

Australian Capital Territory

Public Sector Management Amendment Standards 2011 (No 3)

Disallowable instrument DI2011-49

made under the

Public Sector Management Act 1994, s 251 (Management Standards)

I amend the Standards as set out below.

Catherine Hudson
Commissioner for Public Administration

Date 29 March 2011

Approved under the Public Sector Management Act 1994, s 251 (Management Standards)

Jon Stanhope
Chief Minister

Date 28 March 2011

Australian Capital Territory

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Contents

| | Page |
|---|------|
| 1 Name of instrument | 1 |
| 2 Commencement | 1 |
| 3 Legislation amended | 1 |
| 4 Chapter 2 heading | 1 |
| 5 Part 2.1 | 1 |
| 6 Part 2.2 | 10 |
| 7 Parts 2.3 to 2.5 | 10 |
| 8 Chapter 3 heading | 11 |
| 9 Parts 3.1 to 3.9 | 11 |
| 10 Section 85 | 49 |
| 11 Sections 243, definition <i>Independent Reviewer</i> | 49 |
| 12 Section 247A | 49 |
| 13 Section 248, definition <i>Executive</i> | 49 |
| 14 Chapters 4 to 6 | 50 |
| 15 Section 519 | 89 |

Contents

| | Page | |
|----|---|-----|
| 16 | Section 520, definition of <i>official travellers</i> | 90 |
| 17 | Section 520, new definition of <i>traveller</i> | 90 |
| 18 | Section 527, note | 90 |
| 19 | Section 537 (1) | 90 |
| 20 | New sections 539A and 539B | 91 |
| 21 | Section 540 (3) and (4) | 91 |
| 22 | Part 7.3 | 91 |
| 23 | Section 557 | 91 |
| 24 | Section 575 | 91 |
| 25 | Section 579 definition organisation registered under the Workplace Relations Act 1996 | 92 |
| 26 | Section 582 (3) | 92 |
| 27 | Section 584 (6) | 92 |
| 28 | Part 8.5 | 92 |
| 29 | New part 8.7 | 97 |
| 30 | New part 8.8 | 101 |
| 31 | New chapter 9 | 105 |
| 32 | Dictionary, definition of <i>ABS</i> | 201 |
| 33 | Dictionary, definition of <i>ACTGS</i> | 201 |
| 34 | Dictionary, definition of <i>Agency</i> | 201 |
| 35 | Dictionary, definition of <i>Award</i> | 201 |
| 36 | Dictionary, definition of <i>Certified Agreement</i> | 202 |
| 37 | Dictionary, definition of <i>Consequential and Transitional Provisions Act</i> | 202 |
| 38 | Dictionary, definition of <i>current office</i> | 202 |
| 39 | Dictionary, new definition of <i>disability</i> | 202 |
| 40 | Dictionary, new definition of <i>household member</i> | 202 |
| 41 | Dictionary, new definition of <i>immediate family</i> | 202 |
| 42 | Dictionary, definition of <i>MPRA</i> | 203 |
| 43 | Dictionary, new definition <i>public holiday</i> | 204 |
| 44 | Dictionary, definition of <i>Public Sector Management</i> | 204 |
| 45 | Dictionary, definition of <i>State</i> | 204 |
| 46 | Dictionary, new definition of <i>substantive office</i> | 204 |
| 47 | Dictionary, new definition of <i>supervisor</i> | 204 |

Contents

| | | Page |
|----|---|------|
| 48 | Dictionary, new definition of <i>temporary transfer</i> | 204 |
| 49 | Dictionary, new definition of <i>transfer</i> | 204 |

1 Name of instrument

This instrument is the *Public Sector Management Amendment Standards 2011 (No 3)*.

2 Commencement

This instrument commences on the commencement of the *Public Sector Management Amendment Act 2011*, section 3.

3 Legislation amended

This instrument amends the *Public Sector Management Standards 2006*.

4 Chapter 2 heading

substitute

**Chapter 2 Administration & Management
of the Service**

5 Part 2.1

substitute

Part 2.1 Ethics

Division 2.1.1 Reasonable care and skill

5 Application—div 2.1.1

This division applies to officers and employees.

6 Interpretation—div 2.1.1

In this division:

core hours means the hours which are determined by the relevant Chief Executive as the core hours of work.

manager means a person who has responsibility for planning, organising and leading a work unit or group activity.

officer includes all employees.

senior manager means an employee at branch head level or equivalent.

7 Consumption of alcohol

An officer must not drink alcohol while on duty or on government premises during core hours without prior approval of a senior manager on special occasions, like Christmas parties, the Melbourne Cup and farewells.

8 Alcohol in government vehicles

- (1) Alcohol must not be carried in or on government vehicles except where prior approval has been given for a special occasion by a senior manager.
- (2) Alcohol must not be consumed in or on a Government vehicle.

9 Managing Territory records

- (1) An officer involved with the creation and/or management of records (as defined by the *Territory Records Act 2002*) has a duty of care to ensure that records are managed in accordance with agency's obligations under the *Territory Records Act 2002* and other related legislation.
- (2) In particular, an officer responsible for a record must ensure the record—

- (a) is kept in a form that ensures that the information continues to be accessible in accordance with the *Freedom of Information Act 1989* and agency's obligations under the *Territory Records Act 2002*; and
- (b) is kept safe and preserved properly, in accordance with agency's obligations under the *Territory Records Act 2002*.

Note Agency's obligations under the *Territory Records Act 2002* includes the agency's approved records management program.

Division 2.1.2 Conflict of interest

10 Interpretation—div 2.1.2

In this division:

confidential information means information which it is an officer's duty not to disclose and, in the case of a former officer, information which, at the time they cease to be an officer, it was their duty not to disclose.

core hours means hours which are determined by the relevant Chief Executive.

second job means employment other than an officer's current ACTPS office and includes employment or any other activity within the scope of the Act, section 244 and includes a second job in the ACT Government.

11 Second jobs

- (1) Under the Act, section 244 an officer must not without the written approval of the Chief Executive of an agency—
 - (a) accept or continue to hold paid employment in the Commonwealth or under the Government of a State, or in, or under any public or municipal corporation; or

- (b) engage in or continue to hold or discharge the duties of, or be in paid employment in connection with any business whether carried on by any corporation, company, firm or individual; or
 - (c) engage in or undertake any such business, whether as principal or agent; or
 - (d) engage or continue in the private practice of any profession, occupation or trade or enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged; or
 - (e) act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of the officer's office or otherwise on behalf of the Territory; or
 - (f) accept or engage in any remunerative employment other than in connection with the duties of their office or offices under the Territory.
- (2) Examples of a second job include—
- (a) a second ACT Government position; or
 - (b) a part-time job outside of core hours; or
 - (c) employment taken up during recreation, long service or other leave; or
 - (d) any other profitable activity outside official duties - for instance, the holding of directorships, and engagement as tax agents.
- (3) An officer must put their current ACTPS position before any other employment. Due to the high risk of a real or apparent conflict of interest, all officers who want to begin a second job must, under the Act, section 244, get prior approval from their Chief Executive.

- (4) An officer on leave, including long service leave and leave without pay, wishing to undertake a second job while on leave must apply for permission to do so under the Act, section 244. An application should be attached to the relevant leave form.

12 Unauthorised disclosure of information

An officer or employee who leaves the ACTPS to work for another employer and who intends to use confidential information acquired while a member of the ACTPS in their new employment, must not use the information without the approval of the relevant Chief Executive.

Division 2.1.3 Integrity

13 Application—div 2.1.3

This part applies to officers and employees.

14 Interpretation—div 2.1.3

In this division:

Audit Committee means a body created in accordance with the Department of the Treasury's policy document entitled *Internal Audit Framework*, promulgated in 2003. Agency Audit Committees monitor and review the effectiveness of corporate governance mechanisms in agencies.

corruption in relation to an officer or employee means that the officer or employee seeks, obtains or receives any benefit, other than lawful salary and allowances, on the understanding that the officer or employee will do or refrain from doing anything in the course of their duties or will attempt to influence any other officer or employee on behalf of any person.

fraud means taking or obtaining by deception, money or another benefit from the government when not entitled to the money or benefit, or attempting to do so - this includes evading a liability to government.

integrity means the exercise of authority in accordance with the stated values and principles of the ACT Public Service and includes the control of fraud and corruption.

manager means a person who has responsibility for planning, organising and leading a work unit or group activity.

Risk Management Standard means the current Risk Management Standard AS/NZS 4360: (31 August 2004) issued by Standards Australia.

15 **Fraud and corruption prevention**

- (1) In accordance with the Act, section 6 and section 29 (1), a Chief Executive must pursue a systematic approach to integrity.
- (2) A Chief Executive must ensure that risks to the integrity of the agency are assessed and treated in accordance with the Risk Management Standard and the associated policy guidance.
- (3) A Chief Executive must ensure that risks to the integrity of an agency are addressed in detailed fraud and corruption prevention plans.
- (4) A Chief Executive must ensure that the Agency's integrity arrangements are assessed and reviewed every two years, or more frequently if—
 - (a) any significant suspected fraud or corruption is discovered; or
 - (b) there is a significant change in the nature or scope of operations, procedures or systems.
- (5) The Chief Executive should explore opportunities to actively detect fraud and corruption within the Agency's programs, in accordance

with privacy considerations and noting the requirements for cost effectiveness of these strategies.

16 Monitoring and recording integrity strategies

- (1) The Chief Executive of an agency should request the Audit Committee to oversight the effectiveness of the integrity arrangements, in particular the conduct of the risk assessment and the implementation of the fraud and corruption prevention plans.
- (2) Managers must regularly and systematically assess the potential within their area of responsibility for theft, fraud and corruption to ensure that relevant control procedures are being followed and are effective.
- (3) An agency must establish and maintain an information system that records—
 - (a) all instances of fraud and corruption; and
 - (b) losses to the Agency or potential for damage to the reputation of the Agency or ACT Public Service; and
 - (c) investigative action taken; and
 - (d) disciplinary action taken or outcomes of matters which have been prosecuted; and
 - (e) any changes to procedures and practices arising from the incident.
- (4) The Audit Committee should have access to regular reports of information from the fraud and corruption reporting system.
- (5) A Chief Executive must include details of the implementation of fraud and corruption prevention plan in the Annual Report to the Minister.
- (6) In the Annual Report to the Minister, the Chief Executive must certify that—

- (a) an assessment of the risks to the integrity of the Agency has been conducted in accordance with the Risk Management Standard and the associated policy guidance; and
 - (b) treatments for adequately dealing with the integrity risks identified have been addressed in the fraud and corruption prevention plan as described in the policy guidance; and
 - (c) where the Agency has engaged, or is contemplating engaging, service providers from outside the ACT Public Service, that the integrity risks have been assessed and dealt with in the fraud and corruption prevention plan; and
 - (d) progress during the reporting year on the implementation of the fraud and corruption prevention plan.
- (7) A Chief Executive must select an Executive to be responsible for the implementation of the integrity strategies and the processes for the detection and investigation of fraud and corruption.
- (8) Details of the appointment must be forwarded to the Commissioner.

17 Investigation of fraud and corruption

- (1) The Chief Executive must ensure that where cases of fraud and corruption are detected or notified, that action is taken to investigate those cases.
- (2) Where the case is considered to be serious and complex, the Australian Federal Police must be notified.
- (3) Agencies should recover losses caused by illegal activity through proceeds of crime legislation and civil recovery processes and, in the absence of criminal prosecution, to apply appropriate civil, administrative or disciplinary penalties.

Division 2.1.4 Personal use of IT resources

18 Application—div 2.1.4

This division applies to officers and employees.

19 Interpretation—div 2.1.4

In this division:

employees are defined as an employee or officer covered by the Code of Ethics, except where specifically excluded.

IT resources are defined as information technology owned and/or controlled by the Territory, including computers, printers, network infrastructure and electronic mail.

officer includes an employee.

20 General

- (1) An officer must ensure that he or she does not access, download or store inappropriate material.
- (2) An officer must not use IT Resources to publish or communicate inappropriate material, including material which could be considered defamatory.

21 Network Resources

An officer must not save unofficial software and/or large personal files, including personal cc:Mail archives, to any network drive.

22 Electronic Mail (both internal and external)

An officer must ensure that personal correspondence does not interfere with their duties and wherever possible deal with this correspondence outside working hours.

6 Part 2.2

substitute

Part 2.2 Commissioner's functions & powers

Division 2.2.1 Public Holidays

23 Public holiday in the ACTPS

The Commissioner may declare that any day will be observed as a holiday in respect of any class of officers or employees in the ACTPS.

Division 2.2.2 Equity and Diversity

24 Commissioner for Public Administration responsibilities

- (1) Under the Act, section 40, the Commissioner is to develop and issue an equal employment opportunity program for the Service.
- (2) The Equity and Diversity Framework for the ACT Public Service is intended as that program.
- (3) The Commissioner will update the Framework as appropriate by providing a statement to that effect to the Chief Minister.

7 Parts 2.3 to 2.5

omit

8 Chapter 3 heading*substitute***Chapter 3 Employment in the Service****9 Parts 3.1 to 3.9***substitute***Part 3.1 Merit and the selection process****28 Application—pt 3.1**

- (1) This part applies if a function under the Act is exercised following a recommendation from a selection committee about the suitability of a person in relation to the following employment matters:
- (a) an appointment;
 - (b) an engagement under the Act, section 28 or section 72;
 - (c) an engagement of more than nine months under the Act, section 30 or section 76;
 - (d) a temporary transfer to a higher office for more than three months;
 - (e) a fixed term engagement for 12 months or more;
 - (f) a promotion.

Note **Function** includes authority, duty and power (see Legislation Act, dict, pt 1).

- (2) This part applies to a function exercised following a recommendation from a joint selection committee that was established under Part 3.3 in relation to a transfer or a promotion.

29 Identified positions

- (1) Eligibility for an *identified position* must be restricted to—
 - (a) an Aboriginal person or Torres Strait Islander; or
 - (b) a person who has a disability.
- (2) The relevant chief executive may determine prior to the commencement of a selection process that an office is an identified position.

30 Merit in selection

- (1) The relevant chief executive may only exercise a function in relation to an employment matter if the chief executive—
 - (a) is satisfied that the process used to assess the comparative ability of the applicants to perform the duties of an office complied with the merit principle stated in the Act, section 65; and
 - (b) has used appropriate ways of assessing the comparative ability of applicants against selection criteria, including the following:
 - (i) written applications;
 - (ii) resumes;
 - (iii) referee comments;
 - (iv) interviews;
 - (v) approved psychometric testing;
 - (vi) approved practical skills testing;
 - (vii) an Equal Employment Opportunity Program in division 2.2.2;
 - (viii) the principle of reasonable adjustment under anti-discrimination laws;

- (ix) another method which supports the merit principle set out in the Act, section 65.
- (c) has considered the recommendations about the suitability of applicants made by a selection committee or a joint selection committee in a written selection report.
- (2) The chief executive must exercise a function in relation to an employment matter in writing.

31 Testing of applicants

- (1) The relevant chief executive may arrange for testing to assess the comparative ability of applicants to perform the duties of an office.
- (2) However, testing may only be used if—
 - (a) the Commissioner approves the testing; and
 - (b) the office will be filled by appointment, transfer or promotion.

32 Advertising

- (1) The relevant chief executive must advertise an office in the gazette unless the office is—
 - (a) to be filled by transfer; or
 - (b) to be filled by promotion of an applicant selected on merit to a recurring or identical vacancy; or
 - (c) to be filled by promotion by advancement from a training office; or
 - (d) to be filled by appointment, transfer or promotion of an applicant under an Equal Employment Opportunity Program under division 2.2.2; or
 - (e) for an Administrative Service Officer Class 5 office that the chief executive will fill the vacancy with an officer who is—

- (i) a Graduate Administrative Assistant; and
 - (ii) confirmed as an officer;
- (f) to be filled under part 3.2.

Note it may be necessary to advertise in the gazette under part 3.2.

- (2) However, if a joint selection committee has been established in relation the office, the office must be advertised in the gazette and must state that—
- (a) the office is to be considered by a joint selection committee established under the Act; and
 - (b) a promotion made on the recommendation of a joint selection committee under the Act is not subject to appeal; and
 - (c) a promotion made on the unanimous recommendation of a management-initiated joint selection committee established under the Act is not subject to appeal.
- (3) The advertisement of an office must state the following information about the office:
- (a) if it has mandatory qualifications;
 - (b) if it is an identified position;
 - (c) if it has eligibility requirements.
- (4) The relevant chief executive must be satisfied that the advertisement of the office allowed all eligible people a reasonable opportunity to apply for the office.

33 Recurring and identical vacancies

The relevant chief executive may use a selection committee's recommendation for up to 12 months, to fill an office by appointment, transfer or promotion, if the office—

- (a) is the same office; or

- (b) is at the same level and has the same selection criteria as the original office.

33A Notice of appointment or engagement

At the time of appointment or engagement, the Chief Executive must inform a person in writing of the person's terms of employment, including:

- (a) the type of employment; and
- (b) whether a probationary period applies and the expected duration of the period; and
- (c) if the person is engaged as a fixed term employee, the duration of the engagement; and
- (d) the ordinary weekly hours; and
- (e) the ordinary weekly hours before overtime is payable; and
- (f) a list of the main instruments governing the terms and conditions of employment.

Part 3.2 Merit and the selection process in temporary employment

34 Application—pt 3.2

This part applies if a function under the Act is exercised for a fixed term engagement for less than 12 months.

Note **Function** includes authority, duty and power (see Legislation Act, dict, pt 1).

35 Interpretation—pt 3.2

In this part—

temporary employee register means a register of people who have applied for employment—

- (a) for a period of less than 12 months; and
- (b) with the ACTPS.

36 Temporary employee registers

- (1) The Administering Chief Executive may—
 - (a) approve the establishment of an ACTPS temporary employee register; and
 - (b) set out additional requirements for that register.
- (2) The relevant chief executive may establish a temporary employee register in an administrative unit.
- (3) A temporary employee register must advertise the duties, or range of duties, and classifications that an applicant may be engaged to perform.

37 Advertising temporary employment

- (1) The relevant chief executive must advertise a temporary position by—
 - (a) advertising the position in accordance with subsection (2); or
 - (b) advertising the existence of a temporary employee register in accordance with subsection (3); or
 - (c) lodging the position with an employment agency.
- (2) If a position is expected to be available for a period of six months or longer the position must be advertised in the gazette.

- (3) The existence of a temporary employee register must be advertised at least every 12 months.

38 Selection of employees

- (1) A temporary employee must be selected from—
- (a) a field of applicants for a vacancy; or
 - (b) a temporary employee register; or
 - (c) a field of applicants provided by an employment agency.
- (2) A temporary employee must be selected on the basis of relative efficiency, having regard to their—
- (a) abilities; and
 - (b) qualifications; and
 - (c) experience; and
 - (d) availability to perform the work on the basis required, including—
 - (i) on a full time or part time basis; and
 - (ii) at the relevant location.

Part 3.3 Use of joint selection committees in the selection process

39 Application—pt 3.3

This part applies to a joint selection committee that is established under the Act to make recommendations about the exercise of a function in relation to the following employment matters:

- (a) a transfer;
- (b) a promotion.

Note **Function** includes authority, duty and power (see Legislation Act, dict, pt 1).

40 Interpretation—pt 3.3

In this part—

officer includes and employee.

Note The relevant chief executive may determine which union is the principal union.

41 Procedure of a joint selection committee

(1) The relevant chief executive may use a joint selection committee to—

- (a) reduce the time and cost of filling positions; or
- (b) fill multiple positions with similar or identical duties.

Note Unless a chief executive and principal union agree otherwise, multiple positions means five or more positions.

(2) A joint selection committee must—

- (a) assess the relative ability of applicants to perform the duties of an office in accordance with the merit principle set out in the Act, section 65; and
- (b) attempt to make the assessment as quickly and using the simplest methods appropriate; and
- (c) make recommendations about the suitability of applicants in a written selection report.

(3) An irregularity or defect in the formation of a joint selection committee does not make a promotion or transfer made following the recommendation of the joint selection committee invalid.

- (6) A member of a joint selection committee is not subject to direction from any person or body (other than a court) in considering a promotion.

42 Composition of a joint selection committee

- (1) A joint selection committee will normally comprise, but not be limited to—
- (a) a chairperson who has appropriate skills and experience, nominated by the relevant chief executive; and
 - (b) a person who has appropriate skills and experience, nominated by the relevant chief executive, from a list of officers agreed by the agency and principal union; and
 - (c) a person nominated by the principal union—
 - (i) in all cases for a union agreed joint selection committee; or
 - (ii) if that union nominates a person within fourteen days of notice being given to the union, for a management-initiated joint selection committee.
- (2) If a person nominated by the principal union is an officer—
- (a) the nominee is on duty for all purposes while serving on a joint selection committee; and
 - (b) if the nominee was receiving a higher duties allowance immediately prior to the formation of the joint selection committee, they are entitled to receive a higher duties allowance while performing work relevant to a joint selection committee; and
 - (b) the relevant chief executive should provide relief staffing as necessary for the nominee; and

- (c) the relevant chief executive should provide the nominee appropriate training in selection techniques and joint selection committee procedures.

43 Establishing a union agreed joint selection committee

- (1) The relevant chief executive must consult with the principal union to decide how a union agreed joint selection committee will be established in an agency.
- (2) The chief executive must notify the principal union and any other relevant union or unions of a proposal to establish a union agreed joint selection committee.
- (3) The notification must—
 - (a) identify each office to be filled; and
 - (b) seek union agreement and the name of a nominee for the joint selection committee; and
 - (c) in the case of a union that is not the principal union, include a statement to the effect that the union can give written notice that it objects to the proposal, if it does so within seven days.
- (4) If the principal union agrees to the establishment of a joint selection committee, and no other relevant union objects within seven days, the chief executive must establish a joint selection committee.
- (5) If a principal union does not consent to the establishment of the union agreed joint selection committee or a relevant union objects within seven days the joint selection committee proposal cannot proceed.
- (6) If a chief executive is unable to arrange for the establishment of a union agreed joint selection committee the chief executive may transfer or promote an officer to fill the vacant office under the Act, section 83.

44 Reconstituting a union agreed joint selection committee

- (1) If the chairperson of a union agreed joint selection committee ceases to take part in the deliberations of the committee before the committee makes a recommendation the committee will be reconstituted by—
 - (a) the remaining member or members; and
 - (b) another chairperson nominated by the relevant chief executive.
- (2) If a member of a union agreed joint selection committee ceases to take part in the deliberations of the committee before the committee makes its recommendations, the committee will be reconstituted by—
 - (a) the remaining members; and
 - (b) a replacement from the entity whose nominee has ceased to take part.
- (3) If a union agreed joint selection committee is reconstituted after an original members ceases to take part, it may continue to use information collected and recommendations made by the previous joint selection committee.

45 Establishing a management-initiated joint selection committee

- (1) A management-initiated joint selection committee must not be used unless there has been prior consultation between the relevant chief executive and the relevant union about—
 - (a) the use of management-initiated joint selection committees in that agency; and
 - (b) the implementation and operation of management-initiated joint selection committees in that agency.

- (2) If the relevant chief executive intends to fill positions using a management-initiated joint selection committee he or she must—
 - (a) notify the principal union; and
 - (b) provide the principal union with details of vacancies and related selection documents; and
 - (c) invite the principal union to nominate a member of the joint selection committee within fourteen days, if it wishes to participate.
- (3) After fourteen days, the chief executive must establish a joint selection committee.

46 Reconstituting a management-initiated joint selection committee

- (1) If the chairperson of a management-initiated joint selection committee ceases to take part in the deliberations of the committee before the committee makes a recommendation the committee will be reconstituted by—
 - (a) the remaining member or members; and
 - (b) another chairperson nominated by the relevant chief executive.
- (2) If the member of a management-initiated joint selection committee nominated by the relevant chief executive ceases to take part in the deliberations of the committee before the committee makes its recommendations and—
 - (a) if the chief executive nominates another person within fourteen days of their nominee ceasing to act, then the committee will be reconstituted by—
 - (i) the remaining members or member; and
 - (ii) the chief executive's new nominee; or

- (b) if the chief executive does not nominate another person within fourteen days of their nominee ceasing to act, then the committee will be reconstituted by the remaining members.
- (3) If a member of a management-initiated joint selection committee nominated by the relevant union ceases to take part in the deliberations of the committee, then the chief executive will notify the principal union and—
 - (a) if the principal union nominates another person within fourteen days of being notified by the chief executive, then the committee will be reconstituted—
 - (i) by the remaining members; and
 - (ii) the principal union's new nominee; or
 - (b) if the principal union does not nominate another person within fourteen days of being notified by the chief executive, then the committee will be reconstituted by the remaining members.

47 Failure to reach a unanimous recommendation—union agreed joint selection committees

- (1) A joint selection committee should seek to resolve any significant differences of opinion about the suitability of applicants.
- (2) If the members of a union agreed joint selection committee cannot reach a unanimous recommendation—
 - (a) the recommendation of the majority of the members of the joint selection committee becomes the recommendation of the joint selection committee; or
 - (b) if neither a unanimous nor a majority decision can be reached, the recommendation of the chairperson becomes the recommendation of the joint selection committee.

48 Appealable and non appealable promotions

- (1) A promotion is not appealable if it is made—
 - (a) in accordance with the recommendation of a union agreed joint selection committee; or
 - (b) in accordance with the unanimous recommendation of a management-initiated joint selection committee.

Note A promotion in these circumstances is not appealable because of the independent tripartite nature of the committee.

- (2) If a chief executive promotes an officer who was not recommended by the union agreed joint selection committee the promotion is subject to appeal.
- (3) If a chief executive promotes an officer who was not unanimously recommended by the management-initiated joint selection committee the promotion is subject to appeal.
- (4) When a promotion is notified in the gazette, the notification must include a footnote which details—
 - (a) that the selection process was undertaken by a joint selection committee, and whether the committee was union agreed or management-initiated; and
 - (b) whether the promotion is appealable.

