sector Management Act 1994, s 251(6) and s251(7) (Management Standards)

I amend the Management Standards as set out in Schedule 1 and Schedule 2 in accordance with the Chief Minister's approval.

Cheryl Anne Vardon
Commissioner for Public Administration

11 March 2004

SCHEDULE 1 TO DISALLOWABLE INSTRUMENT No 28

PROVISION OF MANAGEMENT STANDARDS		
Part	Part/Rule Description	AMENDMENT
Standard: Introduction	Part 2 Rule 2: Definitions of particular terms	Omit Rule 2, Part 2, Standard Introduction. Substitute new Rule 2, Part 2, Standard: Introduction as set out in Schedule 2.
Standard 2	Part 1 Rule 4: Other Leave	Omit Rule 4, Part 1, Standard 2. Substitute new Rule 4, Part 1, Standard 2 as set out in Schedule 2.
Standard 3	Part 16 Rule 4: Leave not to count as service	Omit Rule 4, Part 16, Standard 3. Substitute new Rule 4, Part 16, Standard 3 as set out in Schedule 2.
Standard 3	Part 17 Rule 4: Grant of recreation leave	Omit Rule 4, Part 17, Standard 3. Substitute new Rule 4, Part 17, Standard 3 as set out in Schedule 2.
Standard 3	Part 18 Rule 2: Interpretation	Omit Rule 2, Part 18, Standard 3. Substitute new Rule 2, Part 18, Standard 3 as set out in Schedule 2.
Standard 3	Part 18 Rule 4: Personal leave for bereavement purposes	Omit Rule 4, Part 18, Standard 3. Substitute new Rule 4, Part 18, Standard 3 as set out in Schedule 2.
Standard 3	Part 19 Rule 2: Interpretation	Omit Rule 2, Part 19, Standard 3. Substitute new Rule 2, Part 19, Standard 3 as set out in Schedule 2.
Standard 3	Part 19 Rule 3: Allowances paid while on LSL	Omit Rule 3, Part 19, Standard 3. Substitute new Rule 3, Part 19, Standard 3 as set out in Schedule 2.
Standard 3	Part 21 Rule 1: Application	Omit Rule 1, Part 21, Standard 3. Substitute new Rule 1, Part 21, Standard 3 as set out in Schedule 2.
Standard 3	Part 21 Rule 2: Interpretation	Omit Rule 2, Part 21, Standard 3. Substitute new Rule 2, Part 21, Standard 3 as set out in Schedule 2.

Standard 3	Part 21 Rule 3: To accompany spouse on a posting	Omit Rule 3, Part 21, Standard 3. Substitute new Rule 3, Part 21, Standard 3 as set out in Schedule 2.
Standard 3	Part 21 Rule 20: Leave not provided for elsewhere	Omit Rule 20, Part 21, Standard 3. Substitute new Rule 20, Part 21, Standard 3 as set out in Schedule 2.
Standard 3	Part 21 Rule 21: Parental leave	Omit Rule 21, Part 21, Standard 3. Substitute new Rule 21, Part 21, Standard 3 as set out in Schedule 2.
Standard 6	Part 2 Rule 8: Official non-ACT Public Service travel	Omit Rule 8, Part 2, Standard 6. Substitute new Rule 8, Part 2, Standard 6 as set out in Schedule 2.

SCHEDULE 2 TO DISALLOWABLE INSTRUMENT No 28

New Rule 2, Part 2, Standard: Introduction

2. Definitions of particular terms

If a term is used in these Standards and the term is defined in the Act but not in the Standards, then, unless the contrary intention appears, the term has the meaning given to it in the Act.

