

Australian Capital Territory

Public Sector Management Amendment Standards 2014 (No 1)

Disallowable instrument DI2014-66

made under the

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

I amend the Standards as set out below.

Andrew Kefford
Commissioner for Public Administration

Date 6/5/14

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

Katy Gallagher
Chief Minister

Date 6/5/14

Australian Capital Territory

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1 Name of instrument

This instrument is the *Public Sector Management Amendment Standards 2014 (No 1)*.

2 Commencement

This instrument commences on the day after its notification day.

3 Legislation amended

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

4 Section 29

substitute

29 Identified positions

- (1) Eligibility for an identified position must be restricted to—
 - (a) an Aboriginal or Torres Strait Islander person; or
 - (b) a person with disability.
- (2) The head of service may determine prior to the commencement of a selection process for an employment matter that an office is an identified position.
- (3) A reference to a designated position, in a document in relation to an employment matter, is taken to be a reference to an identified position.

- (4) In this section:

employment matter means an employment matter mentioned in the Act, section 65 (1).

identified position—see the Act, section 65 (6).

5 Advertising
New section 32 (1) (g)

after the note, insert

- (g) an office mentioned in 1 of the following sections:
- (i) section 53G (Appointment—certain Health Professional offices);
 - (ii) section 53H (Direct appointment—Health Directorate);
 - (iii) section 53I (Direct appointment—Education and Training Directorate).

6 Section 32 (3) (b), new note

insert

Note A reference to a designated position in an advertisement is taken to be a reference to an identified position (see s 29 (3)).

7 Application—pt 3.3
New section 39 (c)

before the note, insert

- (c) an appointment in accordance with section 53G.

8 Procedure of a joint selection committee
Section 41 (3)

omit

or transfer

substitute

, transfer or appointment

9 New section 50A

in part 3.4, insert

50A Interpretation—pt 3.4

In this part:

administrative arrangements means the Administrative Arrangements under the Act.

Canberra Institute of Technology means the institute established under the [Canberra Institute of Technology Act 1987](#).

commencement day means the day this section commences.

Education and Training Directorate means the Education and Training Directorate established under the administrative arrangements.

Health Directorate means the Health Directorate established under the administrative arrangements.

Justice and Community Safety Directorate means the Justice and Community Safety Directorate established under the administrative arrangements.

nominally vacant, in relation to an office, means an office that does not have an officer appointed to it.

teaching classification means classification mentioned in—

- (a) the *ACT Public Service Canberra Institute of Technology (Teaching Staff) Enterprise Agreement 2011 – 2013*, Annex D; or
- (b) if the *ACT Public Service Canberra Institute of Technology (Teaching Staff) Enterprise Agreement 2011 – 2013* is no longer in effect—the industrial instrument that succeeds the *ACT Public Service Canberra Institute of Technology (Teaching Staff) Enterprise Agreement 2011 – 2013*.

teaching office means an office with a teaching classification.

10 Section 53

substitute

53 Appointment after temporary engagement—general

- (1) Appointment under this section may be started by—
 - (a) the head of service; or
 - (b) a written request from an employee.
- (2) The head of service may appoint an employee as an officer to a nominally vacant office if—
 - (a) the head of service is satisfied that—
 - (i) the employee was engaged in the office after being found suitable for the office through a selection process; and
 - (ii) advertising for the selection process made potential applicants aware that the successful candidate may be eligible for appointment; and

Note A selection process must be advertised in the gazette (see s 32) and may be advertised in more than one place.

- (iii) the employee has exercised the functions of the office for a continuous period of 12 months or more; and
 - (b) the head of service believes on reasonable grounds that—
 - (i) an additional selection process would not identify a more suitable candidate for the office; and
 - (ii) the employee is sufficiently efficient and diligent and has satisfactory conduct for the office; and
 - (c) there is no excess officer eligible for the office.
- (3) The appointment of an officer under this section must be notified in the gazette as an appointment to a non-advertised vacancy.
- (4) This section is subject to sections 53A to section 53F.
- (5) In this section:
- continuous period***—
- (a) means a period with no break in service; and
 - (b) includes the following:
 - (i) a period in another office with the same classification and identical selection criteria as the office;
 - (ii) a period in a higher office.
- selection process*** means a selection process in accordance with part 3.1 (Merit and the selection process).