49 Notification of applicants

After the completion of a joint selection committee recommended selection a chief executive should advise all applicants in writing as soon as practicable, including details of—

- (a) any officers who were promoted under the Act, section 88; and
- (b) any officers who were transferred or promoted under the Act, section 83; and

- (c) the date of the gazette in which the transfers or promotions are expected to appear.

Part 3.4 Appointment

50 Application—pt 3.4

- (1) This part applies to the appointment of a person as an officer in the ACTPS in accordance with the Act, division 5.3.
- (2) This part does not apply to the re-appointment of former officers in accordance with the Act, section 117, section 118 or section 118A.

51 Appointment

- (1) A chief executive may appoint a person to an office or unattached, if the person—
 - (a) is eligible to apply for the office; and
 - (b) is qualified for the office.
- (2) If two applicants for appointment are assessed as equal, and one is a returned soldier, the chief executive must appoint the returned soldier.
- (3) The date of effect of appointment of an officer is the latest of the following:
 - (a) the date on which the officer commences duty;
 - (b) the date the instrument is signed;
 - (c) a date within a period specified on the instrument.

Note This section does not apply to teacher appointed from a state teaching service, or immediately after teacher training.

- (4) However, if an officer is appointed while on specified defence service, the date of effect of appointment is the date specified on the instrument.

52 Eligibility for appointment

- (1) For the Act, paragraph 68 (2) (b)—
permanent resident of Australia includes New Zealand citizens who reside in Australia and who hold a Special Category temporary residence visa.
- (2) All permanent vacancies advertised in the gazette are open to all Australian Citizens or permanent residents of Australia unless—
- (a) a former officer is restricted from re-employment under the Act, section 114; or
 - (b) a former statutory office holder is restricted from re-employment under the Standards, section 641; or
 - (c) the chief executive has decided, because of cost or operational efficiency, that a vacancy is only open to officers.

53 Appointment after temporary engagement for 12 months

- (1) Appointment under this section may be initiated by the relevant chief executive or on request by an individual employee.
- (2) The relevant chief executive may appoint an employee as an officer into a nominally vacant office without an additional selection process if—
- (a) the chief executive believes it would be reasonable to do so; and
 - (b) immediately before appointment the employee has performed the duties of the office, or an identical office continuously, for a period of 12 months or more; and

Note The 12 months continuous period is not broken if the employee performs the duties of another office at a higher level during the period.

- (c) the employee was initially selected for the office on the basis of a merit based selection process, and the initial advertisement made potential applicants aware that the successful candidate may be eligible for appointment; and
 - (d) an additional merit based selection process would not reasonably be expected to identify a better candidate for the nominally vacant office; and
 - (e) immediately before appointment the relevant chief executive assesses the employee's efficiency, diligence and conduct as satisfactory; and
 - (f) there are no excess officers who would be eligible for the office.
- (3) The appointment of an officer under this section will be notified in the gazette as an appointment to a non-advertised vacancy.

Part 3.5 Re-appointment

54 Application—pt 3.5

This part applies to former officers who are re-appointed under the Act, section 117, section 118 or section 118A.

55 Re-appointment process

- (1) An officer who is re-appointed as a result of an appeal or review against dismissal or after resigning to contest an election must be paid at the salary point that applied when they resigned or were dismissed.

- (2) Following successful appeal, or applications for re-appointment, the officer must be re-appointed without probation, unless they were on probation at the time of dismissal or resignation.
- (3) Probation will continue from the date of re-appointment as if there was no break.
- (4) The date of effect of a re-appointment of an officer is the later of—
 - (a) the date the instrument of re-appointment is made; or
 - (b) the date the officer re-commences duty.

Part 3.6 **Recognition of prior service on appointment or engagement**

56 **Interpretation—pt 3.6**

In this part—

government means the Commonwealth, a State or a Territory.

government owned includes joint ownership by more than one government.

industrial instrument for an executive or a full time statutory office holder means the Standards.

officer includes an employee and a full time statutory office holder.

public authority means—

- (a) an authority, whether incorporated or not, that was or is constituted under government law, for a public purpose; or
- (b) a local governing body that was or is established under government law.

57 Recognition of prior service—officer appointed before 23 January 2006

An officer who was an officer on 22 January 2006 will have prior service recognised, as if it had been service with the Territory, in accordance with Information Note 4 of 2006 ‘Prior Service’.

58 Recognition of prior service in Papua New Guinea

An officer who was in continuous public employment in Papua New Guinea before and after 16 September 1975 will have that period of service recognised, as if it had been service with the Territory, for all entitlements affected by length of service in the ACTPS.

Note On 16 September 1975 Papua New Guinea achieved independence of Australia.

59 Recognition of prior service with a Territory-owned corporation

- (1) In this section—
territory-owned corporation—see the *Territory-owned Corporations Act 1990*, dictionary definition of territory-owned corporation.
- (2) An officer who was employed by a territory-owned corporation will have that period of service recognised, as if it had been service with the Territory, for all entitlements affected by length of service in the ACTPS.
- (3) However, service with a territory-owned corporation will not be recognised if there is any break between that service and service with the Territory.
- (4) If previous service with a Territory-owned corporation is recognised as service which counts towards the accrual of personal leave the date on which personal leave accrues can be varied to reflect a previous accrual date.

60 Recognition of prior service—personal leave

- (1) Service for calculating personal leave accrual includes prior service that at the time was—
 - (a) with a government department or agency; or
 - (b) with a public authority; or
 - (c) with a wholly government owned organisation, body or corporation; or
 - (d) with a territory-owned corporation; or
 - (e) predominantly for the purpose of delivering acute public health care services.
- (2) The relevant chief executive may recognise an officer's prior service as service that accrues personal leave if, at the time of the employment—
 - (a) the employment was with an organisation, body or corporation that was at least 50% government owned; or
 - (b) the employment was with an organisation, body or corporation that was created for a public purpose, and is recognised for the purposes of long service leave by a government.
- (3) Prior part time service will be recognised for calculating personal leave accrual on a pro rata basis only if—
 - (a) the service attracted an entitlement to personal leave from the previous employer; and
 - (b) the service occurred after 1 March 1990; and
 - (c) if the service attracted a salary loading in lieu of leave, it was rendered between 1 March 1990 and 15 July 1991.
- (4) However, prior service will not be recognised as service that accrues personal leave if any break between that service and service with the Territory is longer than two months, unless the Commissioner

determines that a break exceeding 2 months does not break continuity because of—

- (a) unforeseen complications or deficient administration; or
 - (b) an unduly protracted selection and appointment process; or
 - (c) inadequate or incorrect advice regarding a suitable commencement date; or
 - (d) other problems which, through no fault of the officer, prevented them from commencing in the required time.
- (5) If an officer's prior service is recognised as service for calculating personal leave accrual—
- (a) the officer will be credited with personal leave from the date the recognised prior service commenced, in accordance with the accrual methodology set out in the relevant industrial instrument; and
 - (b) the officer's personal leave credit will be reduced by—
 - (i) any period of personal leave taken during the recognised prior service, or, if there are no available records, by five days for every year of recognised prior service; and
 - (ii) the period equivalent to any payment in lieu of personal leave made to the officer during the recognised prior service.

61 Recognition of prior service—operational service personal leave

- (1) Service for calculating operational service personal leave accrual includes prior service with the Territory or the APS.
- (2) If an officer's prior service is recognised as service for calculating operational service personal leave accrual—

- (a) the officer will be credited with operational service personal leave from the date the recognised prior service commenced, in accordance with the accrual methodology set out in the relevant industrial instrument; and
- (b) the officer's operational service personal leave credit will be reduced by—
 - (i) any period of operational service personal leave taken during the recognised prior service; and
 - (ii) the period equivalent to any payment in lieu of operational service personal leave made to the officer during the recognised prior service.

62 Recognition of prior service—annual leave

- (1) Service for calculating annual leave accrual includes prior service with the APS.
- (2) However, prior service will not be recognised as service that accrues annual leave if there is any break between that service and service with the Territory.
- (3) If an officer's prior service is recognised as service for calculating annual leave accrual—
 - (a) the officer will be credited with annual leave from the date the recognised prior service commenced, in accordance with the accrual methodology set out in the relevant industrial instrument; and
 - (b) the officer's annual leave credit will be reduced by—
 - (i) any period of annual leave taken during the recognised prior service; and
 - (ii) the period equivalent to any payment in lieu of annual leave made to the officer during the recognised prior service.

63 Recognition of prior service—annual leave loading

- (1) In this section officer does not include—
 - (a) a person engaged under the Act, section 28 or section 30 to perform the duties of a chief executive office; or
 - (b) a person engaged under the Act, section 72 or section 76 to perform the duties of an executive office; or
 - (c) a full time statutory office holder.
- (2) Service for calculating annual leave loading includes prior service with the APS.
- (3) However, prior service will not be recognised as service for calculating annual leave loading if there is any break between that service and service with the Territory.
- (4) If an officer's prior service is recognised as service for calculating annual leave loading the officer will be paid the annual leave loading in accordance with the relevant industrial instrument.

64 Recognition of prior service—long service leave

- (1) Service for calculating long service leave accrual includes prior service that at the time was—
 - (a) with a government department or agency; or
 - (b) with a public authority; or
 - (c) with a wholly government owned organisation, body or corporation; or
 - (d) with a territory-owned corporation; or
 - (b) predominantly for the purpose of delivering acute public health care services.

- (2) The relevant chief executive may recognise prior service an officer's as service that accrues long service leave if, at the time of the employment—
 - (a) the employment was with an organisation, body or corporation that was at least 50% government owned; or
 - (b) the employment was with an organisation, body or corporation that was created for a public purpose, and is recognised for the purposes of long service leave by the Commonwealth, a State or the Northern Territory.
- (3) The relevant chief executive may approve an application for recognition of a period of unrecorded employment for calculating an officer's long service leave accrual if—
 - (a) the employment would be recognisable prior service if it had been recorded; and
 - (a) the applicant submits—
 - (i) a statutory declaration that sets out the details of the prior service; and
 - (ii) statutory declarations from 2 people that worked with the applicant for the period that verify the details in the applicant's statutory declaration.
- (4) Full time service with an organisation, in accordance with the *Fair Work (Register's Organisations) Act 2009*, is included as service for calculating long service leave accrual if, while undertaking the service, the officer was on leave approved for that purpose.
- (5) However, prior service will not be recognised as service that accrues long service leave if any break between that service and service with the Territory is longer than 12 months.
- (6) If an officer's prior service is recognised as service for calculating long service leave accrual—

- (a) the officer will accrue long service leave in accordance with part 4.3 from the date the recognised prior service commenced; and
- (b) the officer's long service leave credit will be reduced by—
 - (i) any period of long service leave taken during the recognised prior service; and
 - (ii) the period equivalent to any payment in lieu of long service leave made to the officer during the recognised prior service.

65 Recognition of prior service—paid maternity leave and primary care giver leave

- (1) This section applies to—
 - (a) officers who are entitled to personal leave; and
 - (b) people employed by an incorporated company that has been declared by the Commissioner to be a relevant body corporate.
- (2) Service for calculating eligibility for paid maternity leave or primary care giver leave includes prior service that at the time was—
 - (a) with a Commonwealth or ACT government department or agency; or
 - (b) with a Commonwealth or ACT public authority; or
 - (c) with a wholly Commonwealth or ACT government owned organisation, body or corporation (including ownership shared across the Commonwealth or Australian Capital Territory); or
 - (d) with a territory-owned corporation; or
 - (e) predominantly for the purpose of delivering acute public health care services in a Commonwealth or ACT organisation.

- (3) The relevant chief executive may recognise an officer's prior service as service for calculating eligibility for paid maternity leave or primary care giver leave if, at the time of the employment—
 - (a) the employment was with an organisation, body or corporation that is at least 50% Commonwealth or ACT government owned; or
 - (b) the employment was with an organisation, body or corporation that was created for a public purpose, and is recognised for the purposes of maternity leave by the Commonwealth.
- (4) However, prior service will not be recognised for calculating eligibility for paid maternity leave or primary care giver leave if there is any break between that service and service with the Territory.

66 Recognition of prior service—redundancy

- (1) Service for calculating a severance benefit for redundancy purposes under the relevant industrial instrument includes prior service with the Territory or the APS.
- (2) However, prior service will not be recognised as service for calculating a severance benefit for redundancy purposes if —
 - (a) there is any break between that service and service with the Territory; or
 - (b) the service would not be recognised for calculating long service leave accrual under section 64; or
 - (c) the period of service ended for one of the following reasons:
 - (i) retrenchment;
 - (ii) invalidity retirement or retirement because of being unable to perform duties because of physical or mental incapacity;

- (iii) inefficiency or under performance;
 - (iv) loss of qualifications;
 - (v) forfeiture of office;
 - (vi) dismissal as a result of disciplinary action;
 - (vii) termination of probationary appointment for reasons of unsatisfactory service;
 - (viii) voluntary retirement at or above the minimum retiring age.
- (3) An absence that is not recognised as service for calculating long service leave accrual—
- (a) will not be recognised as service for calculating a severance benefit for redundancy purposes; and
 - (b) will not break continuity of service for calculating a severance benefit for redundancy purposes.

67 Recognition of service—reappointment following forfeiture of office

The relevant chief executive may determine that all or part of a period between an officer being retired through forfeiture of office under the Act, section 221 and reappointed under the Act, section 222 counts as service for any purpose.

68 Recognition of prior service—Commissioner discretion

- (1) The Commissioner may approve recognition of an officer's prior service as if it had been service with the Territory for the purpose of calculating any entitlement affected by the length of service in the ACTPS, if—
- (a) the prior service would otherwise not be recognised; and

- (b) the prior service was employment predominantly for a public purpose.
- (2) The Commissioner's approval must—
 - (a) be in writing; and
 - (b) identify the previous employment; and
 - (c) state the length of service that has been recognised; and
 - (d) state the entitlement or entitlements that prior service is recognised for.

69 Re-credit of personal leave

An officer is entitled to be re-credited any unused personal leave that they accrued prior to retirement if—

- (a) the officer retired from the ACTPS because they were unable to perform duties appropriate to their classification at the time of retirement because of physical or mental incapacity; and
- (b) the officer is reappointed as a result of action taken under the *Superannuation Act 1976* (Cwlth) or the *Superannuation Act 1990* (Cwlth).

Part 3.7 Promotions

70 Interpretation—pt 3.7

In this part—

appellable level position means any office—

- (a) with a maximum salary lower than the minimum salary of the senior officer grade C classification; or
- (b) for which teaching qualifications are required.

71 Promotion after acting for 12 months

- (1) Promotion under this section may be initiated by the relevant chief executive or on request by an individual officer.
- (2) The relevant chief executive may promote an officer into a nominally vacant office without an additional selection process if—
 - (a) the chief executive believes it would be reasonable to do so; and
 - (b) immediately before appointment the officer has performed the duties of the office, or an identical office continuously, for a period of 12 months or more; and

Note The 12 months continuous period may be considered not to have been broken if the officer performs the duties of another office at a higher level during the period.

 - (c) the officer was initially selected for the office on the basis of a merit based selection process, and the initial advertisement made potential applicants aware that the successful candidate may be eligible for promotion; and
 - (d) an additional merit based selection process would not reasonably be expected to identify a more meritorious candidate for the nominally vacant office; and
 - (e) immediately before appointment the relevant chief executive assesses the employee's efficiency, diligence and conduct as satisfactory; and
 - (f) there are no excess officers who would be eligible for the office.
- (3) The promotion of an officer under this section will be notified in the gazette as a promotion to a non-advertised vacancy.
- (4) If the office was an appealable level position, any suitable qualified officer may lodge an appeal of the decision.

- (5) If the office was above an appealable level position any suitable qualified officer may apply for a review of the process.

72 Re-notifying promotions with major errors

If a major error occurs in a promotion notification, the promotion must be re-notified.

73 Date of effect of promotions

- (1) If an officer accepts a promotion and no appeal is made against that promotion, the promotion takes effect on the later of—
- (a) the 21st day after the last appealable promotion was notified; or
 - (b) the 7th day after the last non-appealable promotion was notified.
- (2) If an appeal against an appealable promotion is disallowed or becomes inoperative, the date of effect of that promotion is the later of—
- (a) the 21st day after the promotion was notified;
 - (b) the day the appeal is disallowed or becomes inoperative; or
 - (c) the day the office becomes vacant.
- (3) The date of effect of a promotion after a successful appeal is the later of the day the appeal is allowed or the day the office becomes vacant.
- (4) If an officer applies to the relevant chief executive to cancel a promotion under the Act, division 5.5, and the chief executive refuses the application, the date of effect of that promotion is the later of—
- (a) the day the chief executive notifies the officer that the application has been refused; or

- (b) the day the office becomes vacant.

74 Multiple promotions

- (1) An officer may elect, in writing, to accept one promotion if the officer is offered promotion to more than one office with the same or equivalent classification and—
 - (a) the first promotion is notified in the gazette; and
 - (b) the later promotions are notified in the gazette—
 - (i) no more than 20 days after the first promotion was, if the first promotion is appealable; or
 - (ii) no more than 6 days after the first promotion was, if the first promotion is non-appealable.
- (2) A promotion election must be received by the relevant chief executive before the later of—
 - (a) 21 days after the last appealable promotion was notified; or
 - (b) 7 days after the last non-appealable promotion was notified.
- (4) If the officer does not make a valid promotion election, the officer is taken to have been offered the following promotion:
 - (a) if an appeal has been made against all but one of the promotions—the promotion that has not been appealed;
 - (b) if no appeal has been made against any of the promotions—
 - (i) the promotion that was notified first; or
 - (ii) if more than one promotion was notified at the earliest time, the promotion nominated by the Commissioner;
 - (c) if appeals have been made against all the promotions—
 - (i) the promotion that was notified first; or

- (ii) if more than one promotion was notified at the earliest time, the promotion nominated by the Commissioner; or
 - (d) in any other case, a promotion, that is not subject to appeal, nominated by the Commissioner.
- (5) If a promotion takes effect, any other offers of promotion to that officer lapse on the later of—
 - (a) 21 days after the last appealable promotion was notified; or
 - (b) 7 days after the last non-appealable promotion was notified.
- (6) If an officer is offered promotion to more than one office with different classifications and the officer does not make a promotion election—the promotion to the office with the highest classification takes effect and the other promotion lapses on that day.

75 Cancellation of promotion

- (1) An officer may apply in writing to the relevant chief executive to have a promotion cancelled.
- (2) The promotion will not take effect until a decision is made on the application if the chief executive receives the application—
 - (a) less than 21 days after a appealable promotion was notified; or
 - (b) less than 7 days after a non-appealable promotion was notified.

76 Officers allowed to appeal

If an appealable promotion was not advertised before the promotion of an officer, any other officer may appeal.

Part 3.8 Transfer

77 Interpretation—pt 3.8

In this part—

transfer means any movement of an officer to another office that is not a promotion.

78 Date of effect of transfers

The date of effect of a transfer of an officer is the date agreed by all relevant parties, or the later of—

- (a) the seventh day after notice of the transfer is given to the officer; or
- (b) the date of effect indicated in the notice of the transfer; or
- (c) the day the office becomes vacant; or
- (d) if the officer applies for permission to decline the transfer—the day the relevant Chief Executive notifies the officer that permission is refused.

79 Declining transfer

- (1) An officer may apply in writing to decline a transfer to an office in the same administrative unit.
- (2) An application to decline a transfer must be made in writing before the seventh day after the officer is given notice of the transfer.
- (3) If the original transfer decision was made by a delegate of the relevant chief executive, the application to decline the transfer must be made to a person with a higher office than the original decision maker.
- (4) If an application is accepted the transfer is taken not to have been made.

80 Salary on transfer

If an officer is transferred to an office with the same classification, the officer will be paid at the pay point they are paid at in their first office.

81 Reduction in classification

- (1) A chief executive may approve a reduction of an officer's classification by transfer if the officer has given written agreement to the transfer on reduction.
- (2) If an officer is transferred to an office of a lower classification on the day the transfer takes effect the officer will—
 - (a) be paid at the lowest pay point in the lower classified office; and
 - (b) receive increments in accordance with previous substantive service using the 1 year in 2 year rule; and
 - (c) receive increments in accordance with previous higher duties using the 1 year in 2 year rule.
- (3) In this section—

1 year in 2 rule for calculating a total period of service means—

 - (a) 12 months in the immediate preceding two years; or
 - (b) two years in the immediate preceding four years; or
 - (c) three years in the immediate preceding six years.

Part 3.9 Temporary transfer

81A Interpretation—pt 3.9

In this part—

temporary transfer means a transfer of an officer for a fixed period, where the officer returns to their substantive office at the end of the fixed period.

81B Appealable directions

- (1) A temporary transfer to perform duties of a higher office is appealable if—
 - (a) promotion to that office would be subject to appeal; and
 - (b) the transfer is for a period longer than 6 months, or is continuous with another transfer to the same office so that the total period of temporary transfer is longer than 6 months; and
 - (c) the transfer is to continue until a specified event; and
 - (d) the officer was not selected on the recommendation of a joint selection committee.

81C Temporary reduction of classification

A chief executive may approve a temporary reduction of an officer's classification by temporary transfer if—

- (a) the officer has given written agreement to the transfer on reduction; and
- (b) the chief executive is satisfied that the temporary reduction is in the interests of the officer's career.

81D Salary on temporary transfer

An officer who is on temporary transfer to another office under the Act, section 100 (1) will be paid the salary of the second office.

81E Skills and qualifications payments

- (1) Allowances for skills and qualifications regularly paid to an officer in their substantive office will continue to be paid to an officer on temporary transfer if—
 - (a) the officer is temporary transferred to another office in which no higher duties allowance is payable; and
 - (b) the officer would have continued to receive the allowance if they had not been transferred.
- (2) If an officer is on temporarily transfer to an office that attracts an allowance for skills and qualifications and the officer has the necessary qualification at the time they are transferred, the officer must be paid the allowance.

81F Periods when higher duties allowance is payable

- (1) An officer will be paid a higher duties allowance for the period the officer is on temporary transfer to a higher office if—
 - (a) the second office has a maximum salary at or above the minimum salary of the senior officer grade C classification; and
 - (b) the transfer is for a period of five or more consecutive working days.

Note A public holiday at the start or end of the period does not count towards the minimum number of days.
- (2) In special circumstances the Commissioner may approve payment of a higher duties allowance for temporary transfer for a period less than five consecutive days.
- (3) If a public holiday falls on a day when an officer would be eligible to be paid a higher duties allowance, the officer will be paid the allowance on that day.

Note An officer is not eligible to be paid a higher duties allowance if the public holiday is one of the 5 consecutive days required for eligibility for the payment.

81G Higher duties allowance pay points and increments

- (1) If an officer who has received a salary in their substantive office (a *substantive salary*) for less than 12 months—
 - (a) is temporarily transferred to a higher office that has a pay point equal to the officer's substantial salary, the officer will be paid—
 - (i) on the pay point equal to the officer's substantial salary until the officer's increment date in their substantial office; and
 - (ii) from that date, a higher duties allowance at the next pay point in the higher salary range; or
 - (b) is temporarily transferred to a higher office that does not have a pay point equal to the officer's substantive salary, the officer will be paid—
 - (i) a higher duties allowance on the pay point in the higher salary range that is immediately above the officer's substantive salary, until the officer's increment date in their substantial office; and
 - (ii) from that date, a higher duties allowance at the next pay point in the higher salary range if—
 - (A) the higher duties allowance being paid before that date is less than the officer's next substantive increment; or
 - (B) the officer's substantive salary only has one pay point.

- (2) If an officer who has received their substantive salary for 12 months or more is temporarily transferred to a higher office the officer will be paid—
 - (a) a higher duties allowance at the pay point in the higher salary range that is immediately above the officer's salary in their substantive office; and
 - (b) after 12 months, a higher duties allowance at the next pay point in the higher salary range.
- (3) If the officer is still on temporary transfer to the higher office 12 months after receiving an incremental increase in that office, the officer will be paid a higher duties allowance at the next pay point in the higher salary range.
- (4) If an officer is temporarily transferred to higher offices for broken or non-continuous periods the officer's increment date—
 - (a) for their first incremental increase while in a higher office is calculated in accordance with the 1 year in 2 rule; and
 - (b) for their second incremental increase while in a higher office is when the total service is two years in the immediate preceding four years.
- (5) In this section—

1 year in 2 rule for calculating a total period of service means—

 - (a) 12 months in the immediate preceding two years; or
 - (b) two years in the immediate preceding four years; or
 - (c) three years in the immediate preceding six years.

10 Section 85

substitute

85 Training offices

For the purposes of the Act, section 71 and section 98, training offices are the offices specified in division 3.10.2.

11 Sections 243, definition *Independent Reviewer*

substitute

Independent Reviewer means a person approved by the Commissioner to review and make recommendations on employment related decisions under industrial instruments.

12 Section 247A

omit

13 Section 248, definition *Executive*

omit

14 Chapters 4 to 6

substitute

Chapter 4 Conditions of employment and attendance

Part 4.1 Continuity of service

253 Interpretation—pt 4.1

In this part—

full time training means a prescribed course of full time training that meets the requirements of the *Long Service Leave (Commonwealth Employees) Act 1976* (Cwlth), section 12 (6).

officer includes an employee or a full time statutory office holder.

254 Continuity of service—general

- (1) Continuity of service with the Territory is not broken if—
- (a) a person who was engaged as an employee is engaged again and there are no working days between the periods of engagement; or
 - (b) a person who was engaged as an employee is appointed as an officer and there are no working days between the period of engagement and the period of appointment; or
 - (c) a person who was appointed as an officer is engaged as an employee and there are no working days between the period of appointment and the period of engagement.