In these Standards, unless the contrary intention appears:

'ABS' means the Australian Bureau of Statistics

'ACTEW' means the Australian Capital Territory Electricity and Water Authority established under the *Electricity and Water Act 1988* (ACT)

'ACTPS' means the Australian Capital Territory Public Service established under section 5 of the *Public Sector Management (Amendment) Act 1995*.
'ACTGS' has the same meaning

'agency' has the same meaning as 'government agency' in the Act

'APS' means the Australian Public Service

'ASO' means the classification '*Administrative Service Officer*' and includes a reference to an office classified by that name or a person occupying such an office

'Award' has the same meaning as '*industrial award*' in the Act

'*Calvary Hospital*' means Calvary Hospital A.C.T. Incorporated

'*Chief Executive*' has the same meaning as '*relevant Chief Executive*' in the Act

'COMCARE' has the same meaning as in the *Safety Rehabilitation and Compensation Act 1988* (Commonwealth)

'committee', in relation to a committee, means all the members of the committee or one or more members acting on behalf of all members

'*Commonwealth Superannuation Scheme*' (CSS) means the superannuation scheme administered under the *Superannuation Act 1976* (Commonwealth)

'*Consequential and Transitional Provisions Act*' means the *Public Sector Management (Consequential and Transitional Provisions) Act 1994* (ACT)

'CPA' Commissioner for Public Administration

'*current office*' means the office an officer occupies, or, for an unattached officer, an office having the same classification as the officer

domestic partner is a reference to someone who lives with the person in a domestic partnership, and includes a reference to a spouse of the person.

domestic partnership is the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis.

'*Gazette*' means the *Australian Capital Territory Gazette*

'*GMO*' means a Government Medical Officer registered as a medical practitioner who has been engaged to provide medical opinion to a government agency in respect of a person

'*GSO*' means the classification 'General Service Officer' and includes a reference to an office classified by that name or a person occupying such an office

'*HDA*' means Higher Duties Allowance

'*locality*' means the ACT and surrounding region

'*MPRA*' means the Merit Protection and Review Agency established under the *Merit Protection (Australian Government Employees) Act 1984* (Commonwealth).

'*part-time officer*' means an officer who occupies a part-time office or an unattached officer who occupied a part-time office immediately before becoming unattached

'*Public Sector Superannuation Scheme*' (PSS) means the superannuation scheme administered under the *Superannuation Act 1990* (Commonwealth)

'*returned soldier*' has the same meaning as the definition in section 251(6) of the *Public Sector Management Act 1994*

'*Selection Committee*' means a committee established to consider and recommend which officer, employee or person should be appointed, promoted, transferred to an office or employed.

'*Self-Government Act*' means the *Australian Capital Territory (Self Government) Act 1988* (Commonwealth)

'*Self-Government (Consequential Provisions) Act*' means the *ACT Self-Government (Consequential Provisions) Act 1988* (Commonwealth)

'*staff bulletin*' means any bulletin distributed among officers and employees under the authority of the Commissioner and which contains details of positions available for appointment, promotion, permanent or temporary transfer or employment

'*Standard*' means a Public Sector Management Standard made under the Act and includes a part of a Standard

'*State*' includes a Territory

'*Superannuation Acts*' mean the *Superannuation Act 1976* (Commonwealth) or the *Superannuation Act 1990* (Commonwealth), or both, as the case requires

'the Act' means the *Public Sector Management Act 1994* (ACT)

'*union*' has the same meaning as '*relevant staff organisation*' in the Act

New Rule 4, Part 1, Standard 2

4. Other Leave

If, but for this Rule, a Chief Executive could not be granted leave, the Commissioner may grant leave (in this Rule called the 'relevant period') to a Chief Executive.

In granting this leave, the Commissioner must determine:

- whether the leave is granted with or without pay; and
- whether and for what purposes the leave counts as service.

In determining whether the leave is granted with or without pay and to the extent which the leave counts as service, the Commissioner will have regard to:

- the purpose for which the leave is taken; and
- the length of the period of the leave.

Where the leave is granted with pay and is to count as service, the Commissioner may grant this leave on half-pay for a period not exceeding twice the relevant period. If the Commissioner approves the taking of leave in this manner, this period of leave counts as service for all purposes.

If, but for this Rule, an Executive cannot be granted leave, this Rule also applies to an Executive, except that a reference to the Commissioner is to be read as a reference to the relevant Chief Executive.

New Rule 4, Part 16, Standard 3

4. Leave not to count as service

If leave that does not count as service aggregates to one or more working months in a calendar year, then:

- the date an increment falls due, or personal leave accrues, is deferred by one month for each complete month of absence (or each complete month of aggregated absences); and
- the yearly recreation leave credit which would have accrued to the officer is reduced by one twelfth for each month of such leave.

