



Australian Capital Territory

# Public Sector Management Standards 2016

DI2016-251

made under the

**Public Sector Management Act 1994**

**Republication No 3**

**Effective: 2 September 2017 – 21 September 2017**

Republication date: 2 September 2017

Last amendment made by [DI2017-38](#)  
(republication for expiry of transitional provisions (pt 11))

## About this republication

### The republished law

This is a republication of the *Public Sector Management Standards 2016*, made under the *Public Sector Management Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 September 2017. It also includes any commencement, repeal or expiry affecting this republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial amendments

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

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## Part 1 Preliminary

### 1 Name of standard

This standard is the *Public Sector Management Standards 2016*.

### 3 Dictionary

The dictionary at the end of this standard is part of this standard.

*Note 1* The dictionary at the end of this standard defines certain terms used in this standard, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*disability*—see the *Discrimination Act 1991*, section 5AA.’ means that the term ‘disability’ is defined in that section and the definition applies to this standard.

*Note 2* A definition in the dictionary (including a signpost definition) applies to this entire standard unless the definition, or another provision of this standard, provides otherwise or the contrary intention otherwise appears (see *Legislation Act*, s 155 and s 156 (1)).

### 4 Notes

A note included in this standard is explanatory and is not part of this standard.

*Note* See the *Legislation Act*, s 127 (1), (4) and (5) for the legal status of notes.

## **Part 2**                      **Selection process**

### **Division 2.1**              **Important concepts—pt 2**

#### **5**                      **Definitions—pt 2**

In this part:

*Aboriginal or Torres Strait Islander person*—see the [Act](#), section 27 (4).

*employ* includes engage or appoint.

*identified position*—see the [Act](#), section 27 (4).

*joint selection committee*—see the [Act](#), section 63.

*prescribed selection process*—see section 6.

*selection committee* means a committee established under section 24.

*selection criteria*, for a prescribed selection process for a position, means criteria about skills and experience required to exercise the functions of the position.

### **Division 2.2**              **Prescribed selection method**

#### **6**                      **Prescribed selection process**

This division applies to the selection of a person in a position mentioned in the [Act](#), section 27 (1) (a *prescribed selection process*).

#### **7**                      **Advertising**

- (1) For a prescribed selection process for a position the selection committee chair—
  - (a) must seek applications for the position in the gazette; and

- (b) may seek applications for the position in another way.
- (2) The advertisement for the prescribed selection process for a position must state the following:
  - (a) the selection criteria for the process;
  - (b) what is required to be an eligible person for selection, including any supporting evidence required;
  - (c) if the process is for an identified position—that the office is an identified position;
  - (d) if the process is appellable or reviewable;
  - (e) if a joint selection committee is undertaking the process—that the assessment of applicants will be made by a joint selection committee.

## **8 Comparative assessment**

- (1) For a prescribed selection process for a position a selection committee—
  - (a) must—
    - (i) make a comparative assessment of applicants based on each applicant's claim against the selection criteria for the position; and
    - (ii) give the assessment, in writing, to the head of service; and
  - (b) may recommend that the head of service select an applicant on the basis of the assessment.
- (2) An applicant's claim against selection criteria may be assessed using 1 or more of the following:
  - (a) a written application;
  - (b) a resume;
  - (c) referee comments;

- (d) an interview;
  - (e) practical skills testing;
  - (f) psychometric testing, approved, in writing, by the head of service for the assessment;
  - (g) an assessment method approved by the chair of the selection committee for the prescribed selection process for the position before applications for the position are sought.
- (3) The head of service may use a selection committee's assessment for up to 12 months for—
- (a) the same position; or
  - (b) another position with the same classification and selection criteria.
- (4) For a selection process for a director-general position, the head of service must consult with the Chief Minister and the Minister responsible for the director-general's administrative unit about the proposed selection of an applicant for the position.

## **Division 2.3                      Selection method for short-term employment**

### **9                      Definitions—div 2.3**

In this division:

*short-term employment* means employment in the service for up to 12 months.

*temporary employee register* means a register established under section 10 (1) or (2).

### **10                      Establishment of temporary employee register**

- (1) The head of service may establish, for the service, a register of expressions of interest from people for short-term employment.

- (2) A director-general may establish, for the director-general's administrative unit, a register of expressions of interest from people for short-term employment.
- (3) Expressions of interest for a temporary employee register must—
  - (a) as far as practicable be accepted at all times; and
  - (b) be sought at least every 12 months.

## **11 Selection method—employment up to 12 months**

- (1) Applications for short-term employment for 6 months or longer must be sought in the gazette.
- (2) The head of service may select any of the following for short-term employment:
  - (a) if applications are sought in the gazette—an applicant;
  - (b) a person registered on a temporary employee register;
  - (c) a person recommended for employment in the service by an employment agency.

*Note* The head of service must exercise a function in relation to the selection of a short-term employee in accordance with the merit and equity principle (see [Act](#), s 8 (3)).

## **Division 2.4 Circumstances when eligibility for selection may be limited**

### **12 Definitions—div 2.4**

In this division:

*casual employee* means a person employed under the [Act](#), section 111.



*continuous period*, in an office, includes the following:

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

*fixed term employee* means a person employed under the [Act](#), section 110.

*nominally vacant office* means an office with no officer appointed to it if—

- (a) a public servant is employed to exercise the functions of the office; or
- (b) an officer is exercising the functions of the office under a temporary transfer.

### **13 Identified position process**

- (1) The head of service may declare, in writing, that a vacant office is an identified position.
- (2) The declaration must be made before starting a prescribed selection process for the position.
- (3) For an identified position that must be occupied by a person with disability, the head of service may restrict eligibility to a person nominated by an organisation established to give people with disability better access to employment, appointment or promotion.

### **14 Direct appointment of employee—general**

- (1) The head of service may appoint a fixed term employee as an officer to a nominally vacant office if—
  - (a) the employee was selected for the office in accordance with a prescribed selection process; and

- (b) advertising for the selection process stated the successful applicant may be eligible for appointment; and
  - (c) the employee has exercised the functions of the office for a continuous period of 12 months or more; and
  - (d) the head of service believes on reasonable grounds the employee has exercised the functions of the office in accordance with the best practice principle; and
  - (e) there is no excess officer eligible for the office.
- (2) An appointment under this section is not appealable.

**15 Direct appointment—Aboriginal and Torres Strait Islander traineeship**

- (1) This section applies to a public servant who is employed in a program approved by the head of service for Aboriginal and Torres Strait Islander trainees (an *Aboriginal and Torres Strait Islander traineeship*).
- (2) The employee must—
- (a) undertake a training course; and
  - (b) be employed at the classification—
    - (i) Aboriginal and Torres Strait Islander Trainee; or
    - (ii) Indigenous Trainee.
- Note* This section relates to a public servant employed at the classification Aboriginal and Torres Strait Islander Trainee or Indigenous Trainee. For an officer appointed to an office with the same classification, see s 21.
- (3) If the employee shows that the employee has completed the training course the head of service must appoint the employee as an officer at the classification of administrative services officer class 2.

- (4) For a misconduct procedure, giving false evidence about completing required training may be misconduct.
- (5) An appointment under this section is not appellable.
- (6) In this section:

*complete*, a training course, means complete to the standard required by the provider of the course.

*training course* means a course (however described) approved, in writing, by the head of service for the Aboriginal and Torres Strait Islander traineeship.

## **16 Direct appointment—graduate program**

- (1) This section applies to a public servant who is employed in a program approved by the head of service for graduates (a *graduate program*).
- (2) The employee must—
  - (a) satisfactorily complete all requirements approved, in writing, by the head of service for the graduate program; and
  - (b) be employed at the classification of graduate administrative assistant; and

*Note* This section relates to a public servant employed at the classification graduate administrative assistant. For an officer appointed to an office with the same classification, see s 22.

- (c) be employed with a probation period of—
  - (i) more than 6 months; and
  - (ii) not less than the period required to complete the program requirements.

- (3) If the employee shows that the employee has completed the program requirements, the head of service must appoint the employee as an officer at—
  - (a) a classification of administrative services officer class 5; or
  - (b) equivalent to the classification of administrative services officer class 5.
- (4) For a misconduct procedure, giving false evidence about completing the program requirements may be misconduct.
- (5) An appointment under this section is not appealable.

**17 Direct appointment of employee—Health Directorate**

- (1) This section applies to a vacant office in the Health Directorate with the following classification:
  - (a) administrative services officer class 1;
  - (b) administrative services officer class 2;
  - (c) health services officer level 2;
  - (d) health services officer level 3;
  - (e) technical officer level 1;
  - (f) facilities technical officer level 1;
  - (g) facilities services officer level 3;
  - (h) facilities services officer level 4;
  - (i) facilities services 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 a fixed term or casual employee to the office if—
  - (a) the employee meets the selection criteria for the position; and
  - (b) the relevant union agrees to the appointment; and
  - (c) the appointment is consistent with the requirements of any policy developed between the Health Directorate and the relevant union about appointments under this section; and
  - (d) there is no excess officer eligible for the office.
- (3) An appointment under this section is not appellable.
- (4) In this section:

*Health Directorate* means the administrative unit responsible for the [Health Act 1993](#) under the administrative arrangements.