11 New sections 53A to 53I

in part 3.4, insert

53A Appointment after temporary engagement—Canberra Institute of Technology—non-teaching offices

- (1) This section applies if on the commencement day an employee is employed in a nominally vacant office, other than a teaching office, in the Canberra Institute of Technology.
- (2) Appointment under this section may be started by—
 - (a) the head of service; or
 - (b) a written request from the employee.
- (3) The head of service may appoint the employee as an officer to the nominally vacant office if—
 - (a) the head of service is satisfied that—
 - (i) the employee was engaged in the office after being found suitable for the office through a selection process; and
 - (ii) advertising for the selection process made potential applicants aware that the successful candidate may be eligible for appointment; and

Note A selection process must be advertised in the gazette (see s 32) and may be advertised in more than one place.

 - (iii) the employee has exercised the functions of the office for a continuous period of 12 months or more; and
 - (b) the head of service believes on reasonable grounds that—
 - (i) an additional selection process would not identify a more suitable candidate for the office; and
 - (ii) the employee is sufficiently efficient and diligent and has satisfactory conduct for the office; and

-
- (c) there is no excess officer eligible for the office; and
 - (d) appointing the employee is consistent with organisational requirements and financial arrangements; and
 - (e) if the employee made a written request to be appointed—the head of service is satisfied that the request is reasonable.
- (4) The appointment of an officer under this section must be notified in the gazette as an appointment to a non-advertised vacancy.
- (5) In this section:
- continuous period*—
- (a) means a period with no break in service; but
 - (b) does not include a period in another office.
- selection process* means a selection process in accordance with part 3.1 (Merit and the selection process).

53B Appointment after temporary engagement—Canberra Institute of Technology—teaching offices

- (1) This section applies if on the commencement day an employee is employed in a nominally vacant teaching office in the Canberra Institute of Technology.
- (2) Appointment under this section may be started by—
 - (a) the head of service; or
 - (b) a written request from the employee.
- (3) The head of service may appoint the employee as an officer to the nominally vacant office if—
 - (a) the head of service is satisfied that—
 - (i) the employee was engaged in the office after being found suitable for the office through a selection process; and

(ii) advertising for the selection process—

(A) made potential applicants aware that the successful candidate may be eligible for appointment; and

(B) appeared in a daily newspaper and any relevant ACT government publication; and

Note A selection process must be advertised in the gazette (see s 32).

(iii) the employee has exercised the functions of the office for a continuous period of 24 months or more; and

(b) the head of service believes on reasonable grounds that an additional selection process would not identify a more suitable candidate for the office; and

(c) the employee meets the selection criteria for the position; and

(d) there is no excess officer or potentially excess officer eligible for the office; and

(e) appointing the employee is consistent with organisational requirements and financial arrangements; and

(f) if the employee made a written request to be appointed—the head of service is satisfied that the request is reasonable.

(4) The appointment of an officer under this section must be notified in the gazette as an appointment to a non-advertised vacancy.

(5) In this section:

continuous period—

(a) means a period with no break in service; and

- (b) includes the following:
- (i) a period in another office with the same classification and identical selection criteria as the office;
 - (ii) a period in a higher office.

selection process means a selection process in accordance with part 3.1 (Merit and the selection process).