Leave which does not count as service includes:

- unauthorised absences of more than 30 minutes;
- absences due to illness caused by misconduct;
- absence due to no sufficient cause;
- leave when the Commissioner or Chief Executive determines leave will not count as service;
- leave without pay;
- staff organisation leave;
- parental leave;
- compensation leave in excess of 45 weeks, but not when officer is on GRTW;
- leave to engage in employment not in the interests of the Service;
- Defence Service leave;
- leave to accompany a domestic partner;
- campaign leave; and
- some forms of personal leave without pay.

New Rule 4, Part 17, Standard 3

4. Grant of recreation leave

A Chief Executive may grant paid recreation leave for a period (in the Rule called the 'relevant period') up to an officer's available credit.

Available credit includes credit which falls due on the first day of January, where the period of leave requested concludes on, or includes the first day of January, subject to the provisions of this Part.

If the operations of an agency, or part of an agency, are suspended at Christmas or another holiday period, a Chief Executive may direct an officer to take recreation leave at a time that is convenient to the working of the agency, whether or not application for leave has been made.

A Chief Executive may direct a teacher to take available recreation leave, whether or not application for leave has been made, at a time that is convenient to the agency.

An officer in the teaching stream is considered to be on recreation leave from the day after the last day on which the officer's school is open in a calendar year unless otherwise directed by a Chief Executive. The period of recreation leave taken is to the limit of the officer's available credits. This is followed by a stand - down period up to the day before the first day on which the officer's school is open in the next calendar year.

An officer on maternity leave or parental leave under the Standards may access recreation leave other than for the period the officer is receiving paid maternity or primary care givers' leave. This leave may be granted on full pay for the relevant period or on half pay for a period not exceeding twice the relevant period.

A period of recreation leave may be granted for the purposes of maternity or parental leave provided that it does not extend the maximum period for which maternity or parental leave would be available.

New Rule 2, Part 18, Standard 3

2. Interpretation

Primary source documents for sick, personal and carers leave are individual Awards and Enterprise Bargaining Agreements, however the core conditions in this standard are drawn from the Australian Capital Territory Public Sector Employment - General Conditions of Service Award 1998.

In this Part, unless the contrary intention appears:

'accrual date' is the date on which an officer receives a credit of personal leave

'accrual period' is the period during which personal leave accrues *'officer'* includes Chief Executives and Executives for the purposes of personal leave

'personal leave year' is the period commencing on an officer's accrual date and ending on the day before the next accrual date

'immediate family or household' use of personal leave for carer or bereavement purposes in accordance with this chapter is subject to the person being either;

- (i) a member of the employee's immediate family; or
- (ii) a member of the employee's household.

The definition of immediate family includes:

- (i) domestic partner (including former domestic partner) of the officer.
- (ii) a child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the officer.

New Rule 4, Part 18, Standard 3

4. Personal leave for bereavement purposes

An employee is entitled to an additional three days full paid personal leave (non-accumulative) on each occasion of a death of a member of the employee's immediate family or household. At the discretion of the Chief Executive, in addition to an employee's immediate family and household members, leave for bereavement purposes may be granted on the parent of domestic partner, foster parent, step parent, step sibling, guardian or foster child.

Personal leave for bereavement purposes counts as service for all purposes.

If bereavement leave of at least one day is granted while the officer is on another type of leave, the amount equivalent to the approved bereavement leave should be recredited.

New Rule 2, Part 19, Standard 3

2. Interpretation

In this Part, unless the contrary intention appears

'dependant' includes a person who was being maintained wholly or partly by the officer at the time of the employee's death

'Higher Duties Allowance' (*'HDA'*) means the allowance paid to an officer who is directed to perform the duties of a higher office

'officer' includes:

- an employee;
- a statutory office holder; and
- a person employed by a Territory instrumentality or by a statutory office holder.

'minor' means a person under the age of eighteen years

'relevant day' in relation to a person who ceases to be an officer, means the day on which they cease to be an officer.