**18 Direct appointment of employee—Education and Training Directorate**

- (1) This section applies to an office in the Education and Training Directorate with the classification—
  - (a) school assistant 2; or
  - (b) school assistant 2/3; or
  - (c) school assistant 3.
- (2) The head of service may appoint a fixed term employee to the office—
  - (a) if the employee has been continuously employed in an office for at least 2 school years 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 a public servant to be sufficiently efficient and diligent and to have satisfactory conduct; and
  - (iii) that allows a public servant to be appointed to any suitable vacant office; and
- (c) if there is no excess officer eligible for the office.
- (3) An appointment under this section is not appellable.
- (4) In this section:

*Education and Training Directorate* means the administrative unit responsible for the *Education Act 2004* under the administrative arrangements.

*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 the same year.

## **19 Direct appointment—long-term SES member**

- (1) A long-term SES member may ask the head of service, in writing, to be appointed as an officer.
- (2) The head of service may appoint the SES member if—
  - (a) the head of service is satisfied to do so is consistent with the public sector principles; and
  - (b) the SES member meets the selection criteria for the position; and
  - (c) if there is no excess officer eligible for the office.
- (3) An appointment under this section is not appellable.

**20 Direct promotion—general**

- (1) The head of service may promote an officer to a nominally vacant office if—
  - (a) the officer was selected for the office in accordance with a prescribed selection process; and
  - (b) advertising for the selection process stated the successful applicant may be eligible for appointment; and
  - (c) the officer has exercised the functions of the office for a continuous period of 12 months or more; and
  - (d) the head of service believes on reasonable grounds the officer has exercised the functions of the office in accordance with the best practice principle; and
  - (e) there is no excess officer eligible for the office.
- (2) If another officer believes that, had a prescribed selection process been undertaken for the office, the other officer would have been recommended as the most suitable applicant, the officer may—
  - (a) for an appellable promotion—appeal; or
  - (b) for a non-appellable promotion—seek a review of the promotion decision.

**21 Direct promotion—Aboriginal and Torres Strait Islander training office**

- (1) For the [Act](#), section 106, an office with 1 of the following classifications is a training office (an *Aboriginal and Torres Strait Islander training office*):
  - (a) Aboriginal and Torres Strait Islander Trainee;
  - (b) Indigenous Trainee.

- (2) For an Aboriginal and Torres Strait Islander training office—
  - (a) the prescribed training is a training course (however described) approved, in writing, by the head of service for the Aboriginal and Torres Strait Islander traineeship; and
  - (b) the prescribed related qualified office is an office at the classification of administrative services officer class 2.
- (3) For a misconduct procedure, giving false evidence about completing required training may be misconduct.

*Note* This section relates to an officer appointed to an office with the classification Aboriginal and Torres Strait Islander Trainee Indigenous Trainee. For a public servant employed to an office with the same classification, see s 15.

## **22 Direct promotion—graduate training office**

- (1) For the [Act](#), section 106, an office with the classification of graduate administrative assistant is a training office (a *graduate training office*).
- (2) For a graduate training office—
  - (a) the prescribed training is a program requirement for the graduate program under section 16; and
  - (b) the prescribed related qualified office is an office—
    - (i) at a classification of administrative services officer class 5; or
    - (ii) equivalent to the classification of administrative services officer class 5.
- (3) For a misconduct procedure, giving false evidence about completing required training may be misconduct.

*Note* This section relates to an officer appointed to an office with the classification graduate administrative assistant. For a public servant employed to an office with the same classification, see s 16.



**23 Direct redeployment—reduction in classification on request**

- (1) This section applies to an officer if the [Act](#), section 122 applies to the officer.
- (2) The officer may ask the head of service, in writing, to reduce the officer's classification by—
  - (a) transferring the officer to an office with a lower classification; or
  - (b) declaring the officer to be an unattached officer with a lower classification.
- (3) The head of service may transfer the officer to a vacant office if the head of service is satisfied to do so is consistent with the public sector principles.
- (4) An action taken under this section is not appellable.

**Division 2.5 Selection committee**

**24 Selection committees—general**

- (1) A committee must be established to undertake a prescribed selection process for a position.
- (2) If the head of service is satisfied it is consistent with the efficient and effective management of the service, the committee may be—
  - (a) a union agreed joint selection committee; or
  - (b) a management initiated joint selection committee.
- (3) The selection committee must include—
  - (a) a chair nominated by the head of service; and
  - (b) at least 2 other members.

*Note* For the nomination of members of a joint selection committee see s 25 (2).

- (4) The selection committee members must, unless the head of service approves otherwise in writing—
  - (a) be public servants or public sector members; and
  - (b) be classified at the same classification, or a higher classification, than the position for which the prescribed selection process is undertaken.
- (5) For subsection (4) (b), the head of service may only approve a person with a lower classification if the person has specialist skills, experience or qualifications that are relevant to the position for which the prescribed selection process is undertaken.
- (6) The chair of the committee must approve the selection criteria for the prescribed selection process for the position before applications for the position are sought.
- (7) Any amount to which a public servant or public sector member was entitled immediately before becoming a member of a joint selection committee, must be paid to the public servant or public sector member for the period the public servant or public sector member is a member of the committee.
- (8) A member of a selection committee is not subject to direction from any person or body (other than a court) in exercising a function under this part.

## **25 Constitution of joint selection committee**

- (1) The head of service and relevant unions (including the principal union) may agree, in writing, to arrangements for the establishment, membership or procedures of a joint selection committee.
- (2) A joint selection committee must include at least—
  - (a) one member nominated by the head of service from a list of officers agreed between the principal union and the director-general for the administrative unit for which the selection process is being undertaken; and

- (b) one member nominated by the principal union.
- (3) If the chair or any other member of the joint selection committee leaves the committee before the selection process is finished, the member must be replaced by a person nominated in the same way as the person leaving the committee.
- (4) Any failure to comply with this section in the establishment of a joint selection committee does not invalidate any decision made by the committee in a prescribed selection process or any act done as a result of the decision of the committee.
- (5) However, if the failure relates to a joint selection committee in a prescribed selection process for a position with an appellable classification, a decision by the committee is appellable.

## **Part 3** Being an eligible person

### **Division 3.1** Supporting evidence requirement

#### **26** Requesting supporting evidence

- (1) The head of service must, in considering whether a person is an eligible person for employment in the service, require the person to show supporting evidence.
- (2) If the person fails to give sufficient supporting evidence to the head of service within a reasonable time—
  - (a) the head of service must not offer employment to the person; or
  - (b) if the head of service has already offered employment to the person—the offer is taken to be withdrawn.

#### **27** False supporting evidence

- (1) If the head of service becomes aware that a public servant gave false supporting evidence in relation to the person's employment, the head of service—
  - (a) if the public servant is not an eligible person for the position in which the person is employed—must end the public servant's employment; or
  - (b) if the public servant is an eligible person for the position in which the person is employed—may end the public servant's employment.
- (2) For a misconduct procedure, giving false supporting evidence may be misconduct.

## **28 Employment in anticipation of supporting evidence**

- (1) This section applies if the head of service requires a person to give the head of service supporting evidence under section 26 (1) and the person has not yet given the supporting evidence.
- (2) The head of service may employ the person if the head of service is satisfied on reasonable grounds that—
  - (a) the person has a reasonable excuse for not giving the supporting evidence; and
  - (b) the person will give the supporting evidence as soon as possible; and
  - (c) it is in the interests of the service to employ the person.
- (3) The head of service must end the person's employment if—
  - (a) the person fails to give the supporting evidence within a reasonable time; or
  - (b) the supporting evidence given does not show the person is an eligible person for the position in which the person is employed.

## **Division 3.2 Loss of eligibility**

### **29 Notifying loss of eligibility**

A public servant must tell the head of service, in writing, if the public servant becomes aware of no longer being an eligible person for the public servant's employment.