-
- (2) Continuity of service for the purpose of calculating any entitlement affected by the length of service with the Territory includes and is not broken by—
- (a) the period between an officer being dismissed and reappointment under the Act, section 117 following the result of an appeal about the dismissal; or
 - (b) the period between an officer's resignation to contest an election and reappointment under the Act, section 118 following failure to be elected; or
 - (c) the period between an officer being retired through forfeiture of office under the Act, section 221 and reappointment following an application to the relevant chief executive under the Act, section 222.

255 Continuity of service—personal leave

Continuity of service for calculating personal leave accrual is not broken by a break in service of two months or less to undertake full time training.

256 Continuity of service—long service leave

Continuity of service for calculating long service leave accrual is not broken by—

- (a) a period of leave; or
- (b) a period of unauthorised absence of 12 months or less; or
- (c) a break in service of 12 months or less; or
- (d) a break in service to undertake full time training for a period of 12 months or less;
- (e) a break in service over 12 months if—
 - (i) the first service was with of the following—

- (A) the Territory;
 - (B) the Australian Public Service;
 - (C) a State public service;
 - (D) a State authority;
 - (E) the public service of another Territory;
 - (F) the police force of the Northern Territory;
 - (G) an authority established under a law of an external territory;
 - (H) the public service of the former Territory of Nauru;
and
- (ii) ended because of an officer's ill health; and
 - (iii) the break between being well enough to resume the duties of the office which ended due to ill health and commencing the next period of service is 12 months or less.

Part 4.2 Attendance and absence

257 Interpretation—Pt 4.2

In this part—

officer includes an employee.

258 Direction to work outside the officer's span of hours

- (1) The relevant chief executive may direct an officer to work outside the officer's span of hours if to do so would be in the interests of the administrative unit or the service as a whole.

- (2) An officer who is directed to work outside the officer's span of hours is entitled to payments relating to overtime and emergency duty.
- (3) If overtime duty commences or is completed outside the officer's span of hours, the period of a meal break is not treated as a break in overtime duty.

259 Unauthorised absences

- (1) An officer must report an absence from duty if the period of absence is more than 30 minutes and is not authorised within a reasonable time.
- (2) If an officer is absent from duty for a period of more than 30 minutes and the absence is not authorised, the relevant chief executive may make one of the following directions:
 - (a) that the absence will be without pay and will not count as service for any purpose;
 - (b) that the absence will be with pay and will count as service for all purposes;
 - (c) that the officer must make up the period of absence by working an equivalent time outside the officer's span of hours.

Note No overtime or penalty payment will be paid for the time made up.

Part 4.3 Long service leave

260 Application—pt 4.3

- (1) The Act, section 5 applies to this part.
- (2) This part does not apply to a person who is—
 - (a) a member of the ACT Legislative Assembly; or

- (b) employed under the *Legislative Assembly (Members' Staff) Act 1989*; or
- (c) temporarily transferred to employment with the Territory or whose services are temporarily loaned to the Territory by the government of the Commonwealth, a State or a Territory; or
- (d) appointed or engaged for employment outside Australia only.

261 Interpretation—pt 4.3

In this part—

category A officer means an officer whose eligible service has either been entirely part time service or entirely full time service.

category B officer means an officer whose eligible service has been both part time service and full time service.

defence employment means—

- (a) employment in the Reserve Forces or of the Citizen Forces either on a continuous full time basis or for a period fixed in accordance with the *Defence Act 1903* (Cwlth), the *Naval Defence Act 1910* (Cwlth), or the *Air Force Act 1923* (Cwlth), as in force at the relevant time; or
- (b) national service.

eligible employment means—

- (a) continuous employment by the Territory; and
- (b) continuous recognised prior service; and
Note Recognised prior service is set out in part 3.6.
- (c) a period of leave without pay to count as service (other than personal leave without pay and leave in relation to defence employment); and
- (d) excludes—

- (i) employment remunerated by fees, allowances or commission, honorarium or equivalent; and
- (ii) appointment or engagement for the sole purpose of overseas employment; and
- (iii) unauthorised absence.

minimum retiring age means—

- (a) for an officer that the Act, part 6 applies to the minimum retiring age set out in that part; or
- (b) for an officer whose minimum retiring age is fixed by their terms and conditions of employment other than under the Act, part 6 the fixed age; or
- (c) 60 years.

month may include part of a month.

officer means an officer or employee.

overtime payment means a payment of overtime made under the relevant industrial instrument.

public authority means an authority or a local governing body that was or is constituted under a law of the Territory, the Commonwealth, a State or another Territory for a public purpose

relevant day means

- (a) in relation to an officer who has been granted long service leave, the day immediately before the day that leave commences; and
- (b) in relation to an officer who receives a payment in lieu of long service leave, the day immediately before the day they cease to be an officer.

relevant rate per hour means the rate per hour that salary would be payable to the officer at on the relevant day.

shift penalty means a payment for shift workers made under the relevant industrial instrument.

Territory includes a Territory instrumentality or statutory office.

year may include part of a year.

262 Purpose—long service leave

Long service leave is available to officers to enable them to be absent from duty in recognition of their length of service in the public sector.

Note Historically and in other jurisdictions long service leave may have been, or be, known by other names, including long leave, furlough or extended leave.

263 Eligibility—long service leave

Long service leave is available to officers.

264 Entitlement—long service leave

- (1) An officer may be granted long service leave up to their available credit from the day they have completed seven years of eligible employment.
- (2) Long service leave is cumulative and there is no limit on the long service leave balance an officer may accrue.
- (3) Long service leave is measured in months.
- (4) For a category A officer who works full time long service leave accrues at a rate of three months for every 10 years of service.

Note After seven years a category A officer who works full time will have a long service leave credit of 2.1 months.

- (5) For a category A officer who works part time, or a category B officer long service leave will accrue on a pro rata basis.

- (6) For officers who will return to service following completion of their long service leave—
- (a) their long service leave credit is calculated based on completed years of eligible employment; and
 - (b) the *calculation day* is the day after the last day of the last completed year of eligible employment.
- (7) For officers who will not return to service following completion of their long service leave—
- (a) their long service leave credit is calculated based on completed months of eligible employment; and
 - (b) the *calculation day* is the day after the last day of the last completed month of eligible employment.
- (8) The long service leave credit of a category A officer is calculated according to the formula—

$$\frac{3a}{10} - b$$

where—

a is the number of years of eligible employment accrued before the calculation day; and

b is the aggregate number of months of long service leave previously granted to the officer at any time during their eligible employment.

- (9) The long service leave credit of a category B officer is calculated according to the formula—

$$\left(\frac{3c}{10} - d \right) + \left(\frac{3e}{10} - f \right)$$

where—

c is the aggregate number of years of eligible employment in a full time capacity before the calculation day; and

d is the aggregate number of months of long service leave previously granted to the officer in relation to the officer's full time employment at any time during their eligible employment; and

e is the aggregate number of years of eligible employment in a part time capacity before the calculation day; and

f is the aggregate number of months of long service leave previously granted to the officer in relation to his or her part time employment at any time during their eligible employment.

- (10) For calculating an officer's long service leave credit, if the long service leave previously granted to an officer during a period of eligible employment under any Act repealed by the *Long Service Leave (Commonwealth Employees) Act 1976* (Cwlth) or under the *Public Service Act 1922* (Cwlth) was not granted on full salary or half salary, that period of long service leave is taken to have been on full salary.
- (11) For calculating an officer's long service leave credit, if during a period of eligible employment an officer received a payment in lieu of long service leave, or an equivalent type of leave, in the ACTPS or another jurisdiction, the officer is taken to have been granted a period of long service leave equal to the period of long service leave that payment was made for.
- (12) If on the day an officer's long service leave is calculated he or she is concurrently employed in other eligible employment, the other employment does not count as eligible employment for the period that it was concurrent with employment by the Territory.
- (13) Eligible part time employment that is or was concurrent with eligible full time employment does not count as eligible employment.

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- (14) If an officer is or was concurrently employed by the Territory in two offices both of which were in a part time capacity, on a day when the officer works in both offices his or her period of employment on that day will be the sum of both periods.

265 Evidence and conditions—long service leave

- (1) An officer should discuss with the relevant chief executive as soon as practicable their intention to be absent on long service leave.
- (2) An officer must make an application to the relevant chief executive to access their long service leave entitlement.
- (3) Having considered the requirements of this section the relevant chief executive may approve an officer's application to access long service leave.
- (4) The relevant chief executive may grant long service leave to an eligible category A officer up to the officer's available credit.
- (5) The relevant chief executive may grant long service leave to an eligible category B officer for one or more of the following:
- (a) a period not exceeding the officer's long service leave credit accrued while working full time;
 - (b) a period not exceeding the officer's long service leave credit accrued while working part time.
- (6) Subject to the rules for category A and category B officers—
- (a) subject to operational requirements, long service leave may be granted at half salary, full salary or double salary with credits to be deducted on the same basis; and
 - (b) the minimum period of long service leave an officer may request is seven days or seven shifts.
- (7) If the relevant chief executive does not approve an application by an officer for long service leave because of operational requirements

the relevant chief executive must consult with the officer to determine a mutually convenient alternative time (or times) for the officer to take the leave.

266 Rate of payment—long service leave

(1) In this section—

current rate of salary means the salary an officer received on the relevant day.

(2) The prescribed average number of hours for a category A officer is the greater of—

- (a) the officer's average number of hours of employment per week during the 12 months of eligible employment ending on the relevant day; or
- (b) the officer's average number of hours of employment per week during the entire period of their eligible employment.

(3) The prescribed average number of hours for a category B officer is the greater of—

- (a) the officer's average number of hours of employment per week during—
 - (i) the 12 months (or the periods aggregating 12 months) that the officer was last employed in a part time capacity before the relevant day; or
 - (ii) if the officer has less than 12 months of eligible employment in a part time capacity, the period or periods when the officer has been employed in a part time capacity; or
- (b) the officer's average number of hours of employment per week during the entire period of their eligible employment.

- (4) When determining an officer's prescribed average number of hours under subsections (2) or (3) the hours will be taken to be the hours calculated under (2)(a) or (3)(a) unless the officer demonstrates that the hours under subsection (2)(b) or (3)(b) are greater.
- (5) A category A officer will receive the current rate of salary or relevant rate per week on the relevant day in relation to any part of long service leave they are granted if—
- (a) the officer's eligible employment has been in a full time capacity; or
 - (b) in a part time capacity with no change in their ordinary hours.
- (6) If a category A officer's eligible employment has been in a part time capacity and there has been a change during that period in their ordinary hours the salary payable to the officer in relation to any part of long service leave they are granted is calculated by multiplying—
- (a) the relevant rate per hour for that part of the long service leave; and
 - (b) the prescribed average number of hours.
- (7) If a category B officer is employed in a full time capacity on the relevant day the salary payable to the officer in relation to any part of leave that is granted—
- (a) in relation to eligible employment at a full time capacity is at their current rate of salary on the relevant day; and
 - (b) in relation to eligible employment in a part time capacity is at a weekly rate at the lower of—
 - (i) the officer's current rate of salary per week in relation to that part of the leave; or
 - (ii) in accordance with the formula

$$\frac{ab}{c}$$

where—

a is the officer's current rate of salary per week in relation to that part of the leave; and

b is the prescribed average number of hours of the officer's employment; and

c is the officer's number of hours of employment per week the officer worked on the relevant day.

- (8) If a category B officer is employed in a part time capacity on the relevant day the salary payable to the officer in relation to any part of leave that is granted—
- (a) in relation to eligible employment at a full time capacity is at the rate of salary that would be payable to the officer in relation to that part of the leave if the officer was working full time on the relevant day; and
 - (b) in relation to eligible employment at a part time capacity is at the rate per week is calculated by multiplying—
 - (i) the relevant rate per hour for that part of the long service leave; and
 - (ii) the prescribed average number of hours.
- (9) Salary for long service leave includes an allowance payable to an officer—
- (a) because they are required to perform their duties in a particular district in Australia if—
 - (i) the officer remains in a district for which the allowance is payable during their long service leave; or

- (ii) if the officer is part of a domestic partnership, their family remains in the district during any part of their long service leave when the officer is absent from that district; and
 - (b) for the supply and maintenance by the officer of tools and equipment ordinarily required by them to perform the duties of their work.
- (10) Salary for long service leave does not include—
 - (a) shift penalty payments; or
 - (b) overtime payments; or
 - (c) payments in the nature of a restriction, or on-call allowance.

267 Effect of other entitlements—long service leave

- (1) Long service leave will count as service for all purposes.
- (2) When applying for long service leave an officer must seek approval if they propose to engage in outside employment during the leave.

268 Access to other entitlements—long service leave

- (1) Public holidays and weekends that fall during periods of absence on long service leave are deducted from the officer's long service leave balance.
- (2) An officer who is ill or injured or cares for a member of the officer's immediate family or household who is sick, for one day or more while on long service leave and who produces a certificate from a registered health professional who is operating within their scope of practice may apply for personal leave.
- (3) If personal leave is granted to the officer, long service leave will be re-credited for the period of personal leave granted.

- (4) An officer may be granted long service leave during a period they would be eligible to be granted—
 - (a) unpaid maternity leave; or
 - (b) unpaid parental leave; or
 - (c) grandparental leave; or
 - (d) community service leave for voluntary community service
- (5) An officer who is prevented from attending for duty under the *Public Health Act 1997*, part 6 may be granted long service leave during that period.

Part 4.4 Reimbursements

269 Interpretation—pt4.4

In this part—

life insurance policy—see definition of life policy in the *Life Insurance Act 1995* (Cwlth), section 9.

loading means a payment additional to a normal insurance premium.

officer includes an employee.

270 Life insurance indemnification payments

- (1) If an officer pays a premium for a life insurance policy on their life that includes a loading because of the officer's occupation, the relevant chief executive may reimburse the officer an amount equal to that loading.
- (2) The beneficiary of an insurance policy or the legal personal representatives of an officer's estate may be indemnified where a personal life insurance policy held by an officer is invalidated, or otherwise made inoperative, on death as a direct result of their

ACTPS employment or the circumstances in which the officer worked.

271 Loss or damage to clothing or personal effects

- (1) The relevant chief executive may reimburse an officer for the loss or damage of the officer's clothing or personal effects if—
 - (a) the relevant chief executive accepts that the loss or damage is caused by the officer's employment; and
 - (b) the officer is not entitled to recover the amount of the loss or damage sustained under a contract of insurance.
- (2) The officer must reimburse the Territory an amount paid under subsection (1) if—
 - (a) the officer was reimbursed under this section; and
 - (b) subsequently recovers damages equal to or greater than the amount paid by the Territory for the loss or damage from another source.

Part 4.5 Additional requirements for salary and allowances

Note The requirements in this part are additional to the requirements provided under industrial instruments, and should be read in conjunction to the relevant industrial instrument, especially an ACTPS Enterprise Agreement which applies to the officer or employee. Some matters in this part may be subordinate to the requirements of a relevant industrial instrument.

272 Salary deductions

An officer or employee may, in writing, authorise deductions from their salary.

273 Salary for unattached officers

- (1) An unattached officer will be paid salary at the rate of the classification of the office they held before unattachment.
- (2) However, the Commissioner may determine a rate of salary of an unattached excess officer that is not the rate of the classification of the office they held before unattachment.

274 Salary on reclassification

- (1) If under a decision or industrial instrument of a Federal Industrial Tribunal or a process established under such a decision or industrial instrument, an officer is eligible for back-pay in respect of a period, the Commissioner may approve the payment to the officer of that back-pay.
- (2) In this section—

back-pay means the difference between—

 - (a) the remuneration paid to the officer during a period; and
 - (b) the remuneration the officer is eligible for under the relevant decision or award of the Federal Industrial Tribunal.

275 Skills and qualifications allowance payment while on leave

- (1) Allowances for skills and qualifications are included in salary for paid leave.
- (2) Allowances for skills and qualifications for paid leave not granted at full pay will be paid on a pro rata basis.

276 First aid allowance for an officer with certain qualifications

- (1) An allowance may be paid to an officer as if they hold a Level 3 or equivalent award if the officer—

- (a) holds a Certificate of General Nursing issued by a nurses registration authority; or
- (b) is included on a nursing register and is not working full-time as a nurse; or
- (c) holds a Medical Trade Certificate issued by the Australian Defence Force.

277 Calculation of salary for Sunday or public holiday duty

- (1) An allowance that is treated as part of salary under a relevant industrial instrument must be included when calculating the hourly rate for Sunday or public holiday duty.
- (2) If an officer or employee works on a public holiday the minimum payment is—
 - (a) four hours for duty which is not continuous with duty performed the day before or after; or
 - (b) four hours at public holiday salary rates for duty performed continuously over two consecutive days where all or part of the consecutive days includes a public holiday.
- (3) The period of a meal break must not be treated as a break in Sunday or public holiday duty.

Part 4.6 Additional requirements for increments

Note The requirements in this part are additional to the requirements provided under industrial instruments, and should be read in conjunction to the relevant industrial instrument, especially an ACTPS Enterprise Agreement which applies to the officer or employee. Some matters in this part may be subordinate to the requirements of a relevant industrial instrument.

278 Deferral of increments—effect of leave without pay not to count as service

- (1) If an officer or employee takes leave that does not count as service which aggregates to one or more working months in a calendar year, then the date on which an increment falls due is deferred by one month for each completed month of absence or each completed month of aggregated absences.

- (2) In this section—

one working month means 30 calendar days.

Note 30 calendar days is equivalent to 22 working days based on a 5 day working week.

Part 4.7 Additional requirements for managing overtime duty

Note The requirements in this part are additional to the requirements provided under industrial instruments, and should be read in conjunction to the relevant industrial instrument, especially an ACTPS Enterprise Agreement which applies to the officer or employee. Some matters in this part may be subordinate to the requirements of a relevant industrial instrument.

279 Application—pt 4.7

This part applies to officers and employees who are required or requested to work reasonable additional hours of duty, subject to the payment for overtime in accordance with an industrial instrument, and the reasonable additional hours provisions of the *Fair Work Act 2009* (Cwlth).

280 Interpretation—pt 4.7

In this part—

additional hours of duty means overtime duty that is performed in excess of an officer's ordinary hours of work that commence or are completed outside the officer's agreed span of hours.

officer includes an employee.

overtime means a period of duty that an officer performs in accordance with a direction of a chief executive, in addition to the officer's ordinary hours of work or otherwise agreed span of hours, less the period, if any, for which the officer has been released from duty in lieu of payment for overtime.

281 Eligibility for paid meal breaks

An officer who is required to perform additional hours of duty is entitled to be paid for the meal break if the relevant chief executive is satisfied the officer cannot reasonably be expected to return home for a meal in the time allocated for the meal break.

282 Time spent travelling to and from overtime duty

Time spent in travelling to or from work must not be taken into account for calculating overtime payments unless—

- (a) officers are required by the relevant chief executive to drive, on official business and outside their normal hours of duty, an agency vehicle or their private motor vehicle; or
- (b) the travel is associated with emergency duty; or
- (c) excess travelling time is applicable under an industrial instrument.

283 Weekend and shift overtime duty

- (1) Payment must be made at the overtime rate relevant to the particular day on which it is worked unless it extends past midnight on a Sunday, when Sunday overtime rate must be applied until ceasing overtime on Monday.

- (2) If overtime extends beyond the time at which the officer would have commenced their rostered shift on Monday, the prescribed rate must change to the normal Monday rate starting from when the rostered Monday shift was due to commence.
- (3) Payment must be made at the overtime rate relevant to the particular day on which it is worked unless it extends past midnight on a public holiday, when public holiday overtime rate must be applied until ceasing overtime on the following day.
- (4) If overtime extends beyond the time at which the officer would have commenced their rostered shift on the following day, the prescribed rate must change to the normal rate for that day starting from when the rostered Monday shift was due to commence.
- (5) If overtime duty extends beyond Friday midnight, minimum Saturday overtime duty requirements continue to apply before a higher rate of penalty is payable.
- (6) Midnight does not break the continuity of an overtime attendance for the purposes of any minimum payment provisions.

Example

Three hours overtime must actually be worked, after midnight, on the Saturday (at time and a half) before a higher penalty rate (double time) can be applied.

- (7) If overtime (other than a full overtime shift) is being worked when clocks are adjusted from standard time to daylight saving time, or *vice versa*, payment must be made for the time actually worked, not clock time.

284 Overtime on a public holiday

- (1) If an officer works ordinary duty and overtime duty on a public holiday in one attendance, the minimum payment provisions must not be applied separately to the hours of ordinary duty and overtime duty.

- (2) In applying the minimum payment provisions, the period of duty worked must be taken as a whole, and payment based on the greater of either four hours or the hours of duty for that day if it had not been a public holiday.
- (3) For part-time officers, the minimum overtime payment for each separate attendance on a public holiday is the lesser of either four hours or the ordinary hours of duty for that day if it had not been a public holiday.

Part 4.8 Additional requirements for leave

Note The requirements in this part are additional to the requirements provided under industrial instruments, and should be read in conjunction to the relevant industrial instrument, especially an ACTPS Enterprise Agreement which applies to the officer. Some matters in this part may be subordinate to the requirements of a relevant industrial instrument.

285 Interpretation—pt 4.7

In this part—

medical officer means a legally registered medical practitioner engaged to conduct medical examinations on behalf of the ACTPS, including examinations in connection with fitness for continued duty.

officer includes an employee.

286 Officer's health a danger to others—personal leave

- (1) If a chief executive determines that an officer is in a state of health that makes them a danger to others the chief executive may require the officer to get and provide a report of their condition from a medical officer.
- (2) Having regard to the medical report, the chief executive may require the officer to take personal leave.

287 Non-continuous primary care givers' leave

A chief executive may approve an officer taking primary care givers' leave in a non-continuous manner, until the officer has exhausted their paid primary care givers' leave credit, so long as annual leave or long service leave is not approved in between period of primary care givers' leave.

Chapter 5 Redeployment, retirement and cessation of employment

Part 5.1 Redeployment

Note Terms used in this Part have the same meaning as in the Act, section 139, see Legislation Act, s 148.

Division 5.1.1 Office unable to perform duties of classification—physical or mental incapacity

288 Interpretation—div 5.1.1

In this division—

approved medical practitioner means a legally registered medical practitioner or registered medical specialist (other than a treating doctor) selected by the relevant chief executive for the purpose of providing advice on an officer's medical condition.

approved rehabilitation provider means a provider of rehabilitation services who is registered by COMCARE as an approved provider under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth).

case manager means an officer nominated by the relevant chief executive to be responsible for monitoring a compensation case if an

officer is or is likely to be, absent from work due to injury or illness for an extended period of time, or requires rehabilitation or support to return to work.

case summary (non-compensation cases) means a record detailing an officer's medical condition and action taken by management to return, retrain and/or rehabilitate the officer to achieve a return to work for officers with a non-compensable injury or illness.

COMCARE means the organisation established under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), section 68. A reference to COMCARE includes a reference to an officer or employee authorised by COMCARE for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth).

compensation case means a case where the injury or illness is the subject of a compensation claim for which liability has been accepted under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth).

Comsuper means the Commonwealth Superannuation Administration.

health assessment means independent advice of an officer's fitness for continued duty, taking account of all previous medical, and other advice relating to the officer's condition.

independent advice means advice relating to an officer's medical condition obtained from a medical officer or an approved medical practitioner who is not providing treatment to the officer.

medical officer means a legally registered medical practitioner engaged to conduct medical examinations on behalf of the ACTPS, including examinations in connection with fitness for continued duty.

registered medical practitioner means a person registered, or licensed as a medical practitioner under a law of a state or territory

that provides for the registration or licensing of medical practitioners.

registered medical specialist means a registered medical practitioner who is approved by Health Services Australia, on behalf of the ACTPS, to provide independent specialist medical advice on an officer's medical condition.

rehabilitation assessment means an assessment of an officer's capability to undertake a rehabilitation program.

Return to Work Program (compensation cases) means an agreed plan of action established under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), section 40 detailing all the processes involved in returning an officer with a compensable condition to work.

SRC Act (Commonwealth) means the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), formerly the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* (Cwlth).

the Board means the Commonwealth Superannuation Board of Trustees No 1, established under the *Superannuation Act 1990* (Cwlth) or the Commonwealth Superannuation Board of Trustees No 2 established under the *Superannuation Act 1976*.

totally and permanently incapacitated in relation to an officer, means that the officer is unlikely ever to be able to work again in a job for which the officer is reasonably qualified by education, training or experience or for which the officer could reasonably be qualified after retraining.

treating doctor means a legally registered medical practitioner chosen by an officer for the purposes of treatment of a medical condition of the officer.

289 Case summary—non-compensation cases

The relevant chief executive must prepare, or arrange for a supervisor to prepare, a case summary in the case of an officer not claiming compensation or where liability for a claim has not been accepted, if—

- (a) the officer has been absent from duty for a period of four weeks and is likely to be absent for more than 13 weeks; or
- (b) the officer has been absent from duty for a period of 13 weeks; or
- (c) it appears that the officer will be absent indefinitely and it is unclear whether they will be able to return to their former office.

290 Health assessment—non-compensation cases

- (1) A health assessment will be paid for by the administrative unit in which an officer is working at the time the injury is sustained or the illness is diagnosed.
- (2) The grant of further personal leave will be subject to the outcome of this medical examination.
- (3) A health assessment must be conducted by—
 - (a) an approved medical practitioner; or
 - (b) a medical officer; or
 - (c) a registered medical specialist; and
 - (d) not by the treating doctor.
- (4) A reasonable time before an officer is to be examined as part of a health assessment, the relevant chief executive must advise the officer, in writing of—
 - (a) the time and place of the examination; and

- (b) the purpose of the examination; and
 - (c) the relevant provisions of the *Health Records (Privacy and Access) Act 1997* relating to confidentiality of medical information and the officer's right to have access to any information provided to the person conducting the health assessment; and
 - (d) the officer's right to submit supporting material for consideration by the person conducting the health assessment.
- (5) On receipt of a health assessment, the chief executive must provide a copy of the assessment report to the officer as soon as possible, subject to the rules on handling sensitive medical information.