New Rule 3, Part 19, Standard 3

3. Allowances paid while on LSL

For the purposes of LSL, salary includes an allowance payable to an officer because they are required to perform their duties in a particular district in Australia (*'district allowance'*).

Salary includes district allowance for the purpose of LSL where an officer remains in a district for which the allowance is payable during their LSL or, if they are part of a domestic partnership, their family remains in that district during any part of the period of their LSL during which the officer is absent from that district.

For the purposes of LSL, salary includes an allowance payable to an officer in respect of the supply and maintenance by the officer of tools and equipment ordinarily required by them to perform the duties of their work.

Where an officer is entitled to receive a payment in lieu of LSL under sections 158 or 159 of the Act, that payment must include an amount in respect of higher duties allowance, where:

- (a) the officer has, or would, but for their absence on authorised leave, have, during a continuous period of not less than 12 months ending on the expiration of the relevant day, performed the duties of a single office having a higher classification than their own, or
- (b) immediately before the person ceased to be an officer, the officer has, or would, but for their absence on authorised leave, have performed the duties of 2 or more offices each of which has a higher classification than their own for periods that were continuous with one another and the aggregate of which is not less than 12 months.

Where a payment in lieu of LSL is made in accordance with sections 158 or 159 of the Act and is to include an amount in respect of HDA, if at any time during the period of 12 months immediately preceding the relevant day the officer performed the duties of an office in respect of which HDA was payable to them at a rate that is lower than the rate of the allowance payable to the officer on the relevant day, then the amount included in the payment in respect of HDA is calculated as if the officer was, on the relevant day, paid at the lowest rate at which HDA was paid to the officer during that period of 12 months.

New Rule 1, Part 21, Standard 3

1. Application

This Part details fixed minimum conditions of employment which must be met and apply to officers and employees except a Chief Executive or Executive unless otherwise stated.

 New Rule 2, Part 21, Standard 3

2. Interpretation

In this Part, unless the contrary intention appears:

'management-initiated placement' means employment with a Government Business Enterprise following an agreement between the management of the Government Business Enterprise and the Commissioner or relevant Chief Executive, where it would be in their mutual interests to allow an officer to be granted leave without pay for the purpose of employment with the Government Business Enterprise

'member of the immediate family' includes domestic partner, parent, parent of domestic partner, brother, sister, guardian, foster parent, step-parent, step-brother, half-brother, step-sister, half-sister, child, foster child or step child of an officer

'officer' includes an employee but does not include a Chief Executive or Executive unless otherwise stated

'Principal Chief Executive Officer' means a person occupying an office or appointment so declared as such by regulations made for the purposes of subsection 3(4)(ra) of the *Remuneration Tribunal Act 1973*

'returned soldier' in relation to leave for returned soldiers for medical treatment and pension review, means a returned soldier, as defined in 251(6) of the *Public Sector Management Act 1994*, suffering from:

- a disability sustained as a result of service in a theatre of war or in "war-like" operations; or
- pulmonary tuberculosis in respect of which the ex-member of the Forces is in receipt of benefits under the Veterans' Entitlement Act

'twelve months' in relation to leave for Local Government purposes, is a period of twelve months commencing on the date or the anniversary of the date the officer becomes a duly elected office holder

'year' in relation to Defence Service leave, is the period commencing on 1 July and ending on the following 30 June

 New Rule 3, Part 21, Standard 3

3. To accompany domestic partner on a posting

A Chief Executive may grant leave without pay to enable an officer to accompany their domestic partner for the period, or part of the period of a temporary posting overseas or interstate.

Leave to accompany a domestic partner on a posting is granted without pay and does not count as service for any purpose.

The maximum period of leave that may be granted is the period during which the domestic partner of the officer is required to perform duties overseas, or interstate.

A teacher or school assistant working in schools, returning to duty after accompanying a domestic partner on a posting must commence duties at the commencement of the next school year.

New Rule 20, Part 21, Standard 3

20. Leave not provided for elsewhere

If, but for this Rule, an officer cannot be granted leave, a Chief Executive may grant leave (in the Rule called the ‘relevant period’) to the officer up to a maximum period of twelve months.