**30 Head of service believes public servant no longer eligible person**

If the head of service believes a public servant is no longer an eligible person for the public servant's employment, the head of service must, in writing—

- (a) tell the public servant why the head of service believes the public servant is no longer an eligible person; and
- (b) if appropriate, ask the public servant for supporting evidence to show the public servant is still an eligible person; and
- (c) tell the public servant that if the public servant is no longer an eligible person—
  - (i) for an SES member—
    - (A) the SES member's SETs will be changed under the [Act](#), section 34 (Circumstances when SETs must be changed); or
    - (B) the SES member's employment will be ended under the [Act](#), section 41 (Loss of eligibility); or
  - (ii) for an officer—the officer will be taken to be ineligible under the [Act](#), part 6 (Redeployment, underperformance and end of employment of officers); or
  - (iii) for an employee—the head of service may end the employee's employment; and
- (d) tell the public servant that the following may be misconduct:
  - (i) failing to disclose information about a change in the public servant's circumstances that affects whether the public servant is an eligible person;
  - (ii) giving false supporting evidence; and

- (e) tell the public servant that the public servant's employment may be ended if the public servant gives false supporting evidence.

**31 Anticipated reduction in classification or retirement—  
officers**

- (1) This section applies if the [Act](#), section 123 applies to an officer.
- (2) The officer may request, in writing, the head of service to retire the officer from the service.

**32 Loss etc of working with vulnerable people registration**

- (1) This section applies if—
  - (a) a public servant must be registered under the [Working with Vulnerable People \(Background Checking\) Act 2011](#) (the **WWVP Act**) because the public servant engages in a regulated activity in exercising the functions of the public servant's position; and
  - (b) under the WWVP Act—
    - (i) the public servant is refused registration; or
    - (ii) a condition is imposed on the public servant's registration that prevents the public servant from exercising the functions of the public servant's position; or
    - (iii) the public servant's registration is suspended; or
    - (iv) the public servant's registration is cancelled; or
    - (v) the public servant surrenders the public servant's registration.

- (2) The head of service may suspend the public servant from work with or without pay until—
- (a) if the public servant’s registration was suspended—the day the public servant’s suspension ends and the public servant becomes—
    - (i) unconditionally registered; or
    - (ii) registered subject to a condition that does not prevent the exercise of the public servant’s functions; or
  - (b) for an SES member whose SETs are changed under the [Act](#), section 34 because the SES member is not an eligible person—the day the SETs are changed; or
  - (c) for an officer who is transferred under the [Act](#), section 122 (Redeployment) or section 123 (Reduction in classification or retirement) because of becoming an ineligible person—the day the officer is transferred.
- (3) In this section:  
*regulated activity*—see the [WWVP Act](#), section 8.

### Division 3.3 Assessment of incapacity

#### 33 Definitions—div 3.3

In this division:

*health assessment*, of a public servant’s physical or mental condition, means a written assessment about—

- (a) the condition; and
- (b) the public servant’s capacity to exercise the functions of the public servant’s position.



***non-compensable physical or mental condition*** means a physical or mental condition that is not the subject of a compensation claim under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth).

***treating doctor***, for a public servant, means any doctor chosen by the public servant to treat the public servant's physical or mental condition.

**34 Head of service believes public servant has physical or mental incapacity**

- (1) This section applies if—
  - (a) either—
    - (i) a public servant's treating doctor advises the public servant is likely to be absent for more than 13 weeks; or
    - (ii) the public servant is absent from work for 13 weeks or more; and
  - (b) the head of service believes that—
    - (i) the public servant is absent because the public servant has a non-compensable physical or mental condition; and
    - (ii) the condition significantly reduces the public servant's capacity to exercise the functions of the public servant's position.
- (2) The head of service must, in writing—
  - (a) tell the public servant about the belief, including the reason why the head of service believes the public servant's capacity to exercise the functions is significantly reduced; and
  - (b) ask the public servant for evidence to show the public servant is able to exercise the functions; and

- (c) tell the public servant that without evidence that the public servant is able to exercise the functions, the public servant must have a health assessment; and

*Note* A health assessment must comply with requirements under s 36.

- (d) give the public servant information about the possible health assessment; and
- (e) tell the public servant that it may be misconduct to give false evidence; and
- (f) tell the public servant that if the public servant is not able to exercise the functions because of a non-compensable physical or mental condition—
  - (i) for an SES member—
    - (A) the SES member’s SETs will be changed under the [Act](#), section 34 (Circumstances when SETs must be changed); or
    - (B) the SES member’s employment will be ended under the [Act](#), section 42 (Invalidity retirement); or
  - (ii) for an officer—the officer will be taken to be incapacitated under the [Act](#), part 6 (Redeployment, underperformance and end of employment of officers); or
  - (iii) for an employee—the head of service may end the employee’s employment.

### **35 Requirement to undergo health assessment**

- (1) If after considering any evidence given to the head of service by the public servant, the head of service believes the public servant has a non-compensable physical or mental condition that significantly reduces the public servant’s capacity to exercise the functions of the public servant’s position, the head of service must—

- (a) arrange for the public servant to have a health assessment of the public servant's physical or mental condition; and
- (b) a reasonable time before the public servant is to have the health assessment, tell the public servant, in writing—
  - (i) the time and place of the assessment; and
  - (ii) the purpose of the assessment; and
  - (iii) about the relevant provisions of the *Health Records (Privacy and Access) Act 1997* relating to confidentiality of medical information and the public servant's right to have access to any information provided to the person conducting the assessment; and
  - (iv) that the public servant may submit supporting material for consideration by the person conducting the assessment.
- (2) The head of service must keep records about the management of the public servant's physical or mental condition.

### **36 Health assessment requirements**

- (1) A health assessment must be undertaken by—
  - (a) an authorised doctor other than the public servant's treating doctor; or
  - (b) a medical specialist authorised by the head of service; or
  - (c) a medical review panel.
- (2) A health assessment must consider any previous assessment about the public servant's non-compensable physical or mental condition.
- (3) The administrative unit in which a public servant was working at the time the physical or mental condition began must pay for the health assessment.

*Note* **Authorised doctor**—see the [Act](#), dictionary.

### **37 Response to health assessment**

- (1) This section applies if the head of service receives a health assessment in relation to a public servant.
- (2) As soon as practicable after receiving the health assessment, the head of service must give a copy of the health assessment to the public servant.
- (3) Having considered the health assessment, the head of service must—
  - (a) if satisfied the public servant has a non-compensable physical or mental condition that significantly reduces the public servant's capacity to exercise the functions of the public servant's position—do 1 or more of the following:
    - (i) approve further personal leave for the public servant;
    - (ii) plan for the public servant's return to work, in consultation with the public servant, in a way that supports the public servant's wellbeing;
    - (iii) declare the public servant incapacitated; or

*Note 1* Arrangements for personal leave are set out in industrial instruments.

*Note 2* The [Act](#), pt 6 (Redeployment, underperformance and end of employment of officers) applies to an incapacitated officer.
  - (b) if satisfied the public servant does not have a non-compensable physical or mental condition that significantly reduces the public servant's capacity to exercise the functions of the public servant's position—notify the public servant, in writing—
    - (i) that the public servant must return to work within 14 days after the day the public servant receives the head of service's notification; and

- (ii) if the public servant has new or more detailed medical evidence (*additional evidence*)—that the public servant may dispute the decision within 14 days after the day the public servant receives the head of service’s notification.
- (4) If the public servant disputes the head of service’s decision under subsection (3) (b)—
  - (a) if the public servant gives the head of service additional evidence within 14 days after the day the public servant receives the notification—the head of service must—
    - (i) approve further personal leave for the public servant; and
    - (ii) establish a medical review panel to make a final health assessment of the public servant’s physical or mental condition; and
  - (b) if the public servant fails to give the head of service any additional evidence—the public servant must return to work within 14 days after the day the public servant receives the notification.

### **38 Health assessment by medical review panel**

- (1) Before establishing a medical review panel, the head of service must tell the public servant, in writing—
  - (a) that the medical review panel will be established; and
  - (b) that the public servant may give evidence to the medical review panel; and
  - (c) that the health assessment of a public servant’s physical or mental condition made by a medical review panel is the final assessment of the public servant’s physical or mental condition for the purposes of this division.

- (2) The members of a medical review panel are—
  - (a) a chair who is an authorised doctor, with no previous involvement in assessing the public servant’s physical or mental condition, nominated by the head of service; and
  - (b) a medical specialist, with no previous involvement in assessing the public servant’s physical or mental condition, agreed by the head of service and the public servant; and
  - (c) a doctor or specialist nominated by the public servant.
- (3) The medical review panel must give the head of service a health assessment based on the majority opinion of the evidence considered by the panel.
- (4) A member of the medical review panel may give the head of service a separate report about the health assessment.
- (5) Having considered the health assessment and any separate report from a panel member, the head of service must—
  - (a) if satisfied the public servant has a non-compensable physical or mental condition that significantly reduces the public servant’s capacity to exercise the functions of the public servant’s position—do 1 or more of the following:
    - (i) approve further personal leave for the public servant;
    - (ii) plan for the public servant’s return to work, in consultation with the public servant, in a way that supports the public servant’s wellbeing;
    - (iii) declare the public servant incapacitated; or

- (b) if satisfied the public servant does not have a non-compensable physical or mental condition that significantly reduces the public servant's capacity to exercise the functions of the public servant's position—
  - (i) notify the public servant, in writing, that the public servant must return to work; and
  - (ii) refer any further medical certificates in relation to the public servant's physical or mental condition to a senior authorised doctor for advice.
- (6) If the public servant fails to comply with a direction to return to work, the head of service must—
  - (a) for an SES member—begin abandonment of engagement procedures against the SES member under the [Act](#), section 40; and
  - (b) for an officer—begin forfeiture of office procedures against the officer under the [Act](#), section 127.