53C Appointment after temporary engagement—Education and Training Directorate

- (1) This section applies if on the commencement day an employee is employed in a nominally vacant office in the Education and Training Directorate.
- (2) The head of service may appoint the employee as an officer to the nominally vacant office if—
 - (a) the head of service is satisfied that—
 - (i) the employee was engaged in the office after being found suitable for the office through a selection process; and
 - (ii) advertising for the selection process made potential applicants aware that—
 - (A) the initial period of employment would be at least 6 months; and
 - (B) the period of employment may be extended; and
 - (C) the successful applicant may be appointed; and
 - Note* A selection process must be advertised in the gazette (see s 37) and may be advertised in more than one place.
 - (iii) the employee has exercised the functions of the office for a continuous period of more than 12 months; and

- (b) the head of service believes on reasonable grounds that an additional selection process would not identify a more suitable candidate for the office; and
 - (c) the employee meets the selection criteria for the position; and
 - (d) there is no excess officer or potentially excess officer eligible for the office; and
 - (e) appointing the employee is consistent with organisational requirements and financial arrangements.
- (3) The appointment of an officer under this section must be notified in the gazette as an appointment to a non-advertised vacancy.
- (4) In this section:
- continuous period*—
- (a) means a period with no break in service; and
 - (b) includes the following:
 - (i) a period in another office with the same classification and identical selection criteria as the office;
 - (ii) a period in a higher office.

selection process means—

- (a) if the initial period of employment is less than 12 months—a selection process in accordance with part 3.2 (Merit and the selection process in temporary employment) that is conducted by a selection committee or a joint selection committee; or

Note A selection process conducted by a selection committee or a joint selection committee does not include selection from a temporary employee register or selection from a field of applicants provided by an employment agency which are otherwise possible under pt 3.2.

- (b) in any other case—a selection process in accordance with part 3.1 (Merit and the selection process).

53D Appointment after temporary engagement—Health Directorate

- (1) This section applies if on the commencement day an employee is employed in a nominally vacant office in the Health Directorate.
- (2) The head of service may appoint the employee as an officer to the nominally vacant office if—
 - (a) the head of service is satisfied that—
 - (i) the employee was engaged in the office after being found suitable for the office through a selection process; and
 - (ii) advertising for the selection process made potential applicants aware that the successful candidate may be eligible for appointment; and

Note A selection process must be advertised in the gazette (see s 32) and may be advertised in more than one place.

- (iii) the employee has exercised the functions of the office for a continuous period of 12 months or more; and

- (b) the head of service believes on reasonable grounds that—
 - (i) an additional selection process would not identify a more suitable candidate for the office; and
 - (ii) the employee is sufficiently efficient and diligent and has satisfactory conduct for the office; and
 - (c) there is no excess officer eligible for the office; and
 - (d) the office is not higher than—
 - (i) a senior officer grade C classification; or
 - (ii) a health professional level 4 classification; or
 - (iii) a classification with a salary equivalent to—
 - (A) a senior officer grade C classification; or
 - (B) a health professional level 4 classification; and
 - (e) if the employee has an employee representative—the head of service has consulted with the employee representative.
- (3) The appointment of an officer under this section must be notified in the gazette as an appointment to a non-advertised vacancy.
- (4) In this section:
- continuous period***—
- (a) means a period with no break in service; but
 - (b) does not include a period in another office.
- employee representative*** means a person chosen by an employee to represent the employee.
- selection process*** means a selection process in accordance with part 3.1 (Merit and the selection process).

53E Appointment after temporary engagement—Justice and Community Safety Directorate

- (1) This section applies if on the commencement day an employee is employed in a nominally vacant office in the Justice and Community Safety Directorate.
- (2) The head of service may appoint the employee as an officer to the nominally vacant office if—
 - (a) the head of service is satisfied that—
 - (i) the employee was engaged in the office after being found suitable for the office through a selection process; and
 - (ii) advertising for the selection process—
 - (A) made potential applicants aware that the successful candidate may be eligible for appointment; and
 - (B) appeared in 1 or more of the ACT Staff Bulletin and a daily newspaper; and

Note A selection process must be advertised in the gazette (see s 32).