291 Implementation of health assessment report—non-compensation cases

If, as a result of a health assessment report, the relevant chief executive considers an officer is fit for their normal duties, they must—

- (a) notify the officer in writing of the decision; and
- (b) advise the officer they have 14 days to dispute the decision; and
- (c) advise the officer that if they do not wish to dispute the decision, they must return to duty no later than 14 days after the date of the chief executive's written notification.

292 Disputing the fitness for duty decision—non-compensation cases

- (1) An officer may dispute the decision by the relevant chief executive that they are fit for duty on the basis of new or more detailed medical evidence that they are not fit for duty.

- (2) The officer must provide any new or more detailed medical evidence within 14 days after the date of the chief executive's written notification.
- (3) If at any stage it appears the officer is unable or unwilling to produce the required new evidence, the relevant chief executive must direct the officer to return to duty immediately.
- (4) If the relevant chief executive considers that new or more detailed evidence has been provided, they should grant the officer further personal leave and refer the matter to a medical review panel.

293 Medical review panels—non-compensation cases

- (1) If there is disputed medical evidence, a relevant chief executive may arrange an independent medical panel to review the officer's condition and make recommendations as to the officer's fitness for duty.
- (2) A panel's report to the chief executive must be taken as the definitive opinion on the medical condition of the officer.
- (3) The composition of the independent medical panel must be—
 - (a) a medical officer as the chairperson; and
 - (b) an appropriate medical specialist; and
 - (c) a registered medical practitioner or specialist nominated by the officer whose case is being considered.
- (4) With the exception of the officer's nominee, no member of the panel should have had any previous involvement in the case.
- (5) The relevant chief executive must advise the officer, in writing, of the establishment and composition of the panel.
- (6) The chief executive must also advise the officer that they have the opportunity to present written evidence to the medical review panel.

- (7) A review panel must submit a written report to the chief executive, signed by all members of the panel.
- (8) A member of the panel may also submit a separate report.
- (9) If the members of the panel disagree, the majority view is taken to be the view of the panel regarding the case.
- (10) The relevant chief executive must advise the officer of their decision in light of the review panel's findings and recommendations.
- (11) If a chief executive decides that an officer is fit to resume duty on the basis of a recommendation from the medical review panel, they must—
 - (a) direct the officer to return to work; and
 - (b) refer any further medical certificates in relation to the injury or illness to a senior medical officer for advice on their acceptability.
- (12) If an officer does not comply with a direction to return to work, the relevant chief executive must immediately commence forfeiture of office procedures against the officer.
- (13) If the relevant chief executive decides that the officer is not fit to resume duty on the basis of a recommendation from the medical review panel, they should proceed with action detailed in part 5.2.
- (14) An officer must cooperate with all actions taken by the relevant chief executive to place them in a suitable office.

Division 5.1.2 Officer not qualified to perform duties

294 Notifying loss of qualification

An officer must notify the relevant Chief Executive if they lose an essential qualification.

295 Voluntary redeployment

- (1) An officer may consent in writing to being redeployed before the relevant chief executive takes formal steps under the Act, section 143.
- (2) The relevant chief executive must provide a statement of reasons and explain that if an officer consents to redeployment, they will not be able to appeal against the redeployment.

Part 5.2 Retirement of officer from Service

Note Terms used in this Part have the same meaning as in the Act, section 139, see Legislation Act, s 148.

296 Application—pt 5.2

- (1) This section applies to an officer if the relevant chief executive for the office is satisfied on reasonable grounds that the officer—
 - (a) is unable to perform duties appropriate to the officer's classification, because of physical or mental incapacity; or
 - (b) is not qualified to perform the officer's duties; or
 - (c) is an excess officer.

297 Voluntary retirement

- (1) An officer may consent in writing to being retired before the relevant chief executive takes formal steps under the Act, section 143.
- (2) The relevant chief executive must provide a statement of reasons and explain that if an officer consents to retirement, they will not be able to appeal against the retirement.

298 Notice of retirement

A notice of retirement of an officer must—

- (a) provide a statement of the reasons for the notice; and
- (b) indicate the officer's right of appeal, unless the officer has given prior written consent to the retirement.

Part 5.3 Underperformance

Note Terms used in this Part have the same meaning as in the Act, section 139, see Legislation Act, s 148.

Note 2 The procedures that apply to underperformance by an officer are—

- (a) if an industrial instrument applies to the officer and includes procedures for underperformance—the underperformance procedures in the industrial instrument; or
- (b) in any other case the procedures approved by the Commissioner.

299 Voluntary retirement

- (1) An officer may consent in writing to being retired before the relevant chief executive takes formal steps under underperformance procedures.
- (2) The relevant chief executive must provide a statement of reasons and explain that if an officer consents to retirement, they will not be able to appeal against the retirement.

300 Notice of retirement

A notice of retirement of an officer must—

- (a) provide a statement of the reasons for the notice; and
- (b) indicate the officer's right of appeal, unless the officer has given prior written consent to the retirement.

Part 5.4 Termination of probationary appointment

301 Application—pt 5.4

This part applies to an officer appointed on probation if their appointment is not yet confirmed.

302 Termination of probationary appointment

- (1) The relevant chief executive must give an officer on probation the opportunity to state their case before making a termination decision.
- (2) If the relevant chief executive decides to terminate an appointment, they must—
 - (a) notify the officer of the decision, the reason for it and the date of effect of the decision;
 - (b) issue and sign a formal instrument of termination that states the name and classification of the officer, the date of termination and the office details.
- (3) Decisions made under this section are non-appealable.

Part 5.5 Payment in lieu of entitlements on cessation of employment or death

303 Interpretation—pt 5.5

In this part—

dependant includes—

- (a) a surviving domestic partner; and
- (b) a former domestic partner; and

- (c) a child under 18 of the deceased officer; and
- (d) any person who is financially dependent on the deceased officer at the time of the officer's death, or at the time of the payment of the death benefit; and
- (e) any person with whom the deceased has an interdependency relationship.

officer includes an employee or a full time statutory office holder.

relevant day means the day immediately before the day an officer ceased to be an officer.

304 Payment in lieu of annual leave—cessation of employment

- (1) An officer who is eligible to be granted annual leave who ceases employment for a reason other than death will be paid as if they had taken their full annual leave credit at full pay on the relevant day.
- (2) If an officer resigns in order to accept a job with an organisation which will accept their annual leave credits, they are not entitled to a payment in lieu of annual leave.

305 Payment in lieu of annual leave loading—cessation of employment

- (1) An officer who is eligible to be granted annual leave who ceases employment for a reason other than death will be paid any accrued annual leave loading on a pro rata basis on the relevant day.
- (2) Payment in lieu of annual leave loading will be paid at the rate the officer was paid on—
 - (a) 1 January of the year the annual leave loading accrued; or
 - (b) if the officer was not employed on 1 January of the year the annual leave loading accrued, at the rate the officer was paid on the day their employment commenced.

306 Payment in lieu of annual leave—death

- (1) This section applies in relation to an officer who has died, or who is considered by the relevant chief executive to have died.
- (2) The relevant chief executive may authorise payment of the amount that would have been authorised to be paid in accordance with this section if an officer had ceased to be an officer other than by death to—
 - (a) a dependant of the officer; or
 - (b) two or more dependants of the officer; and
 - (c) where a dependant of the officer is under a legal disability—
 - (i) a trustee for the benefit of the dependant; or
 - (ii) the legal personal representative of the officer.
- (3) If the officer has two or more dependants the relevant chief executive must consider the respective losses suffered by those dependants as a result of the loss of earnings.
- (4) The amount payable under this section in relation to the officer's death must not be paid if the officer had no next of kin.

307 Payment in lieu of long service leave—cessation of employment

- (1) In this section—

category B officer means an officer whose eligible service has been both full time and part time service.

relevant day means—

 - (a) for an officer who has been granted long service leave, the day immediately before the day that leave commences; and

- (b) for an officer who receives a payment in lieu of long service leave, the day immediately before the day they cease to be an officer.
- (2) An officer who is eligible to be granted long service leave, who ceases to be an officer for a reason other than death will be paid at their full rate of pay as if they had taken their entire long service leave credit on the relevant day.
 - (3) An officer with between one and seven years of service for the purpose of accruing their long service leave entitlement—
 - (a) who will cease to be an officer—
 - (i) on or after attaining the minimum retirement age; or
 - (ii) on his or her redundancy; or
 - (iii) due to ill health which the relevant chief executive is satisfied is the reason for ceasing employment
 - (b) may elect to—
 - (i) be paid an amount equal to the salary they would have received had they taken long service leave on the relevant day; or
 - (ii) be granted long service leave up to their available credits so that the long service leave ends immediately before they cease to be an officer.
- Note* A category B officer may choose the order in which they are granted their full time and part time credits.
- (4) If an officer who is eligible to receive payment or pro rata payment in lieu of long service leave requests in writing not to receive the payment, or to receive a lesser amount, that request must be approved.
 - (5) An officer is not eligible to receive payment or pro rata payment in lieu of long service leave if their employment with the ACTPS

ceases because they resign for the purpose of being appointed to the APS under mobility provisions.

- (6) A payment or pro rata payment in lieu of long service leave is paid—
- (a) if the officer was employed in the same capacities on the relevant day and the day immediately before the relevant day—at the officer's full rate of pay on the relevant day; or
 - (b) if the officer is employed in different capacities on the relevant day and on the day immediately before the relevant day—at the officer's full rate of pay on the day immediately before the relevant day.
- (7) Payment in lieu of long service leave that must include an amount in respect of a higher duties allowance, if—
- (a) the officer has performed the duties of an office with a higher classification than their substantive office for a continuous period of 12 months or ending on the relevant day; or
 - (b) immediately before the person ceased to be an officer, the officer had performed the duties of two or more offices with a higher classification than their substantive office for periods that were continuous with one another aggregating 12 months or more.
- (8) Payment in lieu of long service leave which includes an amount in respect of higher duties allowance is paid at the lowest rate at which higher duties allowance was paid to the officer during that period of higher duties.

308 Payment in lieu of long service leave—death

- (1) In this section
- dependant* includes—
- (a) a surviving domestic partner; and

- (b) a former domestic partner; and
- (c) a child under 18 of the deceased officer; and
- (d) any person who is financially dependent on the deceased officer at the time of the officer's death, or at the time of the payment of the death benefit; and
- (e) any person with whom the deceased has an interdependency relationship.

minor means a person under the age of eighteen years.

relevant day means—

- (a) in relation to an officer who has been granted long service leave, the day immediately before the day that leave commences; and
 - (b) in relation to an officer who receives a payment in lieu of long service leave, the day immediately before the day they cease to be an officer.
- (2) After consideration of all the circumstances, the relevant chief executive may direct that the death of an officer is to be presumed to have occurred on a specified date (**presumed death**).
 - (3) If an officer who is eligible to be granted long service leave or to receive a payment or pro rata payment in lieu of long service leave dies, an amount equal to the salary they would have received had they taken or received a pro rata payment in lieu of long service leave immediately before they died will be paid to their dependant, or divided between two or more dependants.
 - (4) If there are two or more dependants of a deceased officer, the relevant chief executive will have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the officer.

-
- (5) If a person dependent upon a deceased officer is a minor, or person under a legal disability, the money must be held in the Public Trustee's Common Fund where it will be invested, in accordance with the "Prudent Person Investment Principle" in the *Trustee Act 1925*, on behalf of the dependant and the amount is to be taken to have been paid to the person.
 - (6) If money is to be paid and the dependants are incapable of managing their own affairs, the relevant chief executive should authorise payment either to a public trustee or other official with authority to receive payment, or appoint either one or preferably two trustees to whom the payment will be made.
 - (7) If an officer dies and payment has not been made to a dependant of the officer the relevant chief executive must authorise payment of an amount payable to the dependants to the legal personal representative of the officer within 12 months of the death or presumed death of the officer.
 - (8) If an officer with no dependants and no legal personal representative dies intestate the amount is payable to the Territory.
 - (9) Payment in lieu of long service leave that must include an amount in respect of higher duties allowance, if—
 - (a) the officer has performed the duties of an office with a higher classification than their substantive office for a continuous period of 12 months or ending on the relevant day; or
 - (b) immediately before the person ceased to be an officer, the officer had performed the duties of two or more offices with a higher classification than their substantive office for periods that were continuous with one another aggregating 12 months or more.
 - (10) Payment in lieu of long service leave which includes an amount in respect of higher duties allowance is paid at the lowest rate at which

higher duties allowance was paid to the officer during the period of higher duties.

309 Payment in lieu of long service leave—members of the teaching service

(1) In this section—

prescribed teacher A means a member of the service who became a member after 13 September 1973 and before 1 January 1974 and was, immediately before becoming such a member—

- (a) employed in the teaching service of New South Wales and engaged in teaching duties in a Territory school in the ACT; or
- (b) employed in the teaching service of South Australia and engaged in teaching duties in a Territory school in the Northern Territory; or

prescribed teacher B means a member of the service who became a member after 31 December 1976 and before 1 April 1977 and was, immediately before becoming such a member, employed in the teaching service of New South Wales and engaged in full time teaching duties in the ACT in relation to the provision of technical and further education, provided by way of a course of instruction or training—

- (a) that is, or that is preparatory to, a course of a kind relevant to a trade, technical or other skilled occupation; or
- (b) that otherwise meets the educational needs of people who are not enrolled in a full time course of education at a primary school, a secondary school or a secondary college.

relevant date means in relation to a prescribed teacher A 1 January 1974 and in relation to the definition of prescribed teacher B 1 April 1977.

relevant State means the State in the teaching service of which a prescribed teacher was employed immediately before becoming a member of the service.

service means the Australian Capital Territory Teaching Service established by the *Teaching Service Act 1972*.

- (2) If the payment in lieu of long service leave on cessation of employment that a prescribed teacher would ordinarily be entitled to under section 307 is less than the long service leave entitlement the teacher would be entitled to if the scale of accrual of long service leave that applied to the teacher under the law of the relevant State on the relevant date if the teacher had continued to be employed in the teaching service of the relevant State the long service leave entitlement to which he or she is entitled will be determined in accordance with the former scale of accrual.
- (3) If a prescribed teacher ceases their employment with the ACTPS because they resign for the purpose of being appointed to the APS under mobility provisions, they are eligible to be paid the difference between the payment under section 307 and the entitlement they would be entitled to in accordance with the former scale of accrual less the long service leave entitlement to which he or she would be entitled in accordance with this part for the equivalent period of service.

15 Section 519

substitute

519 Application—pt 7.1

- (1) This part applies to officers and employees who travel for official purposes.

- (2) Officers and employees who travel for official purposes must follow Agency Travel Guidelines made under this part.

Note This part and Agency Travel Guidelines made under this part may be subject to industrial instruments.

16 Section 520, definition of *official travellers*

omit

17 Section 520, new definition of *traveller*

insert

traveller means an officer or employee who is travelling away from their normal place of work for official purposes.

18 Section 527, note

omit

19 Section 537 (1)

After

Authorised

omit

official

20 New sections 539A and 539B

insert

539A Application—pt 7.2

This part applies to officers and employees.

539B Interpretation—pt 7.2

In this part—

officer includes an employee.

21 Section 540 (3) and (4)

omit

ACTPS employee

substitute

officer

22 Part 7.3

omit

23 Section 557

omit

24 Section 575

substitute

575 Application—pt 8.2

This part applies to officers or employees who perform work for the ACT Board of Senior Secondary Studies under the *Board of Senior Secondary Studies Act 1997*, section 5.

25 Section 579 definition *organisation registered under the Workplace Relations Act 1996*

omit

26 Section 582 (3)

omit

an organisation registered under the Workplace relations Act 1996 (Cwth)

substitute

a relevant union

27 Section 584 (6)

omit

staff organisation

substitute

union

28 Part 8.5

substitute

Part 8.5 Rental for ACTPS housing

589 Application—pt 8.5

An officer or an employee of the ACTPS who lives in an ACTPS dwelling must pay rental contributions in accordance with this Part, unless specifically excluded.

590 Interpretation—pt 8.5

In this part—

ACTPS dwelling means a house, townhouse, home unit or flat owned or occupied by the ACTPS.

reasonable travelling distance means a distance of up to 30 kilometres measured from the urban boundary.

591 Rental contribution

An officer who lives in an ACTPS dwelling must pay a rental contribution (towards his or her accommodation) from their salary.

592 Calculation of rental contribution

- (1) An officer must pay a rental contribution determined by their salary, as specified in table 594, column 1; and
 - (a) if the officer has no dependents, the amount of rental contribution is as listed in table 594, column 2; or
 - (b) if the officer is accompanied by dependents, the amount of rental contribution is as listed in table 594, column 3; or
 - (c) if the officer has dependents but is unaccompanied, the amount of rental contribution is the amount listed in table 594, column 2 (two-thirds of the amount listed in column 3).
- (2) An officer should pay no more than 10 percent of salary as rental contribution if their duty includes supervision or general control over personnel or property outside their ordinary hours of duty at, or around, the location of the ACTPS dwelling in which they reside.
- (3) If an officer shares the same ACTPS dwelling with one or more officers, the officer should pay the normal rent divided by the number of officers occupying the dwelling.

593 Increase or decrease in contribution

- (1) An officer who has been promoted must pay rental contributions at the higher rate of salary from the date of effect of the promotion, even if the officer was entitled to be paid at the higher rate of salary earlier than the date of effect of the promotion.
- (2) The relevant chief executive must determine the new amount of rental contribution of an officer who becomes entitled to be paid an annual salary at a higher rate, other than by promotion, as soon as practicable, but within 13 weeks of the date the officer becomes entitled to the higher salary.
- (3) The new amount of rental contribution is effective from the date the chief executive determines the new amount payable.
- (4) The relevant chief executive may reduce an officer's contribution in whole, or part by certifying in writing that the location of an officer, or officers, in a particular location is critical to the operating efficiency of the agency.
- (5) The relevant chief executive should consider—
 - (a) the incidental obligations of the officer (e.g. after-hours caretaking or responsibility for staff or official property); or
 - (b) the remoteness of the locality from significant population centres; or
 - (c) the extent to which subsidised housing is required to ensure adequate staff levels; or
 - (d) the availability of private rental accommodation; or
 - (e) the length of time for which an officer is transferred; or
 - (f) the personal circumstances of the officer; or
 - (g) the level of the costs arising from the officer's transfer; or
 - (h) the circumstances in which a transfer has taken place; or

- (i) the condition of the ACTPS dwelling; or
- (j) any other relevant matter.

594 Rental contributions for accommodation in ACTPS housing—rates payable by officers (excluding officers with, but unaccompanied by, dependents)

Table 594

| column 1 | column 2 | column 3 |
|--|--|-----------------------------------|
| Range of annual salary payable to the officer (\$) | Rate per week of rental contribution for accommodation in ACTPS housing (\$) | |
| | Officer without dependants | Officer accompanied by dependants |
| Below 20,000 | 51.00 | 76.00 |
| 20,000 - 21,999 | 52.00 | 78.00 |
| 22,000 - 23,999 | 55.00 | 82.00 |
| 24,000 - 25,999 | 57.00 | 86.00 |
| 26,000 - 27,999 | 60.00 | 90.00 |
| 28,000 - 29,999 | 63.00 | 94.00 |
| 30,000 - 31,999 | 65.00 | 98.00 |
| 32,000 - 33,999 | 68.00 | 102.00 |
| 34,000 - 35,999 | 71.00 | 106.00 |
| 36,000 - 37,999 | 73.00 | 110.00 |
| 38,000 - 39,999 | 76.00 | 114.00 |
| 40,000 - 41,999 | 79.00 | 118.00 |
| 42,000 - 43,999 | 81.00 | 122.00 |
| 44,000 - 45,999 | 84.00 | 126.00 |

| column 1 | column 2 | column 3 |
|---|---|--|
| Range of annual salary payable to the officer (\$) | Rate per week of rental contribution for accommodation in ACTPS housing (\$) | |
| | Officer without dependants | Officer accompanied by dependants |
| 46,000 - 47,999 | 87.00 | 130.00 |
| 48,000 - 49,999 | 89.00 | 134.00 |
| 50,000 - 51,999 | 92.00 | 138.00 |
| 52,000 - 53,999 | 95.00 | 142.00 |
| 54,000 - 55,999 | 97.00 | 146.00 |
| 56,000 - 57,999 | 100.00 | 150.00 |
| 58,000 - 59,999 | 103.00 | 154.00 |
| 60,000 - 61,999 | 105.00 | 158.00 |
| 62,000 - 63,999 | 108.00 | 162.00 |
| 64,000 - 65,999 | 111.00 | 166.00 |
| 66,000 - 67,999 | 113.00 | 170.00 |
| 68,000 - 69,999 | 115.00 | 173.00 |
| 70,000 and over | 119.00 | 178.00 |

29 New part 8.7

insert

Part 8.7 Special arrangements for teachers**600 Interpretation – pt 8.7**

In this part—

teacher means a person who holds an office classified as a Teacher in the Standards or other relevant industrial instrument.

union agreed joint selection committee—see section 43.

601 Union agreed joint selection committee promotions—teachers

If the members of a union agreed joint selection committee cannot reach a unanimous recommendation—

- (a) the recommendation of the majority of the members of the joint selection committee becomes the recommendation of the joint selection committee; or
- (b) if neither a unanimous nor a majority decision can be reached, the recommendation of the chairperson becomes the recommendation of the joint selection committee.

602 Appointment—teachers

- (1) The date of effect in subsection 51 (3) does not apply to a teacher appointed from a state teaching service or immediately after teacher training.
- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

603 Incremental advancement—casual teachers

- (1) A teacher employed on a casual basis is entitled to incremental advancement on the completion of each 200 days of service.
- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

604 Higher duties—teachers in an isolated district

- (1) A teacher is entitled to be paid higher duties allowance during a period of annual leave if the teacher—
 - (a) is eligible for higher duties allowance under the relevant industrial instrument; and
 - (b) is eligible for annual leave under the relevant industrial instrument; and
 - (c) is in an isolated district at the start of the period of annual leave; and
 - (d) has performed higher duties in that district for at least 12 months in the preceding two years; and
 - (e) is not returning to that district at the end of the leave.
- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

605 Sunday or public holiday duty—teachers

- (1) A teacher is not eligible for payment for Sunday or public holiday duty.
- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

606 Direction to take annual leave—teachers

- (1) The relevant chief executive may direct a teacher to take annual leave, at a time that is convenient to the agency, whether or not application for leave has been made.
- (2) Unless otherwise directed by the chief executive a teacher, other than a teacher employed at the Canberra Institute of Technology, is considered to be on annual leave from the last day the teacher's school is open in a calendar year until—
 - (a) the day before the first day on which the school is open in the next calendar year; or
 - (b) the day the teacher's annual leave credit is exhausted on which day the teacher is considered to be on stand-down until the day before the first day on which the school is open in the next calendar year.

607 Accrual of annual leave credit—teachers and school assistants

- (1) A teacher or a school assistant in schools who commences duty on or before the first school day of a calendar year, and works without a break in service, during the year, is entitled to the equivalent of four weeks annual leave, expressed in hours, for each calendar year of service, for their ordinary hours of duty.
- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

608 Leave to accompany a domestic partner on a posting—teachers and school assistants

- (1) 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.

- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

609 Duties with an authority of the Commonwealth, a State, another Territory—teachers

- (1) A teacher must consent before being directed to perform duties with an authority of the Commonwealth, a State, another Territory or a place overseas in accordance with an arrangement under the Act, section 121.
- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

610 Cancellation at the request of the promotee—teachers

- (1) If a teacher applies to the relevant chief executive, under the Act, section 90, to cancel a promotion before its date of effect, the chief executive must cancel that promotion.
- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

611 Temporary transfer—appealable directions—teachers

- (1) A temporary transfer to perform duties of a higher office in the teaching service is not appealable if a temporary vacancy occurred after the start of the school year.
- (2) This section does not apply to teachers employed at the Canberra Institute of Technology.

30 New part 8.8

insert

**Part 8.8 Special arrangements—
pathologists and people covered
by ACT Public Sector Medical
Practitioners Union Collective
Agreement 2008-2011**

**612 Allowance in lieu of right of private practice—
pathologists**

- (1) This section applies to an officer who—
 - (a) is qualified to practice as a pathologist; and
 - (b) is employed as a Consultant, Senior Specialist in Charge, Senior Specialist or Specialist, in pathology.
- (2) Officers covered by this section are entitled to be paid in respect of the period of relevant service, the higher of the following allowances:
 - (a) an allowance equal to 35 per cent of their annual gross salary;
 - (b) an allowance equivalent to the aggregate rate of bonus and expense allowance payable to salaried specialists drawing income from private practice (under a Right of Practice Scheme of the ACT Department of Health).

613 Allowance in lieu of right of private practice—specialists other than pathologists

Officers are entitled to be paid an allowance, in respect of the period of relevant service, at a rate equal to 16 per cent of the annual salary if the officer—

- (a) is a Senior Specialist or Specialist other than a pathologist; and
- (b) has elected to receive the allowance under this section in lieu of any remuneration from exercising a right of private practice under a Right of Private Practice Scheme of the ACT Department of Health.

614 Calculation of salary for Sunday or public holiday duty—medical officers

- (1) If an employee covered by the *Medical Officers' (Australian Capital Territory Public Sector) Award 2000* is rostered for duty on a public holiday which is not in excess of the set weekly hours as specified in that Award, the employee is paid at the rate of time and a half for the actual time worked on the public holiday.

615 Additional annual leave for career medical officers, resident medical officers and registrars

- (1) In addition to the annual leave a medical officer would ordinarily be entitled to, a medical officer who is rostered to work regularly on Sundays and Public Holidays, and who works for more than ten Sundays during a calendar year, accrues an additional seven consecutive days, expressed in hours, recreation leave for that year.
- (2) The seven consecutive days leave include non-working days.
- (3) A medical officer rostered to perform duty on less than ten Sundays during a year in which their annual leave accrues, accrue additional leave for that year at the rate of one tenth of a working week for each Sunday rostered.