## **Part 4                      Notifications**

### **Division 4.1                Gazette notifications**

#### **39                      Notification of direct appointment or promotion**

Notification under the [Act](#), section 29 of an appointment or promotion made under division 2.4 must state the appointment or promotion is to a non-advertised position.

#### **40                      Gazette notification of employment matter with errors**

If there is a significant error in a notice published under the [Act](#), section 29, a corrected notice must be published in the gazette as soon as practicable.

### **Division 4.2                Notification of public servant**

#### **41                      Certain records must be given to public servant**

- (1) The head of service must, in writing—
  - (a) for the engagement of an SES member—tell the SES member—
    - (i) the SES position in which the SES member is engaged; and
    - (ii) the day on which the SES member's engagement starts; and
    - (iii) the day on which the SES member's engagement will end; and
  - (b) for the appointment of an officer—tell the officer—
    - (i) the classification and administrative unit of the office to which the officer is appointed; and



- (ii) if the officer is appointed on probation—about the probation period; and
  - (c) for the promotion of an officer—tell the officer the classification and administrative unit of the office to which the officer is promoted; and
  - (d) for the transfer of an officer—tell the officer the classification and administrative unit of the office to which the officer is transferred; and
  - (e) if an officer becomes an unattached officer—tell the unattached officer the classification of the unattached officer and the administrative unit in which the unattached officer is included; and
  - (f) for the employment of an employee—tell the employee—
    - (i) the office to which, or functions for which, the employee is employed; and
    - (ii) the day on which the employee’s employment starts; and
    - (iii) for an employee employed under the [Act](#), section 110—the day on which the employee’s employment will end.
- (2) The head of service must give the public servant information about the public servant’s employment conditions.

**Examples**

relevant administrative unit, place of work, classification, salary amount and payment method, period of employment, hours of employment, laws and instruments that cover the employment

*Note* An example is part of the standards, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) Information given under this section may be given in any written form and at any place.

**Examples**

- letter
- payslip
- industrial instrument

**42 Notice of retirement—officers**

If the head of service gives an officer a notice of retirement the notice must state—

- (a) the reasons for the retirement; and
- (b) that the officer may appeal unless the officer has given prior written consent to the retirement.

## **Part 5**                      **SES members**

### **Division 5.1**              **Important concepts—pt 5**

#### **43**              **Definitions—pt 5**

In this part:

*band 1 executive* means an SES member engaged at an SES classification that corresponds with classification band 1 in table 50, column 2.

*band 2 executive* means an SES member engaged at an SES classification that corresponds with classification band 2 in table 50, column 2.

*band 3 executive* means an SES member engaged at an SES classification that corresponds with classification band 3 in table 50, column 2.

*base salary*, for an SES classification, means the salary, proportionate to the hours the SES member is engaged to work—

- (a) determined by the remuneration tribunal for the SES classification; or
- (b) if an industrial instrument applies to the SES classification—set out in the industrial instrument for the classification.

#### **Example**

The base salary for an SES member who works 4 days a week is  $\frac{4}{5}$  of the salary determined by the remuneration tribunal for the SES member's classification.

*Note*      An example is part of the standard, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

*SES classification*—see section 50.

*SES position evaluation* means an assessment of an SES position undertaken by a person independent of the service, in accordance with a methodology approved by the engager for the SES position.

## **Division 5.2                    Management of SES employment**

### **44                    SES performance**

- (1) An SES member must give the SES member's engager a draft performance agreement setting out the SES member's performance expectations within 3 months after the day the SES member's contract of engagement starts.
- (2) The engager must—
  - (a) approve the draft performance agreement; or
  - (b) after consulting with the SES member, amend and approve the performance agreement.
- (3) If the engager believes the SES member failed to meet an expectation set out in an approved performance agreement, the engager may undertake an under-performance procedure for the SES member.

### **45                    SES under-performance procedure**

- (1) This section applies if an SES member's engager believes the SES member failed to meet an expectation set out in the SES member's approved performance agreement (a *performance expectation*).
- (2) The engager must, in writing—
  - (a) tell the SES member why the engager believes the SES member failed to meet the performance expectation; and
  - (b) if appropriate, ask the SES member to show the SES member has met the performance expectation; and

- (c) tell the SES member that if the SES member does not show that the SES member meets the performance expectation, or does not take action to meet the performance expectation, within a stated period—
    - (i) the SES member's SETs will be changed under the [Act](#), section 34 (Circumstances when SETs must be changed); or
    - (ii) the SES member's employment will be ended under the [Act](#), section 38 (d) (End of SES member's engagement); and
  - (d) tell the SES member that giving false information may be misconduct.
- (3) At the end of the period mentioned in subsection (2) (c), the engager must—
- (a) if the engager is satisfied the SES member meets the performance expectation—tell the SES member, in writing, the under-performance procedure is completed; or
  - (b) if the engager is satisfied the SES member does not meet the performance expectation but has taken action to be able to meet the performance expectation—
    - (i) if the engager is satisfied it is in the interests of the service—set a date to review the SES member's performance; or
    - (ii) change the SES member's SETs under the [Act](#), section 34; or
  - (c) if the engager is satisfied the SES member does not meet the performance expectation and has not taken action to be able to meet the performance expectation—end the SES member's employment under the [Act](#), section 38 (d).

#### 46 SES member must disclose material interest

- (1) An SES member must tell the SES member's engager, in writing, about any material interest relevant to the SES member's engagement—
  - (a) before the engagement begins; and
  - (b) if the SES member's circumstances change in relation to the SES member's material interests; and
  - (c) 12 months after the day the SES member last told the engager about the SES member's material interests.
- (2) In this section:

*associate*, of a person, means—

- (a) a business partner of the person; or
- (b) a close friend of the person; or
- (c) a family member of the person.

*indirect interest*—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in a matter if any of the following has an interest in the matter:

- (a) an associate of the person;
- (b) a corporation, if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation, if the person, or an associate of the person, is an executive officer of the corporation;

- (e) the trustee of a trust, if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership, if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

**material interest**—an SES member has a **material interest** relevant to the SES member's engagement if the SES member has—

- (a) a direct or indirect financial interest in a matter relevant to the SES member's engagement in the service; or
- (b) a direct or indirect interest of any other kind if the interest could conflict, or could reasonably be perceived to conflict, with the SES member's engagement in the service.

#### **47 SES misconduct procedure**

- (1) This section applies if an SES member's engager receives an allegation, or becomes aware, that the SES member has acted in a way that may be misconduct under the Act.

*Note* Misconduct under this standard is misconduct under the Act.

- (2) The engager must—
  - (a) ask the commissioner, in writing, to investigate the misconduct; or
  - (b) investigate the allegation in accordance with—
    - (i) if the engager has made a misconduct and discipline policy—the policy; and

(ii) principles of natural justice and procedural fairness.

*Note 1* If the engager suspects an SES member of misconduct, the engager may change the SES member's position (see s 68).

*Note 2* If the engager is satisfied on reasonable grounds that an SES member has engaged in serious misconduct, the engager may end the SES member's employment without notice (see s 48 (2) (f) and s 70 (2)).

- (3) The engager may, if satisfied it is in the interests of the service, until the end of the investigation—
- (a) suspend the SES member; or
  - (b) change the SES member's SETs.
- (4) For a suspended SES member, the engager may at any time, if satisfied it is reasonable to do so—
- (a) change the suspension—
    - (i) for a suspension with pay—to suspension without pay; or
    - (ii) for a suspension without pay—to suspension with pay; and
  - (b) change the day on which the suspension ends.

#### **48 Disciplinary action for SES misconduct**

- (1) This section applies to an SES member if the SES member's engager is satisfied on reasonable grounds, because of a misconduct procedure under section 47, that the SES member engaged in misconduct.
- (2) The engager may do 1 or more of the following:
- (a) counsel the SES member;
  - (b) give the SES member a warning;
  - (c) place a condition on the SES member's continuing engagement;



- (d) deduct an amount from the SES member's salary;
- (e) change the SES member's contract;
- (f) end the SES member's engagement.