 - (iii) the employee has exercised the functions of the office continuously for a period of more than 24 months; and
- (b) the head of service believes on reasonable grounds that an additional selection process would not identify a more suitable candidate for the office; and
- (c) the employee meets the selection criteria for the position; and
- (d) there is no excess officer or potentially excess officer eligible for the office; and
- (e) appointing the employee is consistent with organisational requirements and financial arrangements.

(3) The appointment of an officer under this section must be notified in the gazette as an appointment to a non-advertised vacancy.

(4) In this section:

continuous period—

- (a) means a period with no break in service; and
- (b) includes a period in a higher office; and
- (c) does not include a period in another office with the same classification.

selection process means a selection process in accordance with part 3.1 (Merit and the selection process).

53F Appointment after temporary engagement—certain other directorates

(1) This section applies if on the commencement day an employee is employed in a nominally vacant office in—

- (a) the Economic Development Directorate; or
- (b) the Territory and Municipal Services Directorate.

(2) The head of service may appoint the employee as an officer to the nominally vacant office if—

- (a) the head of service is satisfied that—
 - (i) the employee was engaged in the office after being found suitable for the office through a selection process; and
 - (ii) advertising for the selection process made potential applicants aware that—
 - (A) the initial period of employment would be at least 6 months; and
 - (B) the period of employment may be extended; and

(C) the successful applicant may be appointed; and

Note A selection process must be advertised in the gazette (see s 37) and may be advertised in more than one place.

- (iii) the employee has exercised the functions of the office for a continuous period of more than 12 months; and
- (b) the head of service believes on reasonable grounds that an additional selection process would not identify a more suitable candidate for the office; and
- (c) the employee meets the selection criteria for the position; and
- (d) there is no excess officer or potentially excess officer eligible for the office; and
- (e) appointing the employee is consistent with organisational requirements and financial arrangements.
- (3) The appointment of an officer under this section must be notified in the gazette as an appointment to a non-advertised vacancy.
- (4) In this section:

continuous period—

- (a) means a period with no break in service; and
- (b) includes a period in another office with the same classification and identical selection criteria as the office; but
- (c) does not include a period in a higher office.

Economic Development Directorate means the Economic Development Directorate established under the administrative arrangements.

selection process means a selection process in accordance with part 3.2 (Merit and the selection process in temporary employment).

Territory and Municipal Services Directorate means the Territory and Municipal Services Directorate established under the administrative arrangements.

53G Appointment—certain Health Professional offices

- (1) This section applies—
- (a) to an office—
 - (i) in the Community Services Directorate with 1 of the following classifications:
 - (A) health professional level 1;
 - (B) health professional level 2; or
 - (ii) in the Health Directorate with 1 of the following classifications:
 - (A) health professional level 1;
 - (B) health professional level 2;
 - (C) health professional level 3;
 - (D) health professional level 4;
 - (E) health professional level 5;
 - (F) health professional level 6; or
 - (iii) in the Justice and Community Safety Directorate with 1 of the following classifications:
 - (A) health professional level 1;
 - (B) health professional level 2;
 - (C) health professional level 3;
 - (D) health professional level 4;
 - (E) health professional level 5;

- (F) health professional level 6; and
- (b) if—
- (i) the office is vacant; and
 - (ii) it is less than 12 months since a selection process for the office was undertaken; and
 - (iii) the selection process did not result in a suitable person being engaged in or appointed to the office.
- (2) The head of service may appoint a person to the office without advertising the office if—
- (a) the head of service is satisfied—
 - (i) there is a shortage of people able to exercise the functions of the office; and
 - (ii) the person is suitably qualified to exercise the functions of the office; and
 - (b) a joint selection committee with at least 2 members recommends the person is suitable for appointment to the office.
- Note* Members of a joint selection committee are selected in accordance with s 42.
- (3) If the appointment is to an office in the Health Directorate or the Justice and Community Safety Directorate, before recommending a person under subsection (2) (b), the joint selection committee must—
- (a) consider—
 - (i) a certified copy of the person's mandatory qualifications; and
 - (ii) the person's current resume; and

- (b) get the contact details for at least 2 referees for the person.
- (4) An appointment under this section must be on probation.
- (5) In this section:

Community Services Directorate means the Community Services Directorate in accordance with the administrative arrangements.