- (4) Subject to this part, rostered Sunday overtime shift of less than three hours duration must not be taken into account for this section.
- (5) A rostered overtime shift which involves some hours to be worked on a Sunday and some on another day is to be treated as a Sunday overtime shift for this section.
- (6) The additional annual leave prescribed by this section is exclusive of Public Holidays.
- (7) A Chief Executive may determine, if the amount of additional leave is less than one day, expressed in hours, that the amount be carried forward to the following year, if hospital working arrangements so require.

616 Leave for specialists and senior specialists—conference leave

- (1) A chief executive may grant leave to a Specialist or Senior Specialist to attend a medical conference.
- (2) On commencement as a Specialist or Senior Specialist, and on completion of each year of service, an officer accrues a credit of one week of conference leave based on their ordinary hours of duty.
- (3) The maximum accruable credit of conference leave for Specialists and Senior Specialists is two weeks.
- (4) Conference leave cannot be granted in excess of available credits.
- (5) Conference leave must be granted with pay.
- (6) Conference leave counts as service for all purposes.
- (7) A Specialist or Senior Specialist is entitled to payment equal to the cost of return business class air travel to enable attendance at a medical conference provided—
 - (a) the air travel is by the most direct practicable route; and

- (b) the cost does not exceed the maximum applicable between any two Australian capital cities.

617 Leave for specialists and senior specialists—study leave

- (1) A chief executive may grant leave to a Specialist or Senior Specialist who has completed five years of service, for the purpose of undertaking medical study.
- (2) Subject to subsection (3), a period of three months study leave accrues for the first and each subsequent completed five years of service.
- (3) After the first credit has accrued, an officer may elect to accrue a credit of six weeks leave for each completed period of three years service.
- (4) The maximum study leave credit the officer may accrue is six months.
- (5) The period of study leave granted must not exceed the study leave credit of the officer.
- (6) Study leave is granted with pay.
- (7) A Specialist or Senior Specialist is entitled to payment equal to the cost of return business class air travel for study purposes provided—
 - (a) the air travel is by the most direct practicable route; and
 - (b) the cost does exceed the maximum applicable between any two Australian capital cities.

31 New chapter 9*insert***Chapter 9 Executives and statutory office holders****Part 9.1 Executive work value****618 Application—pt 9.1**

This part applies to a person employed under the Act, section 28, section 30, section 72 or section 76.

619 Interpretation—pt 9.1

In this part—

remuneration zone in table 620, column 3 is the range of assessed work value(s) in that Zone—

- (a) *Zone 1* includes the assessed work value range(s) from 680 to 899; or
- (b) *Zone 2* includes the assessed work value range(s) from 900 to 1299; or
- (c) *Zone 3* includes the work value range(s) of 1300 and above.

total remuneration point in table 620, column 2 is the number assigned to that range of assessed work value in column 1.

620 Determining work value

- (1) The assessed work value in respect of a chief executive or executive is the work value obtained by applying the independent job evaluation methodology approved by the Commissioner.

- (2) The total remuneration point in table 620, column 2 is found by the number assigned to the range of assessed work value in column 1.

Table 620

| column 1 Range of Assessed Work Value | column 2 Total Remuneration Point | column 3 Remuneration Zone |
|--|--|---|
| 680 - 735 | 1.1 | Zone 1 (680-899) |
| 736 - 791 | 1.2 | 1.1 680-735 |
| 792 - 899 | 1.3 | 1.2 736-791 |
| 900 - 1000 | 2.4 | 1.3 792-899 |
| 1001 - 1200 | 2.5 | Zone 2 (900-1299) |
| 1201 - 1299 | 2.6 | 2.4 900-1000 |
| 1300 - 1488 | 3.7 | 2.5 1001-1200 |
| 1489 - 1679 | 3.8 | 2.6 1201-1299 |
| 1680 - 1870 | 3.9 | Zone 3 (1300 +) |
| 1871 - 2061 | 3.10 | 3.7 1300-1488 |
| 2062 - 2249 | 3.11 | 3.8 1489-1679 |
| 2250 + | 3.12 | 3.9 1680-1870 |
| | | 3.10 1871-2061 |
| | | 3.11 2062-2249 |
| | | 3.12 2250+ |

621 Movements in remuneration zone

In accordance with the Act, section 28AA(2)(b) and section 72A(2)(b), a variation to a contract may increase the remuneration payable to a chief executive or executive if—

- (a) there has been an increase in job responsibilities; and
- (b) a work value assessment sets a higher total remuneration point for the position than an earlier work value assessment for that position; and

- (c) If one of the following circumstances apply:
- (i) the movement is within total remuneration points set under Zone 1;
 - (ii) the movement is within total remuneration points set under Zone 2;
 - (iii) the movement is not more than two total remuneration points under Zone 3.

622 Circumstances where work value assessment not required

- (1) The Commissioner may waive the requirement for an independent job evaluation if—
- (a) a person is to perform the duties of an executive office under the Act, section 76 and the Commissioner determines the waiver to be in the interests of the Service; or
 - (b) a chief executive office has been created in a newly established administrative unit and a person is to perform the duties of a chief executive office under the Act, section 30.
- (2) If the Commissioner approves a waiver of the requirement for an independent job evaluation, the Commissioner will determine the remuneration point for the office.

Part 9.2 Executive responsibilities

Division 9.2.1 Executive performance

623 Application—div 9.2.1

This part applies to a person employed under the Act, section 28, section 30, section 72 or section 76.

624 Performance management

Chief executives and executives must participate in an annual review of performance.

625 Declaration of interests

- (1) A chief executive or executive engaged on a contract of three months or more must complete a formal declaration of interests.
- (2) Declarations by a chief executive or executive must be made—
 - (a) prior to engagement; and
 - (b) every twelve months as part of an annual review; and
 - (c) as soon as possible after any relevant facts have come to the chief executive or executive's notice; and
 - (d) whenever the relevant circumstances change.

626 External employment

- (1) A chief executive must not, except in accordance with the written approval of the Chief Minister, accept or engage in any remunerative employment other than in connection with the performance of their duties in the ACTPS.
- (2) An executive must not, except in accordance with the written approval of the relevant chief executive, accept or engage in any remunerative employment other than in connection with the performance of their duties in the ACTPS.

Division 9.2.2 Equity and diversity

627 Application—div 9.2.2

This part applies to chief executives.

628 Chief executive responsibilities

- (1) A chief executive must take all reasonable steps to prepare and implement Equity and Diversity Plans for their agency.
- (2) A chief executive must prepare an Equity and Diversity Plan prior to the expiration of the previous plan or within three months of the formation of a new agency.
- (3) A chief executive must monitor, report and review Equity and Diversity Plans.

629 Unauthorised disclosure of information

A chief executive or executive who leaves the ACTPS to work for another employer and who intends to use confidential information acquired while a member of the ACTPS in their new employment, must not use the information without the approval of the relevant chief executive or the relevant Minister in the case of a chief executive.

Part 9.3 Executive financial entitlements**630 Application—pt 9.3**

This part applies to a person employed under the Act, section 28, section 30, section 72 or section 76.

631 Interpretation—pt 9.3

In this part—

remuneration means the cash salary remuneration payable to chief executives and executives as set out in Column 2 ‘Remuneration (per annum)’ of Schedule A of Remuneration Tribunal Determination 2 of 2010 ‘ACT Public Service Executives and Chief Executives’, effective 1 July 2010, as varied or any determination of

the Remuneration Tribunal, which supersedes Determination 2 of 2010, and applies to chief executives and executives.

Note Column 2 ‘Remuneration (per annum)’ of Schedule A of Remuneration Tribunal Determination 2 of 2010 ‘Chief Executives and Executives’, effective 1 July 2010, sets out the cash salary component of chief executive and executive remuneration.

transitional executive means an ACT chief executive or executive who was an ACT Senior Executive Service officer immediately before the commencement of the *Public Sector Management (Amendment) Act 1995* and who has been continuously employed by the Territory from the commencement of the *Public Sector Management (Amendment) Act 1995*.

Note Continuous employment with the Territory may include an appointment to a full time statutory office established under Territory legislation.

632 Chief executive employment benefit

- (1) This section applies to chief executives engaged under the Act, section 28.
- (2) The Chief Minister may by instrument approve the payment to a chief executive of a chief executive employment benefit under the following conditions:
 - (a) for a chief executive employment benefit that is not in excess of 20% of the chief executive’s remuneration, the Chief Minister is satisfied of the requirements of section 632(3);
 - (b) for a chief executive employment benefit that is in excess of 20% of the chief executive’s remuneration, the Chief Minister—
 - (i) must require an independent job evaluation of the relevant office of chief executive; and
 - (ii) must make a decision about whether to approve a chief executive employment benefit based on—

- (A) the independent job evaluation; and
 - (B) the requirements of section 632(3); and
 - (C) market rate pressures; and
 - (D) the specialist skill and expert technical knowledge of the chief executive; and
 - (E) any other relevant matter; and
- (iii) is satisfied that it is appropriate to approve the chief executive employment benefit under this section.
- (3) The Chief Minister may only approve a chief executive employment benefit if satisfied that it is necessary for the attraction to, or retention in, employment of a suitable person as a chief executive.
- (4) If the Chief Minister approves the payment of a chief executive employment benefit, then that benefit—
- (a) will commence on the date and in the amount specified in the instrument; and
 - (b) will, unless specified in the instrument, apply for the term of the chief executive's contract; and
 - (c) may, if less than 20% of the chief executive's remuneration, be increased by the Chief Minister at any time during the term of the chief executive's contract; and
 - (d) may be reduced or ended by the Chief Minister if the chief executive's remuneration is increased, but not so as to reduce the amount paid to the chief executive to an amount less than the sum of;
 - (i) the remuneration paid to the chief executive before its increase; and
 - (ii) the benefit.

- (5) To avoid any doubt, the payment of a chief executive employment benefit is in addition to any remuneration, allowance or entitlement determined by the Remuneration Tribunal under the *Remuneration Tribunal Act 1995*.
- (6) A chief executive employment benefit may only be made in fortnightly pro-rata payments, and is not available as a lump sum payment.
- (7) A chief executive employment benefit counts for salary for all purposes including, but not limited to—
 - (a) superannuation; and
 - (b) salary when on paid leave; and
 - (c) special benefits payments; and
 - (d) payment in lieu of notice.
- (8) If a chief executive takes leave on reduced pay the chief executive employment benefit must be reduced on a pro-rata basis.

633 Payment in lieu for notice period—chief executives and executives

- (1) If notice is required under a chief executive or executive contract of employment, a payment equal to the remuneration for that period of notice may, at the election of the employer or employee, be made in lieu of notice.
- (2) A payment made in lieu of notice under this section is in addition to a payment made under the Standards, section 634 or section 635.

634 Special benefits on early termination of contract—chief executives and executives

- (1) This section does not apply to transitional executives.

-
- (2) In this section a period of continuous recognised service is calculated in the same way an officer's period of service is calculated for long service leave in section 64.
- (3) For the purposes of the Act, section 28A and 73, if a chief executive's or executive's contract of employment is terminated on a ground involving changes to operational requirements which result in a substantial change to the nature of the work required under the contract, the prescribed benefit payable—
- (a) is two weeks of remuneration for every completed year of continuous recognised service; and
 - (b) excludes any period of service for which the chief executive or executive has received a special benefit or redundancy type payment in the ACTPS or another jurisdiction; and
 - (c) cannot exceed 44 weeks of remuneration.
- (4) For the purpose of the Act, section 28A and 73, if a chief executive's or executive's contract of employment is terminated because of a failure to disclose a prior criminal conviction, subject to the Spent Convictions Scheme in the *Spent Convictions Act 2000*, the prescribed benefit—
- (a) is two weeks of remuneration for every completed year of continuous recognised service; and
 - (b) excludes any period of service for which the chief executive or executive has received a special benefit or redundancy type payment in the ACTPS or another jurisdiction; and
 - (c) cannot exceed one month of remuneration.

635 Special benefits applying to transitional executives on early termination or non-renewal of contract in certain circumstances

- (1) This section applies to transitional executives.

- (2) In this section a period of continuous recognised service is calculated in the same way an officer's period of service is calculated for long service leave in section 64.
- (3) For the purpose of the Act, section 28A and section 73 if a transitional executive's contract of employment is terminated as a result of changes to operational requirements that result in substantial change to the nature of the work required under the contract, the prescribed benefit payable—
 - (a) is two weeks of remuneration for every completed year of continuous recognised service; and
 - (b) excludes any period of service for which the chief executive or executive has received a special benefit or redundancy type payment in the ACTPS or another jurisdiction; and
 - (c) cannot exceed 52 weeks of remuneration.
- (4) For the purpose of the Act, section 28A and section 73, if immediately following the expiration of a transitional executive's existing contract he or she is not offered a further contract, provided the reasons for not offering a new contract do not relate to poor performance, misconduct or failure to disclose a prior criminal conviction, subject to the Spent Convictions Scheme in the *Spent Convictions Act 2000*, the prescribed benefit payable—
 - (a) is two weeks of remuneration for every completed year of continuous recognised service; and
 - (b) excludes any period of service for which the chief executive or executive has received a special benefit or redundancy type payment in the ACTPS or another jurisdiction; and
 - (c) cannot exceed 52 weeks of remuneration.
- (5) For the purpose of the Act, section 28A and section 73, if immediately following the expiration of a transitional executive's existing contract he or she is offered a further contract in respect of

an executive office that has a significantly lower work value level than the office relating to the expired contract and the executive does not accept the further contract, the prescribed benefit payable—

- (a) is two weeks of remuneration for every completed year of continuous recognised service; and
 - (b) excludes any period of service for which the chief executive or executive has received a special benefit or redundancy type payment in the ACTPS or another jurisdiction; and
 - (c) cannot exceed 52 weeks of remuneration.
- (6) For the purpose of the Act, section 28A and 73, if a transitional executive's contract of employment is terminated because of a failure to disclose a prior criminal conviction, subject to the Spent Convictions Scheme in the *Spent Convictions Act 2000*, the prescribed benefit—
- (a) is two weeks of remuneration for every completed year of continuous recognised service; and
 - (b) excludes any period of service for which the chief executive or executive has received a special benefit or redundancy type payment in the ACTPS or another jurisdiction; and
 - (c) cannot exceed one month of remuneration.

636 Superannuation—chief executives and executives

- (1) This section applies to—
- (a) any person engaged under a contract as a chief executive or executive, on and after 1 July 2006; but
 - (b) does not apply to any person—

- (i) who is an existing Commonwealth Superannuation Scheme or Public Sector Superannuation Scheme member; or
 - (ii) who was engaged or appointed under the Act before 30 June 2006, if the subsequent engagement as a chief executive or executive would be continuous with employment commenced before 30 June 2006; or
 - (iii) who was engaged or appointed to the Territory under Territory legislation before 30 June 2006, if the subsequent engagement as a chief executive or executive would be continuous with employment commenced before 30 June 2006.
- (2) The value of the employer's superannuation contribution is to be contributed on behalf of the chief executive or executive to an agreed superannuation fund nominated by the chief executive or executive and is—
- (a) 9% of the chief executive or executive's remuneration; or
 - (b) 10% of the chief executive or executive's remuneration, if the chief executive or executive contributes 3% or more of his or her remuneration to the agreed superannuation fund nominated by the chief executive or executive in the form of personal superannuation contributions.
- (3) The employer must contribute any nominated amount on behalf of the chief executive or executive to an agreed superannuation fund nominated by the chief executive or executive.
- (4) This amount is the personal superannuation contributions of the chief executive or executive to the nominated superannuation fund.
- (5) The value of the employer's superannuation contribution must not be paid in cash to a chief executive or executive.

Part 9.4 Statutory office holder financial entitlements

637 Application—pt 9.4

This Part applies to—

- (a) Assistant Executive Officer, Legal Aid Commission (ACT);
and
- (b) Auditor-General; and
- (c) Chief Executive Officer, Land Development Agency; and
- (d) Chief Planning Executive, ACT Planning and Land Authority;
and
- (e) Children and Young People Commissioner; and
- (f) Director of Public Prosecutions; and
- (g) Director, Canberra Institute of Technology; and
- (h) Disability and Community Services Commissioner; and
- (i) Discrimination Commissioner; and
- (j) Electoral Commissioner; and
- (l) Executive Officer, Legal Aid Commission (ACT) ; and
- (l) Health Services Commissioner; and
- (m) Human Rights Commissioner; and
- (n) Occupational Health and Safety Commissioner; and
- (o) Presidential Members of the ACT Civil and Administrative Tribunal; and
- (p) Public Advocate; and

- (q) the Clerk of the Legislative Assembly, subject to the Act, section 52; and
- (r) Victims of Crime Commissioner; and
- (s) a statutory office holder covered by Remuneration Tribunal Determination 3 of 2010 - Full-time Holders of Public Office , effective 1 July 2010, as varied and any determination of the Remuneration Tribunal which supersedes Determination 3 of 2010 and applies to full time statutory office holders.

638 Interpretation—pt 9.4

- (1) In this division—

continuous recognised service is calculated in the same way as an officer's period of service is calculated for long service leave under section 64.

remuneration means the cash salary remuneration payable to full time statutory office holders as set out in Column 2 of Table 1.1 of Remuneration Tribunal Determination 3 of 2010 'Full-time Holders of Public Office', effective 1 July 2010, as varied or any determination of the Remuneration Tribunal, which supersedes Determination 3 of 2010, and applies to full time statutory office holders.

Note Column 2 of table 1.1 of Remuneration Tribunal Determination 3 of 2010 'Full-time Holders of Public Office', effective 1 July 2010, sets out the cash salary component of full time statutory office holder remuneration.

special benefit—as provided under section 640.

639 Payment in lieu for notice period—statutory office holders

- (1) This section applies if the appointment of a statutory office holder is to end before the appointment is due to end but does not apply if the appointment ends—
 - (a) by expiry of the term of appointment; or
 - (b) by the resignation of the statutory officer holder; or
 - (c) under the Act by which the statutory officer holder is appointed and the ending of the appointment relates to removal from office, termination of appointment or retirement provisions under that Act.
- (2) If the appointment of a statutory office holder ends, before it was due to end, the appointer must give the statutory office holder at least eight weeks notice in writing that the appointment will end.
- (2) At the election of the appointer or the statutory office holder a payment equal to the remuneration for the eight weeks notice period may be made in lieu of notice.
- (3) A payment made in lieu of notice under this section is in addition to a payment made under the Standards, section 640.

640 Special benefits on early termination of appointment—statutory office holders

If the appointment of a statutory office holder ends before the appointment is due to end; the statutory office holder will be entitled to a special benefit—

- (a) of two weeks of remuneration for every completed year of continuous recognised service;
- (b) excluding any period of service for which the statutory office holder has received a special benefit or redundancy type payment in the ACTPS or another jurisdiction; and

- (c) up to a maximum of 44 weeks of remuneration.

641 Appointment or engagement of former statutory office holders

- (1) This section applies to a statutory office holder—
 - (a) whose appointment ends before their appointment is due to end for any reason other than their resignation; and
 - (b) who is entitled to receive a special benefit as prescribed under section 640.
- (2) A person to whom this section applies cannot be appointed as a statutory office holder or an officer for the period that corresponds with the period of special benefit that follows immediately after the end of their appointment without the written consent of the commissioner.
- (3) A person to whom this section applies cannot be engaged as an employee for the period that corresponds with the period of special benefit that follows immediately after the end of their appointment without the written consent of the commissioner.
- (4) The commissioner may impose conditions to any written consent provided under this section.

642 Superannuation—statutory office holders

- (1) This section applies to—
 - (a) any person appointed as a statutory office holder, on and after 1 July 2006; but
 - (b) does not apply to any person—
 - (i) who is an existing Commonwealth Superannuation Scheme or Public Sector Superannuation Scheme member; or

- (ii) who was engaged or appointed under the Act before 30 June 2006, if the subsequent appointment as a statutory office holder would be continuous with employment commenced before 30 June 2006; or
 - (iii) who was engaged or appointed to the Territory under Territory legislation before 30 June 2006, if the subsequent appointment as a statutory office holder would be continuous with employment commenced before 30 June 2006.
- (2) The value of the employer's superannuation contribution is to be contributed on behalf of the statutory office holder to an agreed superannuation fund nominated by the statutory office holder and is—
 - (a) 9% of the statutory office holder's remuneration; or
 - (b) 10% of the statutory office holder's remuneration, if the statutory office holder contributes 3% or more of his or her remuneration to the agreed superannuation fund nominated by the statutory office holder in the form of personal superannuation contributions.
- (3) The employer must contribute any nominated amount on behalf of the statutory officer holder to an agreed superannuation fund nominated by the statutory office holder.
- (4) This amount is the personal superannuation contributions of the statutory office holder to the nominated superannuation fund.
- (5) The value of the employer's superannuation contribution must not be paid in cash to a statutory office holder.

Part 9.5 Executive and statutory office holder vehicle entitlements

643 Application—pt 9.5

- (1) This part applies to chief executives, executives and statutory office holders.
- (2) This part does not apply to—
 - (a) the clerk of the Legislative Assembly; or
 - (b) the Chief Justice of the Supreme Court; or
 - (c) Judges of the Supreme Court; or
 - (d) acting Judges of the Supreme Court; or
 - (e) the Master of the Supreme Court; or
 - (f) the Chief Magistrate; or
 - (g) Magistrates.

644 Interpretation—pt 9.5

In this part—

business use means the use of an executive vehicle for purposes associated with the operation of the agency.

executive means—

- (a) a chief executive employed under the Act, section 28 or section 30; or
- (b) an executive employed under the Act, section 72 or section 76; or
- (c) a statutory office holder to whom this part applies.

executive vehicle means a self drive and private plated passenger motor vehicle which is provided to a chief executive, executive or full time statutory office holder to whom this part applies as part of their total remuneration package, and includes any vehicle provided in lieu of that vehicle.

private use means the use of an executive vehicle for private or non-business purposes.

statutory office holder means—

- (a) the holder of an office established under an ACT law and prescribed in Table 1.1 of Remuneration Tribunal Determination 3 of 2010, as varied; or
- (b) the holder of an office established under and ACT law and prescribed in Remuneration Tribunal Determination 5 of 2010 as varied; or
- (c) any determination by the Remuneration Tribunal which supersedes Remuneration Tribunal Determination 5 of 2010 and applies to full-time holders of public offices; or
- (d) any determination by the Remuneration Tribunal which supersedes Determination 5 of 2010 and applies to the part-time presidential member of the ACT Civil and Administrative Tribunal.

645 Executive vehicle entitlement

- (1) An executive is entitled to the use of a four cylinder executive vehicle, within the Territory's leasing arrangements.
- (2) An executive is entitled to a parking space for the executive's vehicle at or near the executive's principal place of work.
- (3) If an executive vehicle is to be returned, replaced, purchased or transferred, this must be done in accordance with the requirements

of the fleet provider and the whole of government policy for executive vehicle management.

646 Executive vehicle entitlement—part time executives

- (1) Subject to subsection (2), an executive who works regular hours but is engaged on a part time basis will continue to receive the vehicle entitlement as if they were a full time executive.
- (2) The administering chief executive may agree to a recommendation from the chief executive of the relevant administrative unit, that the vehicle entitlement of an executive engaged on a part-time basis be restricted to a pro rata basis.
- (3) Having regard to all circumstances, the administering chief executive, in consultation with the chief executive of the relevant administrative unit, is required to consider and advise on the administrative arrangements required for the provision of a pro rata vehicle entitlement.

Note The usual pro rata arrangement will be pro rata payment in lieu in accordance with section 648.

647 Choice of motor vehicle

- (1) When entering into a lease for an executive vehicle an executive is entitled to choose an executive vehicle, subject to—
 - (a) the requirements of this section; and
 - (b) the requirements of the territory's fleet provider; and
 - (c) the specifications in the whole of government policy for executive vehicle management.
- (2) The vehicle selected by an executive must be a four cylinder vehicle.
- (3) The vehicle model selected by an executive must be suitable for business use at the ordinary place of work of the executive.

- (4) The vehicle model selected by an executive must not be a high performance, luxury or prestige vehicle.
- (5) The vehicle selected by an executive may be Australian made or imported.
- (6) The vehicle selected by an executive must be valued by the territory's fleet provider at or below the applicable vehicle value set out in table 647.

Note The vehicle value is the value on the day the quotation is provided by the territory's fleet provider.

- (7) An executive is entitled to chose optional items of equipment for an executive vehicle provided—
- (a) the equipment is approved; and
- (b) the total value of the vehicle with the equipment does not exceed the applicable vehicle value set out in table 648.

Table 647

| column 1 | column 2 |
|-----------------------------------|--|
| remuneration zone | maximum vehicle value (excluding GST) |
| Zone 1 or equivalent remuneration | \$38,300 |
| Zone 2 or equivalent remuneration | \$41,800 |
| Zone 3 or equivalent remuneration | \$46,000 |

Note 1 In table 647 the executive remuneration zone listed in column 1 is the zone determined in section 620.

Note 2 In table 647 the maximum vehicle value listed in column 2 is determined by the manufacturer's recommended retail price.

- (8) Where a statutory office holder receives remuneration that does not align with a remuneration zone as determined in section 620 the administering chief executive must determine the appropriate

maximum value applicable to the vehicle entitlement of the statutory office holder.

648 Payment in lieu of an executive vehicle entitlement

- (1) An executive may elect to receive payment in lieu of the entitlement to an executive vehicle for the value set out in table 648.

Note 1 In table 648 the executive remuneration zone listed in column 1 is the zone determined in section 620.

Note 2 In table 648 the value of payment is GST exclusive.