**Examples—par (c)**

- attend training in conflict resolution
- not be delegated a particular function

*Note* An example is part of the standard, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) If the engager has made a misconduct and discipline policy for SES members, an action under this section must be undertaken in accordance with the policy.

## Division 5.3 SES classification and salary

### 49 Meaning of *relevant base salary*—div 5.3

In this division:

*relevant base salary*, for a person, means the base salary that would apply to the person if the person was engaged at a stated SES classification.

### 50 SES classification

A classification for an SES member must be—

- (a) a classification (an *SES classification*) mentioned in table 50, column 3; and
- (b) decided—
  - (i) in accordance with the written recommendation of an SES position evaluation; or
  - (ii) by the SES member's engager.

**Table 50 SES classifications**

column 1 item	column 2 classification band	column 3 classification
1	1	1.1
2	1	1.2
3	1	1.3
4	2	2.4
5	2	2.5
6	2	2.6
7	3	3.7
8	3	3.8
9	3	3.9
10	3	3.10
11	3	3.11
12	3	3.12

**51 SES base salary**

A salary for an SES member must not be less than the base salary for the SES member's classification.

**52 Salary above base salary in certain circumstances**

- (1) This section applies to a person who is or will be engaged as an SES member.
- (2) The SES member's engager may state, in writing, as a percentage of salary or as an amount, a salary above the relevant base salary (a *higher salary*) if—
  - (a) for a higher salary not more than 110% of the relevant base salary—the engager is satisfied the higher salary is fair and necessary to engage the person; and

- (b) for a higher salary more than 110% of the relevant base salary—the Chief Minister, following a written recommendation from the engager (unless the engager is the Chief Minister), is satisfied the higher salary is fair and necessary to engage the person.
- (3) For subsection (2) (a), at least 1, and for subsection (2) (b), at least 2 of the following circumstances must apply for the higher salary to be fair and necessary:
  - (a) an SES position evaluation finds the relevant base salary for the SES position is less than the salary paid for similar employment outside the service;
  - (b) an earlier selection process advertising the position with the relevant base salary did not attract a suitable applicant;
  - (c) the person has a qualification, skill or expertise that is sufficiently uncommon to warrant a higher salary;
  - (d) for a person not yet engaged in the office—the person’s current salary is above the relevant base salary.
- (4) The engager may make a higher salary payable on conditions.

### **53 SES superannuation**

- (1) This section applies if an SES member—
  - (a) pays a personal superannuation contribution of 3% or more of the SES member’s superannuation salary; and
  - (b) is not a Commonwealth Superannuation Scheme member; and
  - (c) is not a Public Sector Superannuation Scheme member; and
  - (d) was engaged or appointed under the *Public Sector Management Act 1994* or another territory law—
    - (i) after 30 June 2006; or

- (ii) before 1 July 2006 but had a break in service after 30 June 2006.
- (2) The Territory must pay the SES member's agreed superannuation fund an employer's superannuation contribution that is 1% more than the charge percentage.
- (3) In this section:

*agreed superannuation fund*, for an SES member, means a superannuation fund nominated by the SES member and agreed by the engager.

*charge percentage*—see the *Superannuation Guarantee (Administration) Act 1992* (Cwlth), section 19.

*superannuation salary* means the total amount paid to the SES member that the agreed superannuation fund recognises as salary.

## Division 5.4 Long-term or short-term SES employment

### 54 Long-term and short-term SES members

- (1) When engaging an SES member, the engager must state whether the SES member is engaged on a long-term basis (a *long-term SES member*) or a short-term basis (a *short-term SES member*).
- (2) A long-term SES member must not be engaged for a single period of more than 5 years.
- Note* A long-term SES member may be consecutively engaged under s 55.
- (3) A short-term SES member must not be engaged for a single period of more than 2 years.

## **55 Consecutive long-term SES member engagement**

- (1) The engager may engage a long-term SES member immediately after the SES member's current engagement has ended (a *consecutive engagement*) if—
  - (a) the engager is satisfied that during the SES member's current engagement, the SES member met all expectations set out in the SES member's approved performance agreement; and
  - (b) there will be no working day between the SES member's current engagement and the first day of the SES member's consecutive engagement.
- (2) The SES member must be engaged at the same classification as the classification for the SES member's current engagement.
- (3) If the engager does not tell the SES member, in writing, that the SES member will not be offered consecutive engagement at least 3 months before the day stated in the SES member's contract as the end of the SES member's current engagement, the SES member must be paid the relevant amount unless—
  - (a) the SES member has accepted other employment in the public sector; or
  - (b) the SES member is entitled to another form of payment for not being engaged in consecutive engagement.
- (4) In this section:  
*relevant amount*, for a long-term SES member—
  - (a) means 25% of the SES member's annual salary on the last day of the SES member's engagement; but
  - (b) does not include cash payments (for example, cash payments instead of employer-provided benefits).

*Note* An example is part of the standard, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**56 Certain long-term SES member SETs must be presented**

- (1) The Chief Minister must present to the Legislative Assembly a long-term SES member's—
  - (a) name; and
  - (b) classification; and
  - (c) if the long-term SES member is engaged at a higher salary under section 52—salary.
- (2) The Chief Minister must present the information—
  - (a) for a long-term SES member who started employment between 1 September and the last day in February—on the first sitting day after the last day in February; and
  - (b) for a long-term SES member who started employment between 1 March and 31 August—on the first sitting day after 31 August.

**Division 5.5 Executive vehicles and parking**

**57 Definitions—div 5.5**

In this division:

*business use*, of an SES member's executive vehicle, means use in connection with—

- (c) the SES member's SES position; or
- (d) work undertaken in the SES member's administrative unit.

*executive vehicle*—see section 58 (2).

*SES member vehicle policy*—means a policy about executive vehicles made by the head of service.

## **58 Executive vehicle**

- (1) This section applies to a long-term SES member.
- (2) The SES member may lease a vehicle in accordance with the executive vehicle policy and the Territory's leasing arrangements (an *executive vehicle*).

*Note* An executive vehicle is a Territory resource. A public servant must not improperly use a Territory resource (see [Act](#), s 9 (2) (c)).

- (3) The total value of the executive vehicle lease package, including any equipment approved by the engager, must not be more than—
  - (a) for a band 1 executive—\$38 300; or
  - (b) for a band 2 executive—\$41 800; or
  - (c) for a band 3 executive—\$46 000.
- (4) For this section, the *total value* of an executive vehicle lease package—
  - (a) means the manufacturer's recommended retail price on the day the quotation for the price of the vehicle is provided by the lesser of the vehicle; and
  - (b) includes the maintenance and running costs of the executive vehicle; and
  - (c) if the SES member has a disability—does not include any equipment or modification necessary to enable the SES member to drive the vehicle.
- (5) The SES member must—
  - (a) be the registered operator of the executive vehicle; and
  - (b) take reasonable care of the executive vehicle.
- (6) The SES member may only return, replace, purchase or transfer an executive vehicle in accordance with an executive vehicle policy.

**59 Payment instead of vehicle**

- (1) This section applies to—
  - (a) a short-term SES member; and
  - (b) a long-term SES member who requests, in writing, to be paid an amount instead of an executive vehicle.
- (2) The SES member must be paid in fortnightly instalments, a total of—
  - (a) for a band 1 executive—\$19 500 each year; or
  - (b) for a band 2 executive—\$20 000 each year; or
  - (c) for a band 3 executive—\$21 500 each year.

**60 Part-time SES member**

If an SES member is engaged on a part-time basis, the engager must decide whether the SES member is entitled—

- (a) to an executive vehicle; or
- (b) to a payment under section 59 that is in proportion to the hours for which the SES member is engaged.

**61 Parking or payment instead of parking**

- (1) An SES member is entitled to a parking space at or near the SES member's ordinary place of work.
- (2) An SES member may request, in writing, to be paid \$2 500 each year, by fortnightly instalments, instead of a parking space.



**62 Vehicle damaged by driver**

If an executive vehicle is damaged because of the conduct of the vehicle's driver, any repair cost that is not indemnified by the Territory's insurance arrangements must be paid by—

- (a) if the driver is a public servant other than the SES member—the driver; or
- (b) in any other case—the SES member.

**Division 5.6 Application of industrial instrument**

**63 SES leave entitlements**

- (1) The leave entitlements for an SES member are the leave entitlements mentioned in the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017*, as in force from time to time with any necessary changes to give effect to this section.

*Note* The agreement is available at [www.jobs.act.gov.au](http://www.jobs.act.gov.au).

- (2) However, an SES member is not entitled to annual leave loading.

**64 SES salary sacrifice arrangements**

The salary sacrifice arrangements for an SES member are the arrangements mentioned in the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017*, clause D1, as in force from time to time with any necessary changes to give effect to this section.

*Note* The agreement is available at [www.jobs.act.gov.au](http://www.jobs.act.gov.au).