53H Direct appointment—Health Directorate

- (1) This section applies to a vacant office in the Health Directorate with 1 of the following classifications:
 - (a) administrative service officer class 1;
 - (b) administrative service officer class 2;
 - (c) health service officer level 2;
 - (d) health service officer level 3;
 - (e) technical officer level 1;
 - (f) facilities technical officer level 1;
 - (g) facilities service officer level 3;
 - (h) facilities service officer level 4;
 - (i) facilities service officer level 5;
 - (j) health professional level 1;
 - (k) registered nurse level 1;
 - (l) registered midwife level 1.
- (2) The head of service may appoint an employee, including a casual employee, to the office if—
 - (a) the employee meets the selection criteria for the position; and

- (b) the relevant employee representative agrees to the appointment; and
 - (c) the appointment is consistent with the requirements of any policy developed between the Health Directorate and the relevant employee representative about appointments under this section.
- (3) In this section:
employee representative—see section 53D.

53I Direct appointment—Education and Training Directorate

- (1) This section applies to an office in the Education and Training Directorate with 1 of the following classifications:
- (a) school assistant 2;
 - (b) school assistant 2/3;
 - (c) school assistant 3.
- (2) The head of service may appoint an employee to an office—
- (a) if the employee has been continuously engaged in an office for 2 school years or more since the first day of the 2011 school year; and
 - (b) in accordance with a process—
 - (i) developed by the Education and Training Directorate in consultation with the relevant union; and
 - (ii) that includes a requirement for an employee to be sufficiently efficient and diligent and to have satisfactory conduct; and
 - (iii) that allows an employee to be appointed to any suitable vacant office.

(3) In this section:

school year means the period—

- (a) starting on the first day that a school is open for student attendance in a year; and
- (b) ending on the last day that a school is open for student attendance in a year.

12 New part 4.9

insert

Part 4.9 Working with vulnerable people

287A Definitions—pt 4.9

In this part:

employee includes an officer.

Working with Vulnerable People Act means the [Working with Vulnerable People \(Background Checking\) Act 2011](#).

287B Application—pt 4.9

(1) This part applies if—

- (a) an employee is engaged in a regulated activity under the Working with Vulnerable People Act; and
- (b) the employee is required to be registered to engage in the activity under the [Working with Vulnerable People Act](#), section 12.

- (2) If the [Working with Vulnerable People Act](#), section 12 (2) (c) applies to an employee, this part applies to the employee as if the employee had been registered under the Working with Vulnerable People Act.

Note The [Working with Vulnerable People Act](#), s 12 (2) (c) applies to people who are registered under a corresponding law in relation to an activity and who are engaged in the activity for not more than 28 days in any 12-month period.

287C Redeployment—suspension of registration under Working with Vulnerable People Act

- (1) This section applies if an employee’s registration is suspended under the [Working with Vulnerable People Act](#), section 57 (Grounds for suspension or cancellation of registration) or section 59 (Suspension or cancellation of registration).
- (2) The head of service must take reasonable steps to—
- (a) give the employee duties that do not require registration under the Working with Vulnerable People Act; or
 - (b) if the employee cannot be given duties that do not require registration under the Working with Vulnerable People Act—find a vacant position in an administrative unit that the employee is capable of performing and qualified to fill.
- (3) If the head of service finds a position under subsection (2) (b) the head of service must—
- (a) offer the position to the employee; and
 - (b) if the employee consents to be redeployed—redeploy the employee to the position.