Table 648

| column 1 | column 2 |
|-----------------------------------|---------------------------------|
| remuneration zone | value of payment in lieu |
| Zone 1 or equivalent remuneration | \$15,500 per annum |
| Zone 2 or equivalent remuneration | \$16,000 per annum |
| Zone 3 or equivalent remuneration | \$17,500 per annum |

- (2) Where a statutory office holder receives remuneration that does not align with a remuneration zone as determined in section 620 the administering chief executive must determine the appropriate value of payment in lieu.
- (3) Payment in lieu of an executive vehicle will be paid in fortnightly instalments.
- (4) If an executive elects to receive payment in lieu of an executive vehicle, the executive—
- is entitled to retain access to a parking space; and
 - is not entitled to access any other entitlements provided under this part.
- (5) An executive may elect to receive payment of \$2500 in lieu of the entitlement to a parking space.

- (6) Payment in lieu of a parking space will be paid in fortnightly instalments.
- (7) Where an executive is engaged on a part time basis, and is restricted to a pro rata vehicle entitlement under section 646, any payment in lieu of the entitlement to an executive vehicle must be made on a pro rata basis.

649 Change to payment in lieu of an executive vehicle entitlement

An executive who has elected to use an executive vehicle may subsequently elect to receive payment in lieu of an executive vehicle—

- (a) from the date the lease of the executive vehicle ends; or
- (b) with the agreement of the administering chief executive, where the administering chief executive—
 - (i) has received a recommendation from the relevant chief executive; and
 - (ii) is satisfied that there are exceptional circumstances that warrant agreement.

650 Executive vehicle modification

- (1) If an executive has a disability that affects his or her ability to drive a standard vehicle, the executive is entitled to such modifications the relevant chief executive certifies in writing as being reasonably necessary to enable the executive to drive a vehicle.
- (2) If a chief executive has a disability that affects his or her ability to drive a standard vehicle, the chief executive is entitled to such modifications or options as the Commissioner certifies in writing as being reasonably necessary to enable the chief executive to drive a vehicle.

- (3) An executive may choose optional items of equipment to be fitted to his or her executive vehicle in accordance with requirements specified in the whole of government policy for executive vehicle management, provided the manufacturer's recommended retail price does not exceed the maximum value prescribed in table 648.
- (4) Any other modification to an executive vehicle must be made in accordance with the requirements specified in the whole of government policy for executive vehicle management.

651 Executive vehicle maintenance and running costs

- (1) Subject to subsection (3) all executive vehicle maintenance costs will be met by the Territory.
- (2) All running costs of an executive vehicle will be met by the Territory.
- (3) Where, as a result of the conduct of the driver of an executive vehicle, the Territory's insurance arrangements will not respond in part or in whole to a claim for damage to an executive vehicle, the driver (or if the driver is the executive or a person nominated by the executive, the executive) will be required to meet the repair costs, not covered by the Territory's insurance arrangements, associated with restoring that executive vehicle.

652 Executive vehicle care

- (1) An executive must ensure that due care and security is afforded to executive vehicles.
- (2) An executive who home garages an executive vehicle must—
 - (a) park the executive vehicle behind the property line; and
 - (b) if possible, park the executive vehicle under cover.

653 Authorised use of an executive vehicle

- (1) Any driver of an executive vehicle must—
 - (a) hold an appropriate license; and
 - (b) obey all traffic laws and parking restrictions; and
 - (c) abide by the requirements outlined in the whole of government policy for executive vehicle management.
- (2) The driver in control of an executive vehicle is personally responsible for any breaches of traffic laws and parking restrictions, and must pay any fines incurred.

654 Business use of an executive vehicle

- (1) Subject to subsection (2), when an executive is at his or her normal place of work the executive must bring the executive vehicle to work and make it available for business use by the executive's agency during normal business hours.
- (2) When an executive's vehicle is being repaired or serviced, or undergoing a similar process, the executive is not required to bring the executive vehicle to his or her normal place of work.
- (3) Officers and employees who drive an executive vehicle are subject to the same conditions related to the authorised use of that vehicle as the executive.
- (4) Staff of the executive's agency who use the executive vehicle must—
 - (a) report vehicle accidents and defects to the agency; and
 - (b) record accurate and timely information on business use of the vehicle; and
 - (c) ensure that all cargo is properly secured; and

- (d) abide by the requirements outlined in the whole of government policy for executive vehicle management.

655 Private use of an executive vehicle

- (1) An executive may use an executive vehicle for private purposes outside of normal business hours.
- (2) An executive vehicle may only be driven for private purposes by—
 - (a) the executive to whom the vehicle is provided; or
 - (b) an appropriately licensed driver nominated by the executive to the agency who is approved by the agency.
- (3) The executive's agency will maintain a register of drivers approved to drive executive vehicles for private purposes.
- (4) Drivers approved to drive an executive vehicle for private purposes are subject to the same conditions of authorised use of that vehicle as the executive.
- (5) An executive must not use an executive vehicle for personal gain, or the personal gain of any other person.
- (6) An executive must not permit another person to use an executive vehicle for the executive's personal gain, or the personal gain of any other person.

656 Record-keeping

- (1) An agency must keep appropriate records on the use of executive vehicles—
 - (a) for fringe benefits tax calculation and audit purposes; and
 - (b) to enable the monitoring of the executive vehicle use for servicing and replacement purposes.
- (2) An agency is responsible for the calculation and payment of any fringe benefits tax liability associated with executive vehicles.

Part 9.6 Executive and statutory office holder leave entitlements

Division 9.6.1 General

657 Application—pt 9.6

- (1) This part applies to—
- (a) a chief executive employed under the Act, section 28 or section 30; and
 - (b) an executive employed under the Act, section 72 or section 76; and
 - (c) a full time statutory office holder, subject to subsection (2).
- (2) This part does not apply to—
- (a) the Chief Justice of the Supreme Court; or
 - (b) Judges of the Supreme Court; or
 - (c) acting Judges of the Supreme Court; or
 - (d) the Master of the Supreme Court; or
 - (e) the President of the Court of Appeal; or
 - (f) the Chief Magistrate; or
 - (g) Magistrates.

658 Interpretation—pt 9.6

In this part—

decision maker means—

- (a) in relation to an executive engaged under the Act, section 72 or section 76, the relevant chief executive; and

- (b) in relation to a chief executive engaged under the Act, section 28 or section 30, the relevant Minister; and
- (c) in relation to a full time statutory office holder, the relevant Minister; and
- (d) in relation to the Clerk of the Legislative Assembly, the Presiding Officer.

executive includes a chief executive and a full time statutory office holder to whom this part applies.

659 Purpose—leave general

Leave supports the right of an executive in prescribed circumstances to be absent from duty without effecting their continuity of service.

660 Part time executives

Part time executives are credited leave and debited leave on a pro rata basis.

661 Clerk of the Legislative Assembly

In accordance with the Act, section 47(2), leave provisions for the Clerk of the Legislative Assembly excludes the remuneration and allowances payable to the Clerk in respect of his or her leave of absence.

662 Non-approval of leave

- (1) The decision maker will only deny an executive's request for leave where there are operational reasons for doing so.
- (2) If a request for leave is not approved the decision maker will, if requested in writing by the executive, provide the reasons for the decision to the executive in writing.

- (3) If a request for leave is not approved the decision maker will consult with the executive to determine mutually convenient alternative arrangements.

Division 9.6.2 Leave entitlements

Subdivision 9.6.2.1 Personal leave

663 Purpose— personal leave

- (1) Personal leave is available to executives to enable them to be absent from duty—
- (a) because the executive is unfit for work because of a personal illness, or personal injury;
 - (b) to provide care or support to a member of the executive's immediate family, or a member of the executive's household;
 - (c) in extraordinary circumstances.
- (2) Personal leave supports the Territory's commitment to a healthy workplace and workforce.

664 Entitlement—personal leave

- (1) In this section—
- short term executive* means a person with less than 12 months continuous service with the Territory who is—
- (a) engaged on a contract under the Act, section 28 or section 30 for a period of less than 12 months; or
 - (b) engaged on a contract under the Act, section 72 or section 76 for a period of less than 12 months; or
 - (c) appointed as a statutory office holder for a period of less than 12 months.

- (2) An executive may be granted personal leave up to their available credit from the first day of service.
- (3) Personal leave is cumulative and there is no cap on the personal leave credit an executive may accrue.
- (4) If an executive's engagement or a statutory office holder's appointment is the commencement of his or her employment with the Territory, the executive's personal leave balance will be credited with an equivalent of 3.6 weeks of personal leave on the day they commence with the Territory unless he or she is a short term executive.
- (5) Subject to subsection (4), from the day of commencement, an executive's personal leave accrues on a daily basis according to the formula set out below—

$$\frac{(A \times B \times D)}{C} = \text{total hours of leave accrued per day}$$

where—

A is the number of ordinary hours worked per week; and

B is one where the day counts as service, or zero where the day does not count as service; and

C is the number of calendar days in the year; and

D is the number of weeks of personal leave an executive is entitled to in a year.

- (6) The accrual calculated in subsection (5) will be credited to the executive on the anniversary of the executive's commencement.
- (7) A short term executive—
 - (a) will be credited with one week of personal leave after four weeks continuous service and 0.2 weeks of personal leave for each subsequent four weeks of continuous service up to a

maximum of two weeks in the executive's first twelve months of service; and

- (b) if a person who was engaged or appointed as a short term executive is subsequently engaged or appointed so that the entire period of continuous service with the Territory will be 12 months or more—
 - (i) the executive will be credited with 5.2 weeks of personal leave on the anniversary of the executive's commencement; and
 - (ii) for every subsequent twelve months of service, the executive will receive personal leave in accordance with subsection (5).
- (8) An executive in receipt of workers compensation for more than 45 weeks will accrue personal leave on the basis of hours actually worked.
- (9) Executives are not entitled to anticipate personal leave but may be granted up to an aggregate of twenty days without pay in the first twelve months of service.
- (10) Where personal leave credits have been exhausted, the decision maker may grant an executive a period of unpaid personal leave for personal illness or injury or for the care of a member of the executive's immediate family or household who is sick.
- (11) Unused personal leave credit will not be paid out on cessation of employment.

665 Evidence and conditions—personal leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on personal leave.

- (2) The decision maker grant personal leave if they are satisfied there is sufficient cause, having considered any requested or required documentary evidence.
- (3) The decision maker will accept the following documentary evidence as proof of personal illness or injury or the need to care of a member of the executive's immediate family or household who is sick—
 - (a) a certificate from a registered health professional who is operating within their scope of practice; or
 - (b) a statutory declaration made by the employee if it is not reasonably practicable for the employee to give the decision maker a certificate.
- (4) If documentary evidence is not produced when an executive applies for personal leave the decision maker may grant personal leave up to three consecutive working days with pay, to a maximum of seven working days in any accrual year.
- (5) Absences for personal leave without documentary evidence in excess of three consecutive days, or seven days in any accrual year are unauthorised and will be without pay.
- (6) The decision maker may, with reasonable cause, request the executive to provide a medical certificate or statutory declaration for any absence from duty on personal leave at the time of notification of the absence.
- (7) Personal leave may be granted up to an executive's available personal leave credit, provided the maximum continuous period of paid personal leave granted is 52 weeks and the maximum continuous period of unpaid personal leave granted is 78 weeks.
- (8) Subject to the production of satisfactory documentary evidence, a decision maker may grant an executive further absence for personal illness or injury beyond 78 weeks provided the additional period of personal leave is granted without pay and does not count as service for any purpose.

- (9) The decision maker must not grant personal leave for an absence caused by the misconduct of the executive and may determine that an absence caused by the misconduct does not count as service for any purpose.
- (10) A decision maker must approve an application for up to five days personal leave applied for in conjunction with a period of bonding leave.
- (11) The decision maker may refer an executive for a medical examination by a nominated registered medical practitioner at any time for reasons including—
 - (a) the decision maker is concerned about the wellbeing of an executive and considers that the health of the executive is affecting the executive's ability to adequately perform their duties; or
 - (b) the decision maker considers that documentary evidence supplied in support of an absence due to personal illness or injury is inadequate; or
 - (c) the executive has been absent on account of illness for a total of thirteen weeks in any twenty six week period.
- (12) The decision maker may require the executive to take personal leave after considering the results of a medical examination requested by the decision maker.

666 Rate of payment—personal leave

- (1) Personal leave will be granted with pay except where it is granted without pay under subsection 664(9), subsection 664(10) or subsection 665(10).
- (2) Subject to the approval of the decision maker, an executive may request to use personal leave at half pay—
 - (a) for absences of at least one week; and

- (b) to be deducted from the executive's accrued credits at a rate of 50% of the period of absence.
- (3) Any personal leave taken must be deducted from the executive's credit.

667 Effect on other entitlements—personal leave

- (1) Personal leave with pay will count as service for all purposes.
- (2) Personal leave without pay, other than provided under subsection 665(10), will count as service for all purposes.
- (3) Where an executive is absent on personal leave and a public holiday for which the executive is entitled to be paid falls within that period of absence—
 - (a) the executive will be paid as a normal public holiday for that day; and
 - (b) the public holiday will not be deducted from the executive's personal leave credits.
- (4) While personal leave will not be deducted over the Christmas shutdown period, the Christmas shutdown does not break continuity of the period of absence in relation to the maximum periods of leave under subsection 665(9).

668 Access to other leave entitlements—personal leave

- (2) An executive who produces a certificate from a registered health professional operating within their scope of practice, may apply for personal leave for personal illness or injury, or to care for a member of the executive's immediate family or household who is sick, for one day or longer while on—
 - (a) annual leave; or
 - (b) long service leave; or

- (c) unpaid maternity leave; or
 - (d) unpaid parental leave; or
 - (e) grandparental leave.
- (3) An executive who produces a medical certificate from a registered health professional operating within their scope, may apply for personal leave for personal illness or injury, for one day or longer while on purchased leave.
- (4) If personal leave is approved for a period which another form of leave had previously been approved under subsection (2) or (3), the other form leave will be re-credited to the extent of the paid personal leave granted.
- (5) If the executive has exhausted their personal leave credit, personal leave without pay cannot be substituted for unpaid maternity leave.
- (6) If an ill or injured executive exhausts the executive's paid personal leave entitlement and produces a certificate from a registered health professional who is operating within their scope of practice as evidence of continuing personal illness or injury, the executive may apply to the decision maker for approval to take annual leave or long service leave provided the maximum period of paid leave taken in relation to the illness or injury does not exceed 52 weeks.

669 Personal leave in extraordinary circumstances

- (1) Personal leave in extraordinary circumstances, is non-cumulative and if granted is deducted from the executive's personal leave balance.
- (3) The decision maker may grant to a maximum of four days of personal leave in an accrual year, in extraordinary, unforeseen or unexpected circumstances where it is essential that the executive have leave from the workplace.

- (4) Personal leave in extraordinary circumstances is in addition to the seven days personal leave without documentary evidence.
- (5) While personal leave in extraordinary circumstances does not normally require documentary evidence, the decision maker may require reasonable evidence before granting personal leave in extraordinary circumstances.
- (6) Personal leave in extraordinary circumstances will be granted with pay.

670 Infectious disease contacts

- (1) Where an executive is prevented from attending for duty under the *Public Health Act 1997*, part 6, the decision maker may grant that executive personal leave.
- (2) The executive may also apply for the absence or a part of it to be deducted from their annual leave credit.

Subdivision 9.6.2.2 Compassionate leave

671 Purpose—compassionate leave

Compassionate leave is available to executives to enable them to be absent from duty when a member of an executive's immediate family or household—

- (a) has a personal illness or injury that poses a serious threat to the person's life; or
- (b) dies.

672 Entitlement—compassionate leave

- (1) An executive may be granted compassionate leave from the first day of service.
- (2) Compassionate leave is non-cumulative.

- (3) Executives are entitled to up to five days of compassionate leave on each occasion of the death of a member of the executive's immediate family or household.
- (4) Executives are entitled to up to two days of compassionate leave on each occasion of personal illness or injury of a member of the executive's immediate family or household that poses a serious threat to the person's life.
- (5) The decision maker may grant an executive a period of paid or unpaid compassionate leave additional to the period of leave specified in subsections (3) and (4).

673 Evidence and conditions—compassionate leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on compassionate leave.
- (2) An executive must make an application to the decision maker to access compassionate leave.
- (3) Having considered the requirements of this section the decision maker may approve an executive's application to access compassionate leave.
- (4) The decision maker may request evidence that would satisfy a reasonable person that an application for compassionate leave is for a purpose set out in section 671.

674 Rate of payment—compassionate leave

Compassionate leave will be granted with pay except where it is granted without pay under subsection 672(5).

675 Effect on other entitlements—compassionate leave

- (1) Compassionate leave with pay will count as service for all purposes.

- (2) Public Holidays for which the executive is entitled to payment that fall during periods of absence on compassionate leave will be paid as a normal public holiday and will not be considered an absence on compassionate leave.
- (3) Compassionate leave that is granted under subsection 672(3) is not deducted from an executive's personal leave balance.
- (4) Compassionate leave that is granted under subsection 672(4) is deducted from an executive's personal leave balance.

676 Access to other leave entitlements—compassionate leave

If compassionate leave of at least one day is granted while an executive is absent on another type of leave, the other type of leave will be re-credited for the period of the absence on compassionate leave.

Subdivision 9.6.2.3 Operational service personal leave

677 Interpretation—subdiv 9.6.2.3

In this subdivision

operational service has the same meaning as in the *Veterans' Entitlement Act 1986 (Commonwealth)*.

war-caused injuries or diseases has the same meaning as in the *Veterans' Entitlement Act 1986 (Commonwealth)*.

678 Purpose—operational service personal leave

Operational service personal leave enables executives who have rendered operational service to be absent from duty when they are unfit for work because of a war-caused injury or disease.

679 Eligibility—operational service personal leave

An executive who has rendered operational service is eligible for operational service personal leave.

680 Entitlement—operational service personal leave

- (1) Operational service personal leave is cumulative and is additional to personal leave entitlements.
- (2) On appointment, an eligible executive is entitled to nine days operational service personal leave.
- (3) An eligible executive is entitled to receive an additional credit of three days operational service personal leave—
 - (a) 12 months after the date of appointment; and
 - (b) 24 months after the date of appointment; and
 - (c) 36 months after the date of appointment.
- (4) Where operational service personal leave credits have been exhausted, the decision maker may grant an executive a period of unpaid operational service personal leave.
- (5) The maximum operational service personal leave balance that an eligible executive may have is eighteen days.

681 Evidence and conditions—operational service personal leave

- (1) An eligible executive should discuss with the decision maker as soon as practicable their intention to be absent on operational service personal leave.
- (2) An eligible executive must make an application to the decision maker to access their operational service personal leave entitlement.

- (3) Having considered the requirements of this section the decision maker may approve an eligible executive's application to access operational service personal leave.
- (4) Operational service personal leave may be granted by the relevant decision maker—
 - (a) to cover absences resulting from war-caused injury or diseases; and
 - (b) following a written request from an eligible executive, which must include documentary evidence that the absence is due to the war-caused injury or disease, including evidence that the injury or disease is a war-caused injury or disease in accordance with the requirements of the *Veterans' Entitlement Act 1986 (Commonwealth)*.

682 Rate of payment—operational service personal leave

Operational service personal leave will be granted with pay except where it is granted without pay under subsections 680(4).

683 Effect of other entitlements—operational service personal leave

- (1) Operational service personal leave with pay will count as service for all purposes.
- (2) Operational service personal leave without pay will not count as service.

Subdivision 9.6.2.4 Annual leave

684 Purpose—annual leave

Annual leave is available to executives to enable them to be absent from duty for the purposes of rest and recreation.

685 Entitlement—annual leave

- (1) An executive may be granted annual leave up to their available credit from the first day of service.
- (2) Annual leave is cumulative.
- (3) An executive's annual leave credit accrues on a daily basis according to the formula set out below—

$$\frac{(A \times B \times D)}{C} = \text{total hours of leave accrued per day}$$

where—

A is the number of ordinary hours worked per week; and

B is one where the day counts as service, or zero where the day does not count as service or is an unauthorised absence; and

C is the number of calendar days in the year; and

D is the number of weeks of annual leave an executive is entitled to in a year.

- (4) An annual leave credit does not accrue to an executive if the executive is absent from duty on leave for specified defence service, or full time defence service.
- (5) If the executive resumes duty after a period of specified defence service, annual leave will accrue from the date the executive resumes duty.

686 Evidence and conditions—annual leave

- (1) Executives are encouraged to utilise their annual leave in the year that it accrues, and to this end should discuss their leave intentions with the decision maker as soon as practicable.
- (2) An executive must make an application to the decision maker to access their annual leave entitlement.

- (3) Having considered the requirements of this section the decision maker may approve an executive's application to access annual leave.
- (4) The decision maker should approve an executive's application to take annual leave, subject to operational requirements.
- (5) If the decision maker does not approve an executive's application for annual leave because of operational requirements, the decision maker will consult with the executive to determine a mutually convenient alternative time (or times) for the executive to take the leave.
- (6) The decision maker must, unless there are exceptional operational circumstances, approve an application for annual leave if it would enable an executive to reduce their annual leave balance below two and a half years worth of annual leave credit, however, in the case of exceptional operational circumstances, the decision maker may consult with the executive to determine another time (or times) for the annual leave to be taken that is mutually convenient to both the administrative unit and the executive.

Note For full time executives, two and half year's worth of annual leave credit is 10 weeks.

- (7) If an executive's annual leave is cancelled without reasonable notice, or an executive is recalled to duty from leave, the executive will be entitled to be reimbursed reasonable travel costs and incidental expenses not otherwise recoverable under any insurance or from any other source.
- (8) If the operations of an agency, or part of an agency, are suspended at Christmas or another holiday period, the decision maker may direct an executive to take annual leave at a time that is convenient to the working of the agency, whether or not application for leave has been made.

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- (19) If an executive has accrued two years worth of annual leave credits and unless exceptional operational circumstances exist, the executive and decision maker must agree, and implement an annual leave usage plan to ensure the executive's accrued leave credit will not exceed two and a half years worth of annual leave credit.
- (10) If an executive does not agree to a reasonable annual leave usage plan the decision maker may direct an executive who has two and a half years worth of annual leave credit to take annual leave to the extent that the executive's annual leave credit exceeds two and a half years worth of annual leave credit, subject to giving the executive one calendar month notice.
- (11) Subsection (11) does not apply to an executive who is on graduated return to work following compensation leave.
- (12) An executive may not be directed under subsection (10) to take annual leave if the executive has made an application for a period of annual leave equal to or greater than the period specified in subsection (10) in the past six months and the application was not approved.
- (13) An executive who has an annual leave credit in excess of two and a half years worth of annual leave credit—
- (a) on engagement or appointment; or
 - (b) on returning to duty from compensation leave;
- will have twelve months to reduce their annual leave balance to two and a half years worth of annual leave credit or below.
- (14) Annual leave may be granted at half pay with credits to be deducted on the same basis.

687 Rate of payment—annual leave

Annual leave will be granted with pay.

688 Payment in lieu of annual leave

- (1) An executive may cash out up to two weeks of the executive's annual leave credit where that credit has exceeded two years accumulated leave subject to—
 - (a) the executive providing the decision maker with a written election to do so; and
 - (b) the decision maker authorising the election; and
 - (c) the executive taking at least one week of annual leave in conjunction with this entitlement or the executive has taken at least one week of annual leave in the past six months.
- (2) An executive may only cash out annual leave under this section once during each 12-month period.

689 Effect on other entitlements—annual leave

- (1) Annual leave will count as service for all purposes.
- (2) Public holidays for which the executive is entitled to payment that fall during periods of absence on annual leave will be paid as a normal public holiday and will not be deducted from the executive's annual leave balance.

690 Access to other leave entitlements—annual leave

- (1) If personal leave is granted to the executive, annual leave will be re-credited for the period of personal leave granted.
- (2) Subject to the approval of the decision maker, an executive who is on unpaid leave may be granted annual leave during that period, subject to the requirements of that leave type.
- (3) An executive who is prevented from attending for duty under the *Public Health Act 1997*, part 6 may be granted annual leave during that period.

Subdivision 9.6.2.5 Purchased leave

691 Purpose—purchased leave

Purchased leave is available to executives to enable them to be absent from duty to support their work/life balance.

692 Entitlement—purchased leave

- (1) Executives may purchase leave in addition to the executive's usual annual leave entitlement, up to a maximum of 12 weeks in any 12 month period, subject to approval.
- (2) An executive may apply, at any time, to the decision maker for approval to participate in the purchased leave scheme.
- (3) The application must specify the amount of leave to be purchased in whole weeks up to a maximum of 12 weeks in any 12 month period, and the period over which the purchased leave is to be acquitted.
- (4) Approval by the decision maker for an executive to purchase purchased leave, is subject to both the operational requirements of the workplace and the personal responsibilities of the executive.
- (5) Approval to purchase additional leave will not be given where an executive has an annual leave balance of two and a half years worth of annual leave credit or more, except where the executive intends to use all excess annual leave credit before taking purchased leave.
- (6) Once an executive commences participation in the scheme, the executive may only opt out of the scheme before the expiration of the agreed acquittal period, if—
 - (a) the executive can demonstrate, in writing, that exceptional circumstances exist, such as unforeseen financial hardship, and the decision maker agrees; or
 - (b) the executive's employment with the Territory ceases before the expiration of the agreed acquittal period;

- (c) the executive proceeds on paid maternity or primary care giver leave.
- (7) If an executive is transferred or reassigned from one ACTPS Agency to another ACTPS Agency during the agreed acquittal period, the executive's continuation in the purchased leave scheme will be subject to the separate approval of the gaining Agency.
- (8) Where approval is not given under subsection (7), any money owing to the executive in respect of purchased leave not taken will be refunded to the executive as soon as practicable.
- (9) Any shortfall in salary payments will be deducted from monies owing to the executive.