**65 SES vacation childcare subsidy**

The vacation childcare subsidy for an SES member is the vacation childcare subsidy mentioned in the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017*, clause E11, as in force from time to time with any necessary changes to give effect to this section.

*Note* The agreement is available at [www.jobs.act.gov.au](http://www.jobs.act.gov.au).

**66 Disapplication of Legislation Act, s 47 (6)**

The [Legislation Act](#), section 47 (6) does not apply to the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017*.

*Note* The *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017* does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)). The agreement is available at [www.jobs.act.gov.au](http://www.jobs.act.gov.au).

**Division 5.7 Change to SES member SETs**

**67 SES member's SETs must be changed—increased responsibility**

- (1) This section applies if an SES position evaluation—
  - (a) finds the responsibility of an SES member's SES position has increased; and
  - (b) recommends a change to the SES member's SES position including—
    - (i) for a band 1 executive—a higher band 1 classification; or
    - (ii) for a band 2 executive—a higher band 2 classification; or
    - (iii) for a band 3 executive—a higher band 3 classification that is within 2 classification levels of the SES member's current classification.

- (2) The SES member's engager must either—
- (a) change the SES member's—
    - (i) classification to the recommended classification; and
    - (ii) salary to the base salary for the recommended classification; or
  - (b) change the SES member's SETs so that the level of responsibility is appropriate to the SES member's classification.

**68 SES member's SETs must be changed—misconduct procedure**

- (1) This section applies if an SES member's engager—
- (a) plans to undertake or undertakes a misconduct procedure in relation to the SES member's alleged misconduct; and
  - (b) is satisfied it is not in the interests of the service for the SES member—
    - (i) to be suspended; or
    - (ii) to stay engaged in the SES member's position.
- (2) The engager must, until the end of the misconduct procedure, change the SES member's SETs in a way that is in the interests of the service.

**69 Consultation requirements—change to SETs**

- (1) An SES member's engager may make 1 or more of the following changes to an SES member's SETs without consulting the SES member:
- (a) assign a new function to the SES member;
  - (b) end the assignment of a function to the SES member;

- (c) change the administrative unit in which the SES member is engaged;
  - (d) increase the SES member's salary.
- (2) The engager may not make the following changes to the SES member's position without consultation:
- (a) reduce the SES member's salary;
  - (b) change the hours the SES member is engaged to work;
  - (c) change the period the SES member is engaged to work.

## **Division 5.8                    End of engagement**

### **70                    Notice period for ending engagement**

- (1) The minimum notice period for ending a long-term SES member's engagement is the shorter of—
- (a) 8 weeks; or
  - (b) a period agreed by the SES member's engager and the SES member.
- (2) However, there is no minimum notice period if—
- (a) the SES member's engagement is ended because the engager is satisfied on reasonable grounds that the SES member has engaged in serious misconduct; or
  - (b) at the written request of the SES member, or the direction of the engager, the SES member is paid an amount equal to 8 weeks of the SES member's salary.

**71 Notice period for resignation by SES member**

The minimum notice period for resignation by a long-term SES member is the shorter of—

- (a) 8 weeks; or
- (b) a period agreed by the SES member's engager.

**72 Payment at end of SES member's employment**

- (1) If an SES member's engager ends an SES member's engagement under the [Act](#), section 38 (e), the SES member must be paid the greater of—
  - (a) an amount equivalent to 2 weeks of the SES member's salary for every year of relevant service but not more than an amount equivalent to 44 weeks of the SES member's salary; and
  - (b) an amount equivalent to 6 months of the SES member's salary.

- (2) In this section:

*relevant service* means service that is eligible employment for working out long service leave accrual.

## Part 6 Officers

### 73 Selected for multiple positions

- (1) This section applies if—
  - (a) a person is selected for appointment, promotion or transfer in accordance with a prescribed selection process for a position; and
  - (b) before the person starts in the position, the person is selected for appointment, promotion or transfer in accordance with a prescribed selection process for 1 or more other positions.
- (2) The person must tell the head of service, in writing, the person's order of preference for the positions.
- (3) The head of service must decide the position to which the person is selected having considered—
  - (a) the person's preference; and
  - (b) the interests of the service.

*Note* The head of service must decide in accordance with the merit and equity principle (see [Act](#), s 8 (3)).

### 74 When appointment starts

An appointment of an officer starts on the latest of the following:

- (a) the day on which the officer starts work;
- (b) the day stated, in writing, by the head of service.

### 75 When promotion starts

A promotion of an officer starts on the latest of the following:

- (a) the day stated, in writing, by the head of service;

- (b) for a non-appellable promotion—1 week after the day the promotion is notified;
- (c) for an appellable promotion—
  - (i) if no appeal is made—3 weeks after the day the promotion is notified; and
  - (ii) if an appeal is made and the appeal is dismissed or lapses—on the latest of the following:
    - (A) 3 weeks after the day the promotion is notified;
    - (B) the day the appeal is dismissed or lapses;
- (d) for a promotion confirmed under section 76 (2) (b)—the day the head of service confirms the promotion.

## **76 Cancellation of promotion**

- (1) An officer may ask the head of service, in writing, to cancel the officer's promotion—
  - (a) for an appellable promotion—within 3 weeks after the day the promotion was notified; or
  - (b) for a non-appellable promotion—within 1 week after the day the promotion was notified.
- (2) The head of service must, within a reasonable time—
  - (a) cancel the promotion under the [Act](#), section 90 (1); or
  - (b) confirm the promotion.

## **77 When transfer starts**

A transfer of an officer starts on the latest of the following:

- (a) a day agreed between the officer and the head of service;
- (b) 7 days after the day the head of service gives the officer a transfer notice;

- (c) the day stated in the transfer notice;
- (d) the day the office becomes vacant;
- (e) for a transfer confirmed under section 78 (2) (b)—the day the head of service confirms the transfer.

**78 Cancellation of transfer**

- (1) An officer may ask the head of service, in writing, to cancel the officer's transfer within 1 week of the head of service giving the officer a transfer notice.
- (2) The head of service must, within a reasonable time—
  - (a) cancel the transfer under the [Act](#), section 96D; or
  - (b) confirm the transfer.

**79 Salary on transfer**

- (1) If an officer is transferred to another office, the officer must be paid—
  - (a) for a transfer to an office with a lower classification—
    - (i) if an industrial instrument sets out the pay point that applies—at the pay point; or
    - (ii) at the lowest pay point in the classification for the lower office; or
  - (b) for a transfer to an office with the same classification—at the pay point at which the officer is paid at immediately before the transfer; or
  - (c) for a transfer to an office at a higher classification—
    - (i) if an industrial instrument sets out the pay point that applies—at the pay point; or
    - (ii) at the lowest pay point in the classification for the higher office.



- (2) If the officer is transferred to an office for which an allowance for skills and qualifications is payable, and the officer has the necessary skills or qualifications at the time the officer is transferred, the officer must be paid the allowance for the period of the transfer.

### **80 Agreement required for transfer to lower classification**

The head of service must not transfer an officer to an office with a lower classification without the written agreement of the officer.

*Note* The head of service may only transfer an officer in accordance with the merit and equity principle (see [Act](#), s 8 (3)).

### **81 Officer engaged as short-term SES member**

- (1) The section applies if an officer is engaged as a short-term SES member.
- (2) The officer's appointment as an officer does not end only because of the engagement.

### **82 When reappointment starts**

A reappointment of a former officer to an office starts on the latest of the following:

- (a) the day on which the former officer starts work in the office;
- (b) the day stated, in writing, by the head of service.

### **83 Consideration of unsuitability criteria—officer on probation**

- (1) This section applies if the head of service is considering whether 1 or more of the unsuitability criteria apply to an officer.

*Note* Unsuitability criteria may be considered under the [Act](#), s 70 (4) (Appointment on probation), s 71 (4) (Appointment on probation—prescribed training office), s 71A (4) (Appointment on probation—teachers) or s 71B (5) (Extension of period of probation).

- (2) The head of service must—
  - (a) tell the officer, in writing, which unsuitability criteria the head of service believes applies to the officer; and
  - (b) give the officer a reasonable time to respond in writing; and
  - (c) consider the response (if any) of the officer.
- (3) In this section:  
*unsuitability criteria*—see the [Act](#), section 70 (4).

**84 Reappointment on probation in certain circumstances**

- (1) If a reappointed officer is on probation on the day the officer's former appointment ended, the officer must be reappointed on probation.
- (2) The period of the probation is the period of probation the officer had not completed on the day the officer's former appointment ended.