287D Suspension of employment—suspension of registration under Working with Vulnerable People Act

- (1) This section applies if an employee's registration is suspended under the [Working with Vulnerable People Act](#), section 57 (Grounds for suspension or cancellation of registration) or section 59 (Suspension or cancellation of registration).
- (2) The head of service may suspend the employee from work with pay until the earlier of the following:
 - (a) the day the employee is given alternative duties under section 287C (2) (a) or is redeployed under section 287C (3);
 - (b) the day the employee's suspension under the Working with Vulnerable People Act ends and the employee becomes—
 - (i) unconditionally registered under the Working with Vulnerable People Act; or
 - (ii) registered under the Working with Vulnerable People Act subject to a condition that does not stop the employee exercising the functions of the employee's position;
 - (c) if the employee's registration is cancelled under the [Working with Vulnerable People Act](#), section 57 (Grounds for suspension or cancellation of registration) or section 59 (Suspension or cancellation of registration)—the later of the following:
 - (i) the day ending 6 weeks after the day the suspension under this subsection started;
 - (ii) the day the employee's registration is cancelled.

287E Redeployment—failure to hold etc registration under Working with Vulnerable People Act

- (1) This section applies if—
 - (a) an employee is refused registration under the [Working with Vulnerable People Act](#), section 40 (Negative notices); or
 - (b) an employee is unable to exercise the functions of the employee's position because of a condition imposed on the employee's registration under the [Working with Vulnerable People Act](#), section 42 (Conditional registration); or
 - (c) an employee's registration is cancelled under the [Working with Vulnerable People Act](#), section 57 (Grounds for suspension or cancellation of registration) or section 59 (Suspension or cancellation of registration); or
 - (d) an employee surrenders the employee's registration under the [Working with Vulnerable People Act](#), section 60 (Surrendering registration).
- (2) The Act, section 143 (3) to (8) apply as if an employee under this part were an officer under the Act, part 6.

Note The Act, s 143 (3) to (8) requires the head of service and the commissioner to take reasonable steps to identify a vacant position in an administrative unit that the employee is capable of performing and qualified to fill and, if the employee accepts the offer of the position, redeploy the employee.

287F Suspension of employment—failure to hold etc registration under Working with Vulnerable People Act

- (1) This section applies if section 287E (1) applies to an employee.
- (2) The head of service may suspend the employee from work with pay until the earlier of the following:
 - (a) the day the employee is redeployed in accordance with the Act, section 143 (3) to (8);

- (b) the day the employee becomes—
 - (i) unconditionally registered under the Working with Vulnerable People Act; or
 - (ii) registered under the Working with Vulnerable People Act subject to a condition that does not stop the employee exercising the functions of the employee’s position;
- (c) the day ending 6 weeks after the day the suspension under this subsection started.

287G Retirement for failure to hold etc registration under Working with Vulnerable People Act

- (1) This section applies if—
 - (a) both of the following apply:
 - (i) an employee is suspended from work with pay under section 287D for 6 weeks or more;
 - (ii) the employee’s registration under the Working with Vulnerable People Act is cancelled; or
 - (b) the employee is suspended from work with pay under section 287F (2) for 6 weeks or more.
- (2) The Act, section 143 (9) applies as if—
 - (a) an employee under this part were an officer under the Act, part 6; and
 - (b) a referral had been given to the head of service.

Note 1 The Act, s 143 (9) allows the head of service to give the employee written notice of the head of service’s intention to reduce the employee’s classification or retire the officer from the service.

Note 2 A decision to give a notice under the Act, s 143 (9) is an appellable decision.

13 Dictionary, note 2

insert

- daily newspaper

14 Dictionary, note 3

insert

- excess officer
- relevant union

15 Dictionary, new definitions

insert

employee, for part 4.9 (Working with vulnerable people)—see section 287A.

Working with Vulnerable People Act, for part 4.9 (Working with vulnerable people)—see section 287A.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 22 May 2014.

2 Republications of amended laws

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

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