693 Evidence and conditions—purchased leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on purchased leave.
- (2) An executive must make an application to the decision maker to access their purchased leave entitlement.
- (3) Having considered the requirements of this section the decision maker may approve an executive's application to access purchased leave.
- (4) Approval by the decision maker to grant purchased leave will be subject to operational requirements and the personal responsibilities of the executive.
- (5) A minimum of one week of purchased leave must be taken at any one time unless the remaining balance is less than one week or the relevant decision maker is satisfied, on evidence presented, there are exceptional circumstances which warrant purchased leave being taken in shorter periods.

- (6) Purchased leave must be used within the agreed acquittal period, not exceeding 12 months from the date of commencement in the scheme.
- (7) Purchased leave not taken within the agreed acquittal period will be forfeited and the value of the leave refunded to the executive at the end of the acquittal period.

694 Rate of Payment—purchased leave

- (1) While an executive is on a period of purchased leave the executive will be paid at the rate of salary used to calculate the executive's deduction.
- (2) Purchased leave will be paid for by a fortnightly deduction from the executive's salary over an agreed acquittal period not exceeding 12 months from the date the executive commences participation in the scheme.
- (3) Fortnightly deductions, from the executive's salary, will commence as soon as practicable following approval of the executive's application to participate in the purchased leave scheme.
- (4) The deductions will be calculated on the executive's salary at the date of commencement of participation in the scheme, the amount of leave to be purchased and the agreed acquittal period.
- (5) If the executive's salary changes during the acquittal period the executive may seek approval for the deduction to be recalculated.
- (6) Fortnightly tax deductions will be calculated on the executive's gross salary after the deduction has been made for purchased leave.

695 Effect on other entitlements—purchased leave

- (1) Leave taken as purchased leave will count as service for all purposes.

- (2) Public holidays for which the executive is entitled to payment that fall during periods of absence on purchased leave will be paid as a normal public holiday and will not be deducted from the executive's purchased leave balance.
- (3) Purchased leave will not affect the accrual of other forms of leave.
- (4) The purchase of additional leave under this clause will not affect the superannuation obligations of the employer or the executive.

696 Access to other leave entitlements—purchased leave

- (1) Where an executive provides a certificate from a registered health professional operating within their scope of practice for a personal illness occurring during a period of absence on purchased leave, the executive will have the purchased leave re-credited for that period covered by the certificate, and substituted by personal leave.
- (2) An executive participating in the scheme who proceeds on paid maternity or paid primary care giver's leave will elect to, either—
 - (a) exit the purchased leave scheme and have any money owing refunded; or
 - (b) remain in the scheme and have salary deductions continue during the period of paid maternity or paid primary care giver's leave.
- (3) Purchased leave taken during an executive's absence on maternity or primary care giver's leave will not extend the executive's total period of maternity or primary care giver's leave.
- (4) An executive participating in the scheme who proceeds on paid workers compensation will have salary deductions for purchased leave continue.
- (5) Normal conditions for purchased leave will apply for executives on graduated return to work programs; however entry into the scheme should be discussed with the rehabilitation case manager.

Subdivision 9.6.2.6 Long service leave

697 Interpretation—subdiv 9.6.2.6

In this part

category A officer means an executive whose eligible service has either been entirely part time service or entirely full time service.

category B officer means an executive whose eligible service has been both part time service and full time service.

defence employment means—

- (a) employment in a part of the Reserve Forces or of the Citizen Forces either on a continuous full time basis or for a period fixed in accordance with the *Defence Act 1903* (Cwlth), the *Naval Defence Act 1910* (Cwlth), or the *Air Force Act 1923* (Cwlth), as in force at the relevant time; or
- (b) national service.

eligible employment means—

- (a) continuous employment by the Territory; and
- (b) continuous recognised prior service; and
 - Note* recognised prior service is set out in part 3.6.
- (c) a period of leave without pay to count as service (other than personal leave without pay and leave in relation to defence employment); and
- (d) excludes—
 - (i) employment remunerated by fees, allowances or commission, honorarium or equivalent; and
 - (ii) appointment or engagement for the sole purpose of overseas employment; and

(iii) unauthorised absence.

minimum retiring age means—

- (a) for an executive whose minimum retiring age is fixed by their terms and conditions of employment the age so fixed; or
- (b) 60 years.

month may include part of a month.

public authority means an authority or a local governing body that was or is constituted under a law of the Territory, the Commonwealth, a State or another Territory for a public purpose

relevant day means

- (a) in relation to an executive who has been granted long service leave, the day immediately before the day that leave commences; and
- (b) in relation to an executive who receives a payment in lieu of long service leave, the day immediately before the day they cease to be an executive.

relevant rate per hour means the rate per hour which salary would be payable to the executive on the relevant day.

Territory includes a Territory instrumentality or statutory office.

year may include part of a year.

698 Purpose—long service leave

Long service leave is available to executives to enable them to be absent from duty in recognition of their length of service in the public sector.

Note Historically and in other jurisdictions long service leave may have been, or be, known by other names, including long leave, furlough or extended leave.

699 Entitlement—long service leave

- (1) An executive may be granted long service leave up to their available credit from the day they have completed seven years of eligible employment.
- (2) Long service leave is cumulative and there is no limit on the long service leave balance an executive may accrue.
- (3) Long service leave is measured in months.
- (4) For a category A officer who works full time long service leave accrues at a rate of three months every 10 years.

Note After seven years a category A officer who works full time will have a long service leave credit of 2.1 months.

- (5) For a category A officer who works part time, or a category B officer long service leave will accrue on a pro rata basis.
- (6) For executives returning to service following completion of their long service leave—
 - (a) their long service leave credit is calculated based on completed years of eligible employment; and
 - (b) the *calculation day* is the day after the last day of the last completed year of eligible employment.
- (7) For executives who are not returning to service following completion of their long service leave—
 - (a) their long service leave credit is calculated based on completed months of eligible employment; and
 - (b) the *calculation day* is the day after the last day of the last completed month of eligible employment.
- (8) The long service leave credit of a category A officer is calculated according to the formula—

$$\frac{3a}{10} - b$$

where—

a is the number of years of eligible employment accrued before the calculation day; and

b is the aggregate number of months of long service leave previously granted to the executive at any time during their eligible employment.

- (9) The long service leave credit of a category B officer is calculated according to the formula—

$$\left(\frac{3c}{10} - d\right) + \left(\frac{3e}{10} - f\right)$$

where—

c is the aggregate number of years eligible employment in a full time capacity before the calculation day; and

d is the aggregate number of months of long service leave previously granted to the executive in relation to his or her full time employment at any time during their eligible employment; and

e is the aggregate number of years of eligible employment in a part time capacity before the calculation day; and

f is the aggregate number of months of long service leave previously granted to the executive in relation to his or her part time employment at any time during their eligible employment.

- (10) For the purpose of calculating an executive's long service leave credit, if the decision maker is satisfied that long service leave previously granted to an executive during a period of eligible employment under—

(a) any of the Acts repealed by the *Long Service Leave (Commonwealth Employees) Act 1976* (Cwlth);

(b) or under the *Public Service Act 1922* (Cwlth)

was not granted to the executive on full salary or half salary, that period of long service leave is taken to have been on full salary.

- (11) For the purpose of calculating an executive's long service leave credit, if during a period of eligible employment an executive received a payment in lieu of long service leave, or an equivalent type of leave, in the ACTPS or another jurisdiction, the executive is taken to have been granted a period of long service leave equal to the period of long service leave to which that payment was made.
- (12) If on the day an executive's long service leave is calculated he or she is concurrently employed in other eligible employment, the other employment does not count as eligible employment for the period it was concurrent with employment by the Territory.
- (13) Eligible part time employment that is or was concurrent with eligible full time employment does not count as eligible employment.
- (14) If an executive is or was concurrently employed by the Territory in two positions both of which were in a part time capacity, on a day when the executive works in both positions his or her period of employment on that day will be the sum of those periods.

700 Evidence and conditions—long service leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on long service leave.
- (2) An executive must make an application to the decision maker to access their long service leave entitlement.

- (3) Having considered the requirements of this section the decision maker may approve an executive's application to access long service leave.
- (4) The decision maker may grant long service leave to an eligible category A officer up to his or her available credit.
- (5) The decision maker may grant long service leave to an eligible category B officer—
 - (a) for a period not exceeding the executive's long service leave credit accrued while working full time; and/or
 - (b) for a period not exceeding the executive's long service leave credit accrued while working part time.
- (6) Subject to the rules for category A and category B officers—
 - (a) subject to operational requirements, long service leave may be granted at half salary, full salary or double salary with credits to be deducted on the same basis; and
 - (b) the minimum period of long service leave an executive may request is seven days or shifts.
- (7) If the decision maker does not approve an application by an executive for long service leave because of operational requirements the decision maker will consult with the executive to determine a mutually convenient alternative time (or times) for the executive to take the leave.

701 Rate of payment—long service leave

- (1) In this section—

current rate of salary means the salary an executive received on the relevant day.
- (2) The prescribed average number of hours for a category A officer is the greater of—

- (a) the executive's average number of hours of employment per week during the 12 months of eligible employment ending on the relevant day; or
 - (b) the executive's average number of hours of employment per week during the entire period of their eligible employment.
- (3) The prescribed average number of hours for a category B officer is the greater of—
 - (a) the executive's average number of hours of employment per week during—
 - (i) the 12 months (or the periods aggregating 12 months) that the executive was last employed in a part time capacity before the relevant day; or
 - (ii) if the executive has less than 12 months of eligible employment in a part time capacity the period or periods during which the executive has been employed in a part time capacity; or
 - (b) the executive's average number of hours of employment per week during the entire period of their eligible employment.
- (4) When determining an executive's prescribed average number of hours under subsections (2) or (3) the hours will be taken to be the hours calculated under (2)(a) or (3)(a) unless the executive demonstrates that the hours under subsection (2)(b) or (3)(b) are greater.
- (5) A category A officer will receive the current rate of salary or relevant rate per week on the relevant day in relation to any part of long service leave they are granted if—
 - (a) the executive's eligible employment has been in a full time capacity; or
 - (b) in a part time capacity with no change in their ordinary hours.

- (6) If a category A officer's eligible employment has been in a part time capacity and there has been a change during that period in their ordinary hours the salary payable to the executive in relation to any part of long service leave they are granted is calculated by multiplying—
- (a) the relevant rate per hour for that part of the long service leave; and
 - (b) the prescribed average number hours.
- (7) If a category B officer is employed in a full time capacity on the relevant day the salary payable to the executive in relation to any part of leave that is granted—
- (a) in relation to eligible employment at a full time capacity is at their current rate of salary on the relevant day; and
 - (b) in relation to eligible employment in a part time capacity is at a weekly rate of the lower of—
 - (i) the executive's current rate of salary per week in relation to that part of the leave; or
 - (ii) in accordance with the formula

$$\frac{ab}{c}$$

where—

a is the executive's current rate of salary per week in relation to that part of the leave; and

b is the prescribed average number of hours of the executive's employment; and

c is the executive's number of hours of employment per week the executive worked on the relevant day.

-
- (8) If a category B officer is employed in a part time capacity on the relevant day the salary payable to the executive in relation to any part of leave that is granted—
- (a) in relation to eligible employment at a full time capacity is at the rate of salary that would be payable to the executive in relation to that part of the leave if the executive was rendering full time on the relevant day; and
 - (b) in relation to eligible employment at a part time capacity is at the rate per week is calculated by multiplying—
 - (i) the relevant rate per hour for that part of the long service leave; and
 - (ii) the prescribed average number of hours.

702 Effect of other entitlements

- (1) Long service leave will count as service for all purposes.
- (2) When applying for long service leave an executive must seek approval if they propose to engage in outside employment during the leave.

703 Access to other entitlements—long service leave

- (1) Public Holidays and weekends that fall during periods of absence on long service leave are deducted from the executive's long service leave balance.
- (2) An executive who is ill or injured or cares for a member of the executive's immediate family or household who is sick, for one day or more which on long service leave and who produces a medical certificate may apply for personal leave.
- (3) If personal leave is granted to the executive, long service leave will be re-credited for the period of personal leave granted.
- (4) An executive who would otherwise be granted—

- (a) unpaid maternity leave; or
 - (b) unpaid parental leave; or
 - (c) grandparental leave; or
 - (d) community service leave for voluntary community service
- may be granted long service leave during the period of that other leave type.
- (5) An executive who is prevented from attending for duty under the *Public Health Act 1997*, part 6 may be granted long service leave during that period.

Subdivision 9.6.2.7 Maternity leave

704 Purpose—maternity leave

Maternity leave is available to executives to enable them to be absent from duty to—

- (a) support her own wellbeing and to care for and bond with a new born child;
- (b) support the protection of the family and children under the *Human Rights Act 2004*.

705 Eligibility—maternity leave

- (1) An executive who is pregnant is eligible to apply for maternity leave.
- (2) An executive is eligible for maternity leave where termination of the pregnancy occurs within 20 weeks of the expected date of birth of the child.
- (3) Where an executive's pregnancy terminates more than 20 weeks before the expected date of birth of the child any maternity leave which has been prospectively approved will be cancelled.

706 Eligibility—paid maternity leave

- (1) An executive who is eligible for maternity leave and who has completed 12 months service, including recognised prior service, is eligible to be paid for the first 18 weeks of maternity leave.

Note recognised prior service is set out in part 3.6.

- (2) An executive who is eligible for maternity leave and who completes 12 months service during the first 18 weeks of maternity leave is eligible for paid maternity leave for the period between completing 12 months qualifying service and the end of the first 18 weeks of maternity leave.
- (3) An executive who is eligible for maternity leave and who is on approved leave without pay is eligible for paid maternity leave for the period between completing the approved period of leave without pay and the end of the first 18 weeks of maternity leave.

707 Entitlement—maternity leave

- (1) An eligible executive may be granted up to 52 weeks maternity leave for each pregnancy.
- (2) Subject to subsection (8), an employee who is eligible for paid maternity leave is entitled to be paid for the first eighteen weeks of maternity leave.
- (3) Maternity leave is non-cumulative.
- (4) Subject to subsections (5) and (6), an executive who is eligible for maternity leave must absent herself from duty for a period notionally commencing six weeks prior to the expected date of birth of the child and ending six weeks after the actual date of birth of the child.
- (5) An eligible executive's period of maternity leave will commence—
 - (a) subject to subsection (6), six weeks prior to the expected date of birth of the child; or

- (b) on the birth of the child if this occurs earlier than six weeks prior to the expected date of birth of the child; or
 - (c) on the date of termination of the pregnancy where termination occurs within 20 weeks of the expected date of birth of the child, or
 - (d) for an eligible executive, on the first day of paid maternity leave.
- (6) An executive who produces medical evidence from a medical practitioner that she is fit for duty until a date less than six weeks prior to the expected date of birth of the child may continue to work up until a date recommended by the medical practitioner subject to the approval of the decision maker.
- (7) An executive who has given birth to a child and produces medical evidence from a medical practitioner that she is fit for duty from a date less than six weeks after the date of birth of the child may resume duty on a date recommended by the medical practitioner subject to the approval of the decision maker.
- (8) An executive who has given birth to a child may resume duty following the end of the 6 week period after the birth of the child and earlier than the end of the approved period of maternity leave, subject to the approval of the decision maker.
- (9) An executive is entitled to return to work in accordance with the provisions in the National Employment Standards.

708 Evidence and conditions—maternity leave

- (1) Maternity leave under subsection 707(4) is deemed to be approved; however, an executive is required to submit a leave form for any period of maternity leave.
- (2) An executive should discuss with the decision maker as soon as practicable their intention to be absent on maternity leave.

- (3) An executive must make an application to the decision maker to access their paid maternity leave entitlement, or their entitlement to unpaid maternity leave other than under subsection 707(4).
- (4) Having considered the requirements of this section the decision maker may approve an executive's application to access maternity leave.
- (5) Prior to commencing maternity leave an executive will provide the decision maker with evidence of her pregnancy and the expected date of birth from a registered health professional who is operating within their scope of practice.
- (6) As soon as possible after the birth of the child an executive will provide the decision maker with evidence of the birth, and the date of the birth, from a registered health professional who is operating within their scope of practice.

709 Rate of payment—maternity leave

- (1) Paid maternity leave may be granted in any combination of full or half salary with credits to be deducted on the same basis.
- (2) The decision maker may approve, subject to a medical certificate from a registered medical practitioner who is operating within their scope of practice, an executive taking paid maternity leave in a non-continuous manner, provided any other form of paid leave will not be approved until the executive has used all of the executive's paid maternity leave entitlement.
- (3) A period of paid maternity leave does not extend the maximum 52 week period of maternity leave available to an eligible executive.
- (4) An executive's period of absence on maternity leave between the paid period of maternity leave and the maximum 52 week period of maternity leave will be without pay, unless other paid leave entitlements are accessed.

710 Effect on other entitlements—maternity leave

- (1) Maternity leave with pay will count as service for all purposes.
- (2) Maternity leave without pay taken by an executive during the period commencing six weeks prior to the expected date of birth of the child and ending six weeks after the actual date of birth of the child will count as service for all purposes.
- (3) Subject to subsection (2) any period of maternity leave taken without pay will not count as service for any purpose but does not break continuity of service.
- (4) Public holidays for which the executive would otherwise have been entitled to payment that fall during periods of absence on maternity leave will not be paid as a normal public holiday and will not extend the maximum period of maternity leave.

711 Access to other leave entitlements—maternity leave

- (1) An application by an executive for long service leave or annual leave during a period that would otherwise be an unpaid period of maternity leave will be granted to the extent of available entitlements.
- (2) An application by an executive for personal leave during a period that would otherwise be an unpaid period of maternity leave will be granted subject to the executive providing satisfactory evidence from a registered health professional operating within their scope of practice and to the extent of available entitlements.

Subdivision 9.6.2.8 Special maternity leave

712 Purpose—special maternity leave

Special maternity leave is available to executives if—

- (a) the executive is not fit for work due to a pregnancy related illness, or

- (b) the pregnancy of the executive ends within twenty eight weeks of the expected date of birth, other than by the birth of a living child.

Note If a pregnancy ends within twenty weeks of the expected date of birth of the child the employee may be entitled to paid or unpaid maternity leave.

713 Entitlement—special maternity leave

An executive is entitled to a period of unpaid special maternity leave for the duration certified by a registered medical practitioner as necessary.

714 Evidence and conditions—special maternity leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on special maternity leave (which may be after the leave has started) including the period, or expected period, of the leave.
- (2) An executive must make an application to the decision maker to access their paid maternity leave entitlement, or their entitlement to unpaid maternity leave other than under subsection 707(4).
- (3) Having considered the requirements of this section the decision maker may approve an executive's application to access maternity leave.
- (4) An executive who has given notice that special maternity leave will be (or is being) taken must provide reasonable evidence of the purpose for taking leave which may include a medical certificate from a registered medical practitioner.

715 Rate of payment—special maternity leave

Special maternity leave is granted without pay.

716 Effect on other entitlements—special maternity leave

- (1) Special maternity leave does not count as service for any purpose.
- (2) Special maternity leave does not break continuity of service.
- (3) Special maternity leave accessed due to pregnancy related illness is deducted from the entitlement for unpaid maternity leave accessed after the birth of the child.

717 Access to other leave entitlements—special maternity leave

- (1) Special maternity leave is in addition to any accrued personal leave entitlement.
- (2) Special maternity leave is in addition to compassionate leave.

Subdivision 9.6.2.9 Primary care giver leave

718 Purpose—primary care giver leave

Primary care giver leave is available to executives to enable them to be absent from duty to—

- (a) care for and bond with a newborn, adopted or foster child, or a child for whom the executive has enduring parental responsibility due to a care and protection order; and
- (b) support the protection of the family and children under the *Human Rights Act 2004*.

719 Eligibility—primary care giver leave

- (1) Primary care giver leave is available to executives who are the primary care giver of a newborn, adopted or foster child, or a child for whom the executive has enduring parental responsibility due to a care and protection order.

- (2) An executive who has completed at least 12 months service, including recognised prior service, is eligible for paid primary care giver leave.

Note recognised prior service is set out in part 3.6.

- (3) An executive who is eligible for paid maternity leave is not eligible for primary care giver leave.
- (4) An executive who completes 12 months of qualifying service within 18 weeks of becoming the primary care giver for a child is eligible for primary care giver leave for the period between completing 12 months qualifying service and the end of the first 18 weeks of becoming the primary care giver for the child.

720 Entitlement—primary care giver leave

- (1) An executive is entitled to 18 weeks of paid primary care giver leave in relation to each birth, adoption or care and protection order.
- (2) Primary care giver leave is non-cumulative.
- (3) An executive is entitled to return to work in accordance with the provisions in the National Employment Standards.

721 Evidence and conditions—primary care giver leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on primary care giver leave.
- (2) An executive must make an application to the decision maker to access their primary care giver leave entitlement.
- (3) Having considered the requirements of this section the decision maker may approve an executive's application to primary care giver leave.
- (4) The executive must provide the decision maker with appropriate evidence concerning the reasons for and circumstances under which

the primary care giver leave application is made, which may include—

- (a) a certificate from a registered health professional operating within their scope of practice relating to the expected date of birth of a child; or
 - (b) a birth certificate; or
 - (c) documents from an adoption authority concerning the proposed adoption of a child; or
 - (d) documents relating to the court orders granting parental responsibility of a foster child until the child reaches the age of 18.
- (5) In all cases details of leave being taken by the executive's domestic partner must be provided.
- (6) Before granting primary care giver leave, the decision maker must be satisfied that the executive demonstrates that they are the primary care giver for the newborn, adopted or foster child.

Example 1

The primary care giver may be the mother of an adopted child.

The primary care giver may be the father of the newborn child.

The primary care giver may be the domestic partner of the newborn child's mother.

The primary care giver may be a kinship carer or foster carer with parental responsibility until the child reaches the age of eighteen years.

- (7) Unless the decision maker determines that exceptional circumstances apply, primary care giver leave will not be approved to care for—
- (a) a baby over the age of 14 weeks; or
 - (b) an adopted or foster child—

- (i) more than after fourteen weeks after the adoption or foster care placement; or
 - (ii) if the child is over the age of 18, on the day of placement.
- (8) Primary care giver leave may be taken up to a maximum of 36 weeks at half pay.
- (9) The total combined entitlement under this subdivision, subdivision 9.6.2.7 and equivalent clauses under an industrial instrument is 18 weeks of paid leave in relation to the birth or adoption or fostering arrangement.
- (10) Primary care giver leave may be taken in any combination with maternity leave provided that the mother and the other executive entitled to primary care giver leave do not take these forms of paid leave concurrently.

722 Rate of payment—primary care giver leave

- (1) Primary care giver leave will be granted with pay.
- (2) The rate of payment to be paid during a paid period of primary care giver leave is the same rate as would be paid for approved personal leave.
- (3) Primary care giver leave may be granted in any combination of full or half pay, with credits to be deducted on the same basis.

723 Effect on other entitlements—primary care giver leave

- (1) Primary care giver leave will count as service for all purposes.
- (2) Public holidays for which the executive is entitled to payment that fall during periods of absence on primary care giver leave will not be paid as a normal public holiday.

724 Access to other leave entitlements—primary care giver leave

Primary care giver leave does not extend the maximum period of unpaid parental leave available to an executive.

Subdivision 9.6.2.10 Bonding leave

725 Purpose—bonding leave

Bonding leave is available to executives to enable them to be absent from duty to—

- (a) bond with a newborn, adopted or foster child or a child for whom the employee has enduring parental responsibility due to a care and protection order;
- (b) support the protection of the family and children under the *Human Rights Act 2004*.

726 Eligibility—bonding leave

- (1) Bonding leave is available to executives at the time of the child's birth, adoption, foster care or granting of enduring parental responsibility due to a care and protection order by the executive's domestic partner.
- (2) An executive who is entitled to paid maternity leave or paid primary care giver leave is not eligible for bonding leave.
- (3) If an executive is granted short-term parental responsibility of a child through and in accordance with a care and protection order, providing the child is under the age of eighteen on the day of placement, the executive may access paid bonding leave.

727 Entitlement—bonding leave

- (1) An executive is entitled to be absent for a maximum of two weeks (10 days) at, or near, the time of the birth, adoption or care and protection order.

Note The maximum absence may be increased by a further five days of personal leave for bonding purposes.

- (2) Bonding leave is non-cumulative.
- (3) Bonding leave must be taken as a single block.

Note The five days of personal leave for bonding purposes may be taken at any time up to fourteen weeks from the date of the birth, adoption or care and protection order.

- (4) Where an executive's domestic partner is also an *ACTPS* officer, employee or executive bonding leave may be taken concurrently with the domestic partner receiving maternity or primary caregiver leave.

728 Evidence and conditions—bonding leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on bonding leave.
- (2) Bonding leave is deemed to be approved; however an executive must submit an application to the decision maker for any period of bonding leave.
- (3) The executive must provide the decision maker with appropriate evidence concerning the circumstances under which the bonding leave application is made, which may include—
 - (a) a medical certificate relating to the expected date of birth of a child; or
 - (b) a birth certificate; or
 - (c) documents from an adoption authority concerning the proposed adoption of a child; or

- (d) documents relating to the court orders granting parental responsibility of a foster child until the child reaches the age of 18.
- (4) Unless the decision maker determines that exceptional circumstances apply bonding leave will not be approved to care for—
 - (a) a baby over the age of 14 weeks; or
 - (b) an adopted or foster child over the age of 18 on the day of placement.

729 Rate of payment—bonding leave

Bonding leave will be granted with pay.

730 Effect on other entitlements—bonding leave

- (1) Bonding leave will count as service for all purposes.
- (2) Public holidays for which the executive is entitled to payment that fall during periods of absence on bonding leave will be paid as a normal public holiday and will not extend the maximum period of bonding leave.

Subdivision 9.6.2.11 Parental leave

731 Purpose—parental leave

Parental leave is in addition to the provisions available in maternity and primary care giver leave and is available to executives to enable them to be absent from duty following the birth or adoption of a child or the placement of a child in accordance with a care and protection order.

732 Eligibility—parental leave

Parental leave is available to an executive who is the primary care giver of a child following the birth or adoption of a child or the placement of a child in accordance with a care and protection order.