A period of leave granted must be without pay and does not count as service for any purpose except where the Commissioner directs in special circumstances that a period of leave granted is to be with pay or to count as service, having regard to:

- the purpose for which the leave is being taken;
- the length of service of the officer; and
- the length of the period for which the leave is being taken.

Where a period of leave is granted with pay and is to count as service, the Commissioner may grant this leave on half-pay for a period not exceeding twice the relevant period. If the Commissioner approves the taking of this leave in this manner, this period of leave counts as service for all purposes.

New Rule 21, Part 21, Standard 3.

21. Parental leave

For the purposes of this Rule an officer also includes a Chief Executive and an Executive.

21.1 Primary care givers’ leave

Where an officer applies for this leave, a Chief Executive must grant 14 weeks paid primary care givers’ leave to the officer where he or she:

- a) demonstrates that he or she is the primary care giver of a new born or adopted child;
- b) has been employed by the Territory for 12 months continuously; and
- c) is entitled to personal leave as a condition of his or her employment.

A period of paid primary care givers’ leave counts as service for all purposes.

The officer may elect to spread the 14 weeks paid leave over 28 weeks at half-pay. The whole period of primary care givers' leave counts as service for all purposes.

The Chief Executive may approve an officer taking primary care givers' leave in a non-continuous manner, provided that recreation leave or long service leave is not approved, until the officer has exhausted their paid primary care givers' leave credit.

The granting of primary care givers' leave is also subject to:

- a) an officer who is entitled to maternity leave is not entitled to primary care givers' leave;
- b) an officer may take primary care givers' leave up to a maximum of 14 weeks, provided:
 - i. section 173 of the Act is satisfied;
 - ii. this leave is not taken at the same time as any other officer is receiving paid maternity leave or paid leave under Standard 3 Part 21 Rule 20 or Standard 2 Part 1 Rule 4 in relation to the same child; and
 - iii. the officer's entitlement to paid primary care givers' leave is reduced by the amount of paid maternity leave already taken by the other officer referred to in sub-paragraph 21.1b) ii) above.

21.2 Unpaid paternity leave

Where an officer applies for this leave, a Chief Executive must grant an officer five days unpaid paternity leave at the time of the birth or adoption of a child. Where the officer's domestic partner is also an officer, this leave may be taken concurrently with the domestic partner receiving paid maternity or primary care givers' leave.

A period of this leave counts as service for all purposes.

21.3 Unpaid Parental leave

A Chief Executive may grant leave without pay to an officer following the birth or adoption of a child to enable them to care for the child.

This leave may commence on the day of birth of the child, or in the case of an adopted child on the day on which the officer assumes responsibility for the child.

Parental leave does not count as service for any purpose but does not break continuity of service.

The maximum period of such leave is 40 weeks, less any period of absence granted under Part VIII of the Act. This period does not include the required period of absence described under that Part of the Act.

If an officer's domestic partner is also an officer the aggregate period of leave granted to both of them under this Rule must not exceed 66 weeks. This includes leave granted to the officer and the domestic partner under this Rule, and leave without pay granted to the officer and the domestic partner under Part VIII of the Act. This aggregate period does not include the required period of absence described under that Part of the Act.

The *Workplace Relations Act 1996* (Commonwealth) sets out minimum entitlements to parental leave. These minimum entitlements allow the child's primary carer 52 weeks to care for the child in the first year of the child's life. The 52 weeks can be shared between the parents whether employed inside or outside the ACTPS.

A teacher who has completed three years service may make application for up to four years parenting leave in total for the first child.

An extension of up to a further three years may be granted to a teacher for each subsequent child, provided:

- that the teacher becomes unattached from the beginning of the following school year; and
- the teacher gives the prescribed notice of intention to return to duty at the end of the period of the unattachment and accepts that placement will normally be made at the beginning of a school year.

The maximum leave available under this provision is seven years.

New Rule 8, Part 2, Standard 6

8. Official non-ACT Public Service travel

Travel paid for by the ACT Public Service for non-ACT Public Service travellers may include official domestic partner travel, travel by interviewees and travel by consultants or contractors. Travel must only be approved where it directly relates to the effective accomplishment of official business. In these limited instances, prior written approval of the Chief Executive or delegate must be obtained.