## **Part 7                      Public servant entitlements**

### **Division 7.1                Important concepts—pt 7**

#### **85                      Meaning of *accrual method*—pt 7**

In this part:

*accrual method*, for a public servant's entitlement, means the way the entitlement is worked out—

- (a) for a redundancy payment for an SES member—under section 72; or
- (b) in any other case—
  - (i) if an industrial instrument applies to the public servant's entitlement—under the industrial instrument; or
  - (ii) in the way approved, in writing, by the head of service.

### **Division 7.2                Eligible employment for working out certain entitlements**

#### **86                      Application—div 7.2**

- (1) This division sets out provisions for working out—
  - (a) whether a public servant's prior employment is—
    - (i) recognised prior service for leave and other entitlements; and
    - (ii) continuous service for leave and other entitlements; and
  - (b) how much leave and other entitlements the public servant has.

(2) This division applies to a public servant employed on or after the day the *Public Sector Management Amendment Act 2016*, section 3 commences.

*Note 1* For a public servant who was employed, or taken to be employed, under the Act before 23 January 2006, the *Public Sector Management Standard 3*, pt 19, r 9 (repealed) applies to how the public servant's entitlements are worked out.

*Note 2* For a public servant who was employed, or taken to be employed, under the Act on or after 23 January 2006, the *Public Sector Management Standards 2006*, pt 3.6 (repealed) applies to how the employee's entitlements are worked out.

## 87 Meaning of *eligible employment*

(1) In this standard:

*eligible employment*, for an entitlement mentioned in an item in table 87, column 2, means the employment mentioned in column 3 for the item.

*Note* On request by a public servant, the head of service may recognise other prior employment as eligible employment for certain entitlements (see s 88).

**Table 87 Eligible employment for certain entitlements**

column 1 item	column 2 entitlement	column 3 eligible employment	column 4 period
1	personal leave	<ul style="list-style-type: none"> <li>• ACT employment</li> <li>• APS employment</li> <li>• State employment</li> <li>• public health employment</li> <li>• employment by entity at least 50% owned solely or jointly by the Territory, Commonwealth or a State</li> </ul>	2 months

column 1 item	column 2 entitlement	column 3 eligible employment	column 4 period
2	paid maternity leave / paid primary caregiver leave	<ul style="list-style-type: none"> <li>• ACT employment</li> <li>• APS employment</li> <li>• public health employment by Territory or Commonwealth entity</li> <li>• employment by entity at least 50% owned solely or jointly by the Territory, Commonwealth or a State</li> </ul>	part of working day
3	annual leave / annual leave loading	<ul style="list-style-type: none"> <li>• ACT employment</li> <li>• APS employment</li> </ul>	part of working day
4	operational service personal leave	<ul style="list-style-type: none"> <li>• ACT employment</li> <li>• APS employment</li> </ul>	part of working day
5	redundancy payment	<ul style="list-style-type: none"> <li>• ACT employment</li> <li>• APS employment</li> </ul>	part of working day

(2) In this section:

***ACT employment*** means employment by—

- (a) the service; or
- (b) a public sector body; or
- (c) a territory-owned corporation.

***APS employment*** means employment by the Australian Public Service.

***Australian Public Service***—see the [Public Service Act 1999](#) (Cwlth), section 9.

**public authority** means the following entities established under a law of the Territory or the Commonwealth or a State:

- (a) an authority, whether incorporated or not, established for a public purpose;
- (b) a local governing body.

*Note 1* **Establish** includes constitute and continue in existence (see [Legislation Act](#), dict, pt 1).

*Note 2* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**public health employment** means employment predominantly for delivering acute public health care services.

**State employment** means employment by—

- (a) a State public service; or
- (b) a State public authority.

## 88 Other eligible employment

- (1) This section applies if a public servant's prior employment was 1 or both of the following:
  - (a) employment predominantly for a public purpose;
  - (b) employment before an ineligible break period.
- (2) If asked by a public servant, the head of service may state, in writing, that the employee's prior employment is eligible employment for 1 or more stated entitlements mentioned in table 87, column 2.
- (3) In this section:

**ineligible break period**, for an entitlement mentioned in an item in table 87, column 2—see section 89 (3).

## **89 Working out accrual of entitlements**

- (1) A public servant's entitlement is worked out—
  - (a) in accordance with the period of the public servant's eligible employment (less any non-accrual period); and
  - (b) in accordance with the accrual method; and
  - (c) from the employee's entitlement day.
- (2) A part-time employee's entitlement is worked out on a proportionate basis.
- (3) In this section:

*entitlement day*, for working out a public servant's entitlement, means the earlier of—

- (a) the first day of the public servant's current employment; and
- (b) if the public servant has an ineligible break period—the day after the public servant's last ineligible break period.

*full-time training* means training recognised as full-time training for the *Long Service Leave (Commonwealth Employees) Act 1976* (Cwlth), section 12 (6).

*illness period* means a period—

- (a) starting on the day a public servant ends employment with 1 of the following because of the public servant's ill health:
  - (i) the public sector;
  - (ii) the Australian Public Service;
  - (iii) a State public service or authority;  
*Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).
  - (iv) an authority established under a law of an external territory; and

- (b) ending on the day the head of service decides the employee is well enough to be employed again.

***ineligible break period***, for an entitlement mentioned in an item in table 87, column 2, means a break in employment (a ***break***) that, if the following are excluded, is longer than the period mentioned in column 4 for the item:

- (a) for a public servant who re-enters the service under the [Act](#), part 7—the period between the day the employee’s employment is ended and the day the employee is re-employed;
- (b) for working out personal leave accrual—
  - (i) any period of full-time training in the break; and
  - (ii) any period in the break when the employee is not employed because of an administrative error or delay by the Territory.

***non-accrual period***, in a period of eligible employment, means the following:

- (a) a period for which the public servant has received a redundancy-type payment;
- (b) a period of unapproved absence;
- (c) for the accrual of a particular kind of leave—
  - (i) any period of the leave taken; or
  - (ii) any period for which a payment instead of the leave was made to the employee;
- (d) for personal leave accrual—if there is no record about leave taken—5 days for every year of eligible employment.



## **Division 7.3                      Cash out of certain entitlements**

### **90                      Definitions—div 7.3**

In this division:

*dependant*, of a public servant, includes the following:

- (a) the public servant's domestic partner;
- (b) the public servant's former domestic partner;
- (c) a child of the public servant;
- (d) a person who is financially dependent on the public servant.

*impaired decision-making ability*—a person has impaired decision-making ability if the person's decision-making ability is impaired because of a physical, mental, psychological or intellectual condition or state, whether or not the condition or state is a diagnosable illness.

*legal disability*—a person has a legal disability if—

- (a) the person is a child; or
- (b) the head of service is satisfied that the person has impaired decision-making ability.

### **91                      Annual leave cash out**

- (1) This section applies to a public servant who leaves the service.

**Example**

- leaving by resignation
- leaving by retirement
- leaving because head of service ends contract for employment
- leaving through redundancy

*Note*                      An example is part of the standards, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) If the public servant has accrued annual leave, the public servant must be paid an amount equal in value to the accrued leave.
- (3) However, the public servant must not be paid the amount if the public servant resigns to accept employment (however described) by an employer who—
  - (a) gives the public servant a period of annual leave equal to the accrued annual leave; or
  - (b) gives the public servant an entitlement equal in value to the accrued leave.
- (4) The value of the payment is worked out in accordance with the accrual method for annual leave on the day immediately before the day the public servant leaves the service.

**92 Annual leave loading cash out—officers**

- (1) This section applies to an officer who leaves the service.
- (2) The officer must be paid any unpaid annual leave loading.
- (3) The value of the payment is worked out in accordance with the accrual method for annual leave loading—
  - (a) on the day immediately before the day the officer leaves the service; and
  - (b) using the officer’s salary on the officer’s first day as an officer in the accrual year.

**93 Annual leave cash out following death**

- (1) This section applies if—
  - (a) the head of service is satisfied on reasonable grounds that a public servant has died; and
  - (b) the public servant has at least 1 dependant.

- (2) If the public servant has accrued annual leave, the head of service must, in consultation with the public trustee—
  - (a) pay a total amount equal in value to the accrued annual leave to the dependant or dependants of the public servant; or
  - (b) if any dependant states, in writing, that the allocation of the payment is not appropriate—to the public servant's estate.
- (3) For a dependant who has a legal disability, the payment to the dependant may be paid to—
  - (a) a trustee for the benefit of the dependant; or
  - (b) the legal personal representative of the public servant.
- (4) The value of the payment is worked out in accordance with the accrual method for annual leave on the day immediately before the day the public servant died or is taken to have died.

## **Division 7.4 Entitlements in certain circumstances—public servants**

### **94 Lease of Territory dwelling**

- (1) The head of service may approve the lease of a Territory dwelling to a public servant if living in the dwelling relates to the public servant's employment in the service.
- (2) In this section:  
*Territory dwelling* means residential accommodation owned or controlled by the Territory.