733 Entitlement—parental leave

- (1) An executive is entitled to up to two years of parental leave following the child's birth, adoption or placement in accordance with a care and protection order, less any period of maternity leave or primary care giver leave which the executive has taken in relation to the same child.

Note At the end of this time the employee is entitled to return to work in accordance with the provisions in the National Employment Standards.

- (2) An executive is entitled to apply and will be granted an additional year of parental leave for up to two occasions of birth, adoption or placement in accordance with a care and protection order, provided that the executive agrees to become unattached.

734 Evidence and conditions—parental leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on parental leave.
- (2) An executive must make an application to the decision maker to access their parental leave entitlement.
- (3) Having considered the requirements of this section the decision maker may approve an executive's application to access parental leave.
- (4) The executive must provide the decision maker with appropriate evidence concerning the reasons for and circumstances under which the parental leave application is made, which may include—
 - (a) a birth certificate; or

- (b) documents from an adoption authority concerning the adoption of a child; or
 - (c) documents relating to the court orders granting parental responsibility of a foster child until the child reaches the age of 18.
- (5) The decision maker will not grant parental leave if the executive's domestic partner is on parental leave and is an officer or employee of the ACTPS.

735 Rate of payment—parental leave

Parental leave will be granted without pay.

736 Effect on other entitlements—parental leave

- (1) Parental leave will not count as service for any purpose.
- (2) Parental leave will not break continuity of service.
- (3) Public holidays for which the executive is entitled to payment that fall during periods of absence on parental leave—
 - (a) will not be paid as a normal public holiday; and
 - (b) will not extend the maximum period of parental leave.

737 Access to other leave entitlements—parental leave

- (1) An executive on parental leave may access annual and long service leave on full or half pay to the extent of available entitlements.
- (2) An application by an executive for personal leave during a period that would otherwise be a period of parental leave will be granted subject to the executive providing a certificate from a registered health professional operating within their scope of practice.

Subdivision 9.6.2.12 Grandparental leave

738 Purpose—grandparental leave

Grandparental leave is available to executives to enable them to be absent from duty to undertake a care giving role to their grandchild.

739 Eligibility—grandparental leave

To be eligible for grandparental leave, the baby or child whom the executive is providing care for must be—

- (a) their grandchild; or
- (b) their step-grandchild; or
- (c) their adopted grandchild; or
- (d) a child for whom the executive's child has parental or caring responsibility authorised under a law of a State or Territory.

740 Entitlement—grandparental leave

- (1) An eligible executive may be granted up to 52 weeks of grandparental leave, in relation to each grandchild under care, which may be taken over a period not exceeding five years.
- (2) Grandparental leave is available up until the fifth birthday of the grandchild for whom the executive is the primary care giver.
- (3) Grandparental leave is non-cumulative.
- (4) The length of a period of absence on grandparental leave must be agreed between the eligible executive and the decision maker.

Example

A day or part-day on an occasional basis.

A regular period of leave each week, fortnight or month.

A larger block of leave such as six or 12 months.

- (5) If an executive is absent on grandparental leave and becomes a grandparent to another grandchild a new application must be made to extend the period of grandparental leave to care for the additional child.

741 Evidence and conditions—grandparental leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on grandparental leave.
- (2) An executive must make an application to the decision maker to access their grandparental leave entitlement, and must include details of the period, or expected period, of the absence.
- (3) Having considered the requirements of this section the decision maker may approve an executive's application to access grandparental leave.
- (4) The decision maker should not approve an application for grandparental leave where an executive has an annual leave balance in excess of eight weeks.
- (5) An application for grandparental leave must include evidence in the form of—
 - (a) a statutory declaration or a medical certificate confirming the birth or the expected date of the birth of the grandchild; or
 - (b) the grandchild's adoption certificate or a statutory declaration confirming the adoption of the grandchild; or
 - (c) a letter or a statutory declaration confirming that there is an authorised care situation.
- (6) If both grandparents are employees of the ACTPS either grandparent may be granted leave but the leave may not be taken concurrently.

742 Rate of Payment—grandparental leave

Grandparental leave will be granted without pay.

743 Effect on other entitlements—grandparental leave

- (1) Executives cannot engage in other work during a period of grandparental leave without the prior approval of the decision maker.
- (2) Grandparental leave will count as service for all purposes except the accrual of annual leave and personal leave.
- (3) Grandparental leave will not break continuity of service.
- (5) Public holidays for which the executive is entitled to payment that fall during periods of absence on grandparental leave—
 - (a) will not be paid as normal public; and
 - (b) will not extend the maximum period of grandparental leave.

744 Access to other leave entitlements—grandparental leave

- (1) An executive on grandparental leave may access annual leave, purchased leave or long service leave.
- (2) An application by an employee for personal leave during a period that would otherwise be grandparental leave will be granted subject to the employee providing a certificate from a registered health professional who is operating within their scope of practice.

Subdivision 9.6.2.13 Community service leave**745 Purpose—community service leave**

Community service leave is available to executives to allow them to be absent from duty to engage in the following community service activities—

- (a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
- (b) a voluntary emergency management activity; or
- (c) other recognised voluntary community service activity.

746 Entitlement—jury service

Community service leave for jury service is non-cumulative.

747 Evidence and conditions—jury service

- (1) Although the granting of community service leave for jury service is deemed to be approved, an executive must—
 - (a) submit a leave form for the period of the absence; and
 - (b) provide sufficient documentary evidence of the reason for the absence.
- (2) The executive should discuss with the decision maker their intention to be absent on community service leave for jury service.

748 Rate of payment—jury service

- (1) Community service leave for jury service will be granted with pay.
- (2) If the executive is paid jury fees, this amount must be deducted from the executive's salary less reasonable out-of-pocket expenses.

749 Effect on other entitlements—jury service

- (1) Community service leave for jury service will count as service for all purposes.
- (2) Public holidays for which the executive is entitled to payment that fall during periods of absence on community service leave for jury service will be paid as a normal public holiday and will not be considered to be community service leave for jury service.

750 Eligibility—voluntary emergency management

An executive who is a member of a relevant emergency service, including—

- (a) a State or Territory Emergency Service; or
- (b) a fire-fighting service; or
- (c) a search and rescue unit; or
- (d) other volunteer service performing similar functions

is eligible for community service leave for voluntary emergency management.

751 Entitlement—voluntary emergency management

- (1) An eligible executive is entitled to be absent on unpaid leave to engage in voluntary emergency management activities, subject to operational requirements in the workplace.
- (2) An eligible executive is eligible for up to four days paid community service leave for voluntary emergency management per emergency.
- (3) Community service leave for voluntary emergency management is non-cumulative.

752 Evidence and conditions—voluntary emergency management

- (1) An executive should discuss their intention to be absent on paid or unpaid community service for voluntary emergency management with the decision maker as soon as practicable, which may be a time after the absence has started.
- (2) An executive must advise the decision maker of the period, or expected period, of the absence.

- (3) An executive must make an application to the decision maker to access their paid community service leave for voluntary emergency management entitlement.
- (4) Having considered the requirements of this section the decision maker may approve an executive's application to access community service leave for voluntary emergency management.
- (5) The decision maker may grant community service leave for voluntary emergency management to enable the executive to fulfil an obligation in the event of a civil emergency.
- (6) The executive must, if requested by the decision maker, provide sufficient documentary evidence of the reason for the absence.

753 Rate of payment—voluntary emergency management

Paid community service leave for voluntary emergency management will be granted at the executive's normal rate of pay.

754 Effect on other entitlements—voluntary emergency management

- (1) A period of recognised community service leave for voluntary emergency management will count as service for all purposes.
- (2) Public holidays for which the executive is entitled to payment that fall during periods of absence on community service leave for voluntary emergency management will be paid as a normal public holiday and will not be considered to be community service leave for voluntary emergency management.

755 Additional leave—voluntary emergency management

Additional paid leave may be approved by the decision maker for any voluntary emergency management duties required to be performed by an executive who is a member of a State or Territory Emergency Service.

756 Entitlement—voluntary community service

- (1) An executive is entitled to up to three days of paid leave for community service leave to engage in a recognised community service activity within a 12 month period.
- (2) An executive may be granted additional unpaid voluntary community service leave to engage in a recognised voluntary community service activity, subject to operational requirements in the workplace.
- (3) Community service leave for voluntary community service is non-cumulative.

757 Evidence and conditions—voluntary community service

- (1) An executive should discuss their intention to be absent on community service leave for voluntary community service, as soon as practicable, with the decision maker.
- (2) An executive must make an application to the decision maker to access their community service leave for voluntary community service entitlement.
- (3) Having considered the requirements of this section the decision maker may approve an executive's application to access unpaid community service leave for voluntary community service.
- (4) The executive must provide sufficient documentary evidence of the reason for the absence.
- (5) In considering an application from an executive for leave to engage in a voluntary community service activity, the decision maker must consider whether—
 - (a) the activity is a recognised voluntary activity; and
 - (b) the community organisation or project is an acceptable organisation or project as defined in the agency's guidelines; and

- (c) there is a risk the activity would place the executive in a real or perceived conflict of interest.
- (6) Leave for a voluntary community service activity must not be approved for activities which—
 - (a) involve any payment in cash or kind for the duties performed by the executive; or
 - (b) replace work ordinarily undertaken by a paid worker; or
 - (c) are undertaken solely for direct personal benefit of the executive; or
 - (d) place the executive in a conflict of interest situation; or
 - (e) are primarily focussed on promoting particular religious or political views; or
 - (f) involve work which does not have a community focus.
- (7) The decision maker may refuse an application from an executive for leave to engage in a voluntary community service activity on operational grounds.

758 Rate of Payment—voluntary community service

Community service leave for voluntary community service will be granted with pay for the first three days leave in a 12 month period.

759 Effect on other entitlements—voluntary community service

- (1) Community service leave for voluntary community service will count as service for all purposes up to a maximum of twenty three days in any 12 month period.
- (2) Where the decision maker has approved a request for unpaid community service leave for voluntary community service

exceeding 20 days in a 12 month period, any leave in excess of 20 days will not count as service.

- (3) Public holidays for which the executive is entitled to payment that fall during periods of absence on paid community service leave—
 - (a) will be paid as normal public holidays; and
 - (b) will not be considered to be community service leave for voluntary community service.

760 Access to other entitlements—voluntary community service

Community service leave for voluntary community service may be taken in combination with approved annual or long service leave.

Subdivision 9.6.2.14 Other leave

761 Purpose—other leave

- (1) Other leave is available to executives to enable them to be absent from duty for a variety of purposes.
- (2) Other leave may be granted in the interests of—
 - (a) the Agency, a State, a Territory or the Commonwealth; or
 - (b) the community in general; or
 - (c) the executive.

762 Eligibility—other leave

An executive who meets the eligibility requirements in column 2 of table 766A is eligible to that form of other leave.

763 Entitlement—other leave

An executive may be granted other leave to the maximum period in column 4 of table 766A.

764 Evidence and conditions—other leave

- (1) An executive should discuss with the decision maker as soon as practicable their intention to be absent on a form of other leave, including the reasons for the absence, and the period or expected period of absence.
- (2) An executive must make an application to the decision maker to access a form of other leave.
- (3) Having considered the requirements of this section the decision maker may approve an executive's application for a form of other leave.
- (4) The executive must, if requested by the decision maker, provide sufficient documentary evidence supporting the reason for the absence.
- (5) When considering requests for other leave, the decision maker will take into account—
 - (a) the executive's circumstances; and
 - (b) community norms and obligations; and
 - (c) the operational requirements of the workplace; and
 - (d) other available leave options; and
 - (e) any conditions on the entitlement in column 5 of table 766A.

765 Rate of payment and effect on other entitlement—other leave

- (1) Other leave may be granted with or without pay in accordance with column 6 of table 766A.
- (2) A period of other leave will count as service in accordance with column 7 of table 766A.

- (3) Public holidays for which the employee is entitled to payment that fall during periods of absence on paid other leave will be paid as a normal public holiday and will not reduce an entitlement of the employee to other leave.

766 Access to other leave entitlements—other leave

Leave will not be granted under this provision if another form of leave is more appropriate.

766A Types of other leave

Types of other leave are as provided in table 766A.

Table 766A

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|--|---|---|--|---|-------------------------------------|--|
| Accompany a domestic partner on a posting | To enable an executive to accompany the executive's domestic partner for the period, or part of the period, of a posting | An executive | The maximum period is the period during which the domestic partner of the executive is required to perform duties overseas, or interstate. | | Without pay. | Will not count for any purpose. |
| Attend Aboriginal or Torres Strait Islander Ceremonies | To attend a ceremony associated with the death of an immediate or extended family member or for other ceremonial obligations under Aboriginal and Torres Strait Islander law. | An executive who is of Aboriginal or Torres Strait Islander descent. | A maximum period of ten days in any two year period. | | Without pay. | Will not count for any purpose. |
| Attend Aboriginal or Torres Strait Islander meetings | For attending representative meetings in the capacity of an elected representative of the Aboriginal and Torres Strait Islander peak body. | An executive who is an elected representative of the ACT Aboriginal and Torres Strait Islander peak body. | The maximum period is the time necessary to attend representative meetings. | If an executive accepts any fee for attendance at the meeting, leave will be granted without pay. An executive may accept reimbursement for out-of-pocket expenses. | Full pay. | Will count as service for all purposes. |

Section 31

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|--|---|--|--|--|-------------------------------------|--|
| Attend NAIDOC week activities | To enable an executive to attend and participate in NAIDOC Week activities. | An executive who is of Aboriginal or Torres Strait Islander descent. | A maximum period of one complete day or for varying periods over the week's activities, totalling the equivalent of one complete day. | | Full pay. | Will count as service for all purposes. |
| Attend sporting events as an accredited competitor or official | To enable an executive to attend sporting events as an accredited competitor or official. | An executive who is selected by an official sporting body to participate as an accredited official or competitor with national or international sporting status. | The maximum period is the time necessary to attend training for, or attendance at, a major national or international sporting or other recognised event in the capacity of an accredited official or competitor. | Leave will be with pay unless otherwise agreed by the executive. | With pay or without pay. | With pay will count as service for all purposes. Without pay will not count as service for any purpose. |

Section 31

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|---------------------|---------------------|-------------------------|--|---|--|--|
| Attend as a witness | | An executive | The maximum period is the time necessary to attend as a witness. | If an executive is required to travel to give evidence, they may be reimbursed for reasonable travel expenses as if the executive had travelled in the course of the executive's duties, less any amount received as witnesses' expenses. | <p>With pay for an executive to give evidence—</p> <ul style="list-style-type: none"> (a) on behalf of a Territory, a State or the Commonwealth; (b) on behalf of an authority established by or under a law of a Territory, a State or the Commonwealth; (c) in a judicial review or administrative review proceeding where the matter being reviewed relates to the work of the employee; (d) before a Royal Commission appointed under a law of the Commonwealth; (e) before a person conducting an inquiry under a law of a Territory, a State or the Commonwealth; or (f) before a person or authority exercising arbitral functions under a law of a Territory, a State or the Commonwealth. <p>Without pay in all other circumstances under this type of other leave.</p> <p>An executive is entitled to retain any amounts received for witness' expenses; and be reimbursed for travel expenses minus the retained witness' expenses.</p> | Will count as service for all purposes. |

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|------------------------------------|---|---|--|--------------------------------|-------------------------------------|--|
| Campaign for election | To enable the executive to campaign for election | An executive who is standing for election to the ACT Legislative Assembly, Commonwealth or State House of Parliament, or other legislative or advisory body approved by the Commissioner. | A maximum period of three months. | | Without pay. | Will not count for any purpose. |
| Cope with an emergency or disaster | Where an executive is affected by a disaster which has destroyed or significantly damaged the executive's usual place of residence or its contents. | An executive whose home is wholly or partly uninhabitable for health or safety reasons. | A maximum period of three days in each consecutive period 12 months. | | Full pay. | Counts as service for all purposes. |

Section 31

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|--------------------------|---|---|--|--|---|--|
| Defence Service | To enable an executive to undertake specified defence service and, also, enlistment, training and/or deployment with the Australian Defence Force Reserve (ADFR). | An executive who is a member of one of the following forces is eligible for specific defence service leave— (a) the Australian Defence Force; or (b) a naval, military or air force of a country allied or associated with Australia for the purposes of defence; or (c) a naval, military or air force of the United Nations. | Determined in consultation with the Commissioner. | An eligible executive must give notice to the Chief Executive as soon as practicable of their absence or intention to be absent for Defence Service Leave, including documentary evidence. | Determined in consultation with the Commissioner. | Determined in consultation with the Commissioner. |
| Donate an organ | To enable an executive to donate an organ. | An executive who volunteers as an organ donor. | A maximum period of three months in any 12 month period. | | Full pay. | Will count as service for all purposes. |

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|---|--|--|--|--------------------------------|-------------------------------------|--|
| Donate blood | To enable an executive to donate blood. | An executive, who volunteers as a blood donor. | The maximum period is the time necessary to attend to give blood, including travel and reasonable recovery time. | | Full pay. | Will count as service for all purposes. |
| Engage in employment associated with compensation | To enable an executive to engage in employment outside the ACTPS as part of a rehabilitation process under the <i>Safety, Rehabilitation and Compensation Act 1988</i> . | An executive who is, or was, entitled to compensation leave under the <i>Safety, Rehabilitation and Compensation Act 1988</i> and the employment is part of a rehabilitation process under that Act. | A maximum period of three years. | | Without pay. | Will count as service for all purposes. |

Section 31

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|---|--|---|---------------------------------|--------------------------------|-------------------------------------|--|
| Engage in employment in the interests of defence or public safety | To enable the executive to engage in work or employment that the Chief Executive considers is in the interests of the defence or public safety of the Commonwealth or the Territories. | An executive who is engaging in work or employment that the decision maker considers is in the interest of the defence or public safety of the Commonwealth or the Territories. | A maximum period of two years. | | Without pay. | The first twelve months will count as service for all purposes. Subsequent leave will count as service for all purposes except annual leave. If an executive does not return to duty with the ACTPS the leave will not count as service for any purpose. |

Section 31

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|--|--|--|---------------------------------|--------------------------------|-------------------------------------|---|
| Engage in employment in the interests of the ACTPS | To enable an executive to engage in work or employment that the decision maker considers is in the interests of the ACTPS. | An executive who is engaging in work or employment that the decision maker considers is in the interests of the ACTPS. | A maximum period of five years. | | Without pay. | Will counts as service for all purposes except for annual leave. If an executive does not return to duty with the ACTPS the leave will not count as service for any purpose. |

Section 31

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|---------------------------|--|---|--|--------------------------------|-------------------------------------|--|
| Local government purposes | To enable the executive to attend formal meetings, in the capacity of an elected office holder, of a local government council. | An executive who is a duly elected office holder of a local government council. | A maximum period of— (a) in the case of an executive who is mayor or president of the council, five days in any 12 month period; or (b) in any other case three days in any 12 month period. | | Full pay. | Will count as service for all purposes. |

Section 31

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|--|---|---|---|--|-------------------------------------|--|
| Religious purposes | To enable an executive to attend a ceremony integral to the practice of the executive's religious faith. | An executive who is an adherent to the particular religious faith and who is a practising member of that religious faith. | A maximum period of ten days in any two year period. | Religious leave is only available for ceremonies that are of significant importance to the particular faith that are generally observed by the entire faith. Leave is not available for ceremonies that are only of significance to the individual member of the particular religious faith. | Without pay. | Will not count for any purpose. |
| Returned soldiers for medical purposes | To enable an executive to attend an appointment for treatment or review as a returned soldier under the <i>Veterans' Entitlement Act 1986</i> (Commonwealth). | An executive who is a returned soldier. | A maximum period of two weeks in any twelve month period. | | Full pay. | Will count as service for all purposes. |

Section 31

| column 1 Type | column 2 Purpose | column 3 Eligibility | column 4 Entitlement | column 5 Conditions | column 6 Rate of payment | column 7 Effect on other entitlements |
|--|---|---------------------------------|------------------------------------|--------------------------------|--|--|
| Take leave where leave cannot be granted under any other provision | To enable an executive to be absent from duty where the leave cannot be provided for elsewhere. | An executive. | A maximum period of twelve months. | | Without pay, except where the decision maker determines there are special circumstances, having regard to— (a) the purpose for which the leave is being taken; and (b) the length of service of the executive; and (c) the length of the period for which the leave is being taken. In special circumstances the decision maker determines whether leave is at full pay or half pay. | Leave without pay will not count as service for any purpose except where the decision maker determines there are special circumstances that the period of leave granted is to be with pay. |

Subdivision 9.6.2.15 Public holidays

767 Entitlement—public holidays

Executives are entitled to be absent from duty, in accordance with the *Holidays Act 1958*, on the following days:

- (a) 1 January (New Year's day), or, if that day falls on a Saturday or Sunday, the following Monday;
- (b) 26 January (Australia Day), or, if that day falls on a Saturday or Sunday, the following Monday;
- (c) the 2nd Monday in March (Canberra Day);
- (d) Good Friday;
- (e) the Saturday following Good Friday;
- (f) the Monday following Good Friday;
- (g) 25 April (Anzac Day), or, if that day falls on a Saturday or Sunday, the following Monday;
- (h) the 2nd Monday in June (the day for the observance of the anniversary of the birthday of the Sovereign);
- (i) Family and Community Day;
- (j) the 1st Monday in October (Labour Day);
- (k) Christmas Day, or, if that day falls on a Saturday or Sunday, the following Monday;
- (l) 26 December (Boxing Day), or, if that day falls on a Saturday, the following Monday; or, if that day falls on a Sunday or Monday, the following Tuesday;
- (m) any other day, or a part of any other day, declared to be a public holiday in the ACT in accordance with the *Holidays Act 1958*;

- (n) the next working day after Boxing Day;
- (o) any other day, or part of any day, declared to be a holiday by the Commissioner for Public Administration.

768 Rate of payment—public holidays

- (1) A public holiday will be granted with pay.
- (2) A part time executive whose regular part time hours do not fall on a public holiday will not be paid for that public holiday.
- (3) An executive will not be paid for a public holiday which occurs during a period of leave without pay.
- (4) If a public holiday occurs on the day immediately before or immediately after an executive is on a period of leave without pay the executive is entitled to be paid for the public holiday.

769 Effect on other entitlements—public holidays

- (1) Public holidays count as service for all purposes.
- (2) A public holiday will not count as service if it occurs while the executive is on a period of leave not to count as service.

Subdivision 9.6.2.16 Christmas shutdown

770 Purpose—Christmas shutdown

Christmas shutdown is available to executives to enable them to be absent from duty for purposes of operational efficiency and for the wellbeing of executives.

771 Entitlement—Christmas shutdown

- (1) Executives are entitled to two days of leave during each Christmas shutdown period, which are the working days beginning on 28 December and ending on 31 December.

- (2) Only executives who are directed to work during this period may attend for work over the Christmas shutdown period.
- (3) Executives who are working during the Christmas shutdown period will be entitled to either—
 - (a) take paid absence equivalent to the time worked at a time agreed between the executive and the decision maker; or
 - (b) elect to receive a payment for the time worked.
- (4) Part time executives whose regular part time hours do not fall during the Christmas shutdown period will not be entitled to the additional two days of paid leave.

772 Rate of payment—Christmas shutdown

Christmas shutdown leave will be granted with pay.

773 Effect on other entitlements—Christmas shutdown

Christmas shutdown leave will count as service for all purposes.

32 Dictionary, definition of *ABS*

omit

33 Dictionary, definition of *ACTGS*

omit

34 Dictionary, definition of *Agency*

omit

35 Dictionary, definition of *Award*

omit

36 Dictionary, definition of *Certified Agreement*

omit

37 Dictionary, definition of *Consequential and Transitional Provisions Act*

omit

38 Dictionary, definition of *current office*

omit

39 Dictionary, new definition of *disability*

insert

disability—see the *Discrimination Act 1991*, section 5AA

40 Dictionary, new definition of *household member*

insert

household member means a person residing in an officer's or employee's normal place of residence at the time of the officer's or employee's illness, injury, emergency or death who is not in the officer's or employee's immediate family.

41 Dictionary, new definition of *immediate family*

insert

immediate family means—

- (a) an officer's or employee's—
 - (i) domestic partner; or
 - (ii) former domestic partner; or
 - (iii) child; or

- (iv) adult child; or
 - (v) parent; or
 - (vi) grandparent; or
 - (vii) grandchild; or
 - (viii) sibling; or
- (b) the officer's or employee's domestic partner's or former domestic partner's—
- (i) child; or
 - (ii) adult child; or
 - (iii) parent; or
 - (iv) grandparent; or
 - (v) grandchild; or
 - (vi) sibling; or
- (c) a person related to the executive by Aboriginal and/or Torres Strait Islander kinship structure; and
- (e) a person identified in paragraphs (a), (b) and (c) may be adopted, step-, fostered or ex-nuptial; and
- (f) and a person recognised by the relevant chief executive as a member of the officer's or employee's immediate family in exceptional circumstances.

Note This might include other close family member or for an employee who has no-one to nominate as 'immediate family', a nominated person.

42 Dictionary, definition of MPRA

omit

43 Dictionary, new definition *public holiday*

insert

public holiday means a day or part of a day at a location where a holiday has been declared for members of the Service.

44 Dictionary, definition of *Public Sector Management*

omit

45 Dictionary, definition of *State*

omit

46 Dictionary, new definition of *substantive office*

insert

substantive office means the office an officer has been appointed, promoted or permanently transferred to.

47 Dictionary, new definition of *supervisor*

insert

supervisor means a person who has direct supervisory responsibility for one or more employees in a work unit or group activity.

48 Dictionary, new definition of *temporary transfer*

insert

temporary transfer—see section 81A

49 Dictionary, new definition of *transfer*

insert

transfer—see section 77

Endnotes

1 Notification

Notified under the Legislation Act on 7 April 2011.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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