### **95 Payment in relation to life insurance**

- (1) This section applies to a public servant who has a life insurance policy.

- (2) If the public servant is required to pay an additional amount for the life insurance policy because of the public servant's employment in the service, the head of service may reimburse the additional amount.
- (3) If the life insurance policy is invalidated, or otherwise made inoperative, as a direct result of the public servant's employment in the service, the head of service may agree to indemnify 1 or more of the following:
  - (a) the public servant;
  - (b) a beneficiary of an insurance policy;
  - (c) a legal representative for the public servant's estate.
- (4) In this section:

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

## **96 Reimbursement for loss or damage**

- (1) The head of service may reimburse a public servant for the loss or damage of the public servant's property if—
  - (a) the head of service is satisfied the loss or damage relates to the public servant's employment in the service; and
  - (b) the public servant has not been reimbursed for the loss or damage from another person.
- (2) The head of service may require the public servant to repay an amount paid under subsection (1) if the public servant is compensated or reimbursed for the loss or damage by another person.

**97 Retrospective salary payment**

If a public servant is entitled to an amount of salary that has not been paid to the public servant, the head of service must approve the retrospective payment of the salary as soon as practicable after becoming aware of the non-payment.

**98 Work outside ordinary hours**

- (1) If the head of service is satisfied it is in the interests of service, the head of service may direct a public servant to work outside the public servant's ordinary hours.
- (2) A direction under subsection (1) is subject to any requirement about the working of additional hours in an industrial instrument.

*Note* A direction is also subject to provisions about the working of additional hours in the *Fair Work Act 2009* (Cwlth).

- (3) In this section:

***ordinary hours***, for a public servant, means—

- (a) for an officer or employee—
  - (i) the officer's or employee's ordinary hours of work under an industrial instrument; or
  - (ii) the officer's or employee's span of hours under an industrial instrument; and
- (b) for an SES member—the hours the SES member is engaged to work, set out in the SES member's contract.

**99 Personal leave if health danger to others**

- (1) This section applies if the head of service believes a public servant's health puts another person at risk.

- (2) At the written request of the head of service, the public servant must—
  - (a) be examined by an authorised doctor; and
  - (b) give the medical report to the head of service.
- (3) The head of service—
  - (a) must review the medical report; and
  - (b) if the head of service believes it is in the interests of the service—may, having regard to the medical report, require the public servant to take personal leave or another kind of leave.

**100 Non-continuous primary caregiver leave**

- (1) This section applies to a public servant who is granted primary caregiver leave in accordance with the requirements set out in an industrial instrument.
- (2) The head of service—
  - (a) may approve a written request from the public servant to take the primary caregiver leave in non-continuous periods; but
  - (b) must not approve a period of annual leave or long service leave in between the periods of primary caregiver leave.

**Division 7.5 Entitlements in certain circumstances—officers and employees**

**101 Payment of skills and qualifications allowance in certain circumstances**

- (1) This section applies if an officer or employee is ordinarily paid an allowance for a qualification or skill under an industrial instrument.
- (2) The allowance must be paid to the officer or employee if the officer or employee is absent on approved paid leave.

- (3) If the officer's or employee's salary while on leave is not full-pay, the allowance must be paid in proportion to the rate of salary being paid to the officer or employee.

## **102 Sunday salary**

- (1) This section applies to an officer or employee who—
  - (a) works on a Sunday; and
  - (b) receives a higher salary on a Sunday (a *Sunday salary*) under an industrial instrument.
- (2) If the officer's or employee's Sunday salary is worked out by reference to the officer's or employee's ordinary salary, an allowance that is paid to the officer or employee and treated as salary is taken to be part of the officer's or employee's ordinary salary for working out the Sunday salary.
- (3) For working out the hours an officer or employee works on a Sunday, the officer or employee is taken to be working for the period of a meal break.
- (4) The minimum payment for an officer or employee who works on a Sunday but does not work on either the Saturday before or the Monday after the Sunday is an amount equivalent to 4 hours of Sunday salary.

## **103 Public holiday salary**

- (1) This section applies to an officer or employee who—
  - (a) works on a public holiday; and
  - (b) receives a higher salary on a public holiday (a *public holiday salary*) under an industrial instrument.

- (2) If an officer's or employee's public holiday salary is worked out by reference to the officer's or employee's ordinary salary, an allowance that is paid to the officer or employee and treated as salary is taken to be part of the officer's or employee's ordinary salary for working out the public holiday salary.
- (3) For working out the hours an officer or employee works on a public holiday for an officer or employee who works overtime in accordance with an industrial instrument, the hours worked is the total of the ordinary work and the overtime work.
- (4) The minimum payment for an officer or employee who works on 2 or more consecutive days, including a public holiday, is an amount equivalent to 4 hours of public holiday salary.

**104 Salary increment delayed by leave in certain circumstances**

- (1) This section applies if an officer or employee—
  - (a) is entitled to be paid an increase in salary in accordance with a salary increment under an industrial instrument; and
  - (b) since the officer's or employee's last increment, has been on leave that does not count as eligible employment.
- (2) The day the change in the officer's or employee's increment takes effect is delayed by 22 working days for every 22 working days of the leave.

**105 PSSAP eligibility**

- (1) This section applies to an officer or employee if on 6 October 2006 (the *relevant day*) the officer or employee was a member of the PSSAP and was—
  - (a) appointed to or employed by the Territory; or
  - (b) in a regular and systematic employment relationship with the Territory.



- (2) The officer or employee is eligible to be a member of the PSSAP if—
- (a) for an officer or employee who was appointed or employed—there has been no break in appointment or employment from the relevant day; and
  - (b) for an officer or employee who was in a regular and systematic employment relationship with the Territory—the relationship has continued from the relevant day; and
  - (c) the head of service is satisfied it is reasonable for the officer or employee to be eligible.

- (3) In this section:

**PSSAP** means the Public Sector Superannuation Accumulation Plan.

**Public Sector Superannuation Accumulation Plan** means the superannuation scheme established under the [Superannuation Act 2005](#) (Cwlth).

**regular and systematic employment relationship**, between a public servant and the Territory—

- (a) means the employee—
  - (i) is employed by the Territory in accordance with a regular work schedule or regular pattern of work; and
  - (ii) has a reasonable expectation of continuing employment with the Territory; and
- (b) is continuous employment with the Territory even if the employee is employed outside the service between periods of employment in the service (including if that employment was not approved by the head of service).

## 106 Unauthorised absences

- (1) An officer or employee must tell the head of service if the officer or employee is absent without authorisation.
- (2) The head of service may make 1 of the following directions in relation to an unauthorised absence:
  - (a) the absence is without pay and does not count as eligible employment for any purpose;
  - (b) the absence is with pay and counts as eligible employment for all purposes;
  - (c) the officer or employee must make up the period of absence by working an equivalent time in addition to the officer's or employee's ordinary hours.
- (3) In this section:

*ordinary hours*—see section 98 (3).

*unauthorised absence* means an absence for a continuous period of 30 minutes or more that is not authorised under an industrial instrument or the Act.

## Part 8 Public sector standards

### 107 Codes of conduct

- (1) The commissioner must—
  - (a) develop a code of conduct that applies to all government agencies, public servants and public sector members; and
  - (b) consult the head of service in the development of the code.
- (2) A public sector employer—
  - (a) may develop a code of conduct that applies to the public sector employer's staff; and
  - (b) if the public sector employer develops a code—must consult the commissioner in the development of the code.
- (3) A code of conduct is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### 108 Second jobs

- (1) This section applies if a public servant requires the head of service's approval for an activity under the [Act](#), section 244 (1).

*Note* A public servant requires the head of service's approval for employment, business activities or membership of a board or committee other than in the exercise of the officer's functions.
- (2) The public servant must tell the head of service, in writing, about an activity as soon as practicable before the public servant plans to start the activity.

- (3) The head of service must not approve an activity if the head of service reasonably believes to do so—
  - (a) would not be consistent with the public sector principles; or
  - (b) would create a real or perceived conflict of interest for the public servant.
- (4) The head of service must tell the public servant if the activity has been approved, in writing, as soon as practicable.
- (5) A decision under this section is reviewable.

**109 Unauthorised disclosure of information**

A public servant who stops being a public servant must not disclose confidential information acquired while a public servant without the written approval of the head of service.

## Part 9 Investigations by commissioner

### 110 Commissioner's powers for investigation

- (1) This section applies if the commissioner wants to—
  - (a) conduct an investigation; or
  - (b) assess whether an investigation is in the interests of the service.
- (2) The commissioner may do 1 or more of the following:
  - (a) inspect, or enquire into, the operations of any part of the service;
  - (b) enter, at any time, premises (other than residential premises) occupied by an officer or employee in connection with the officer's or employee's employment;
  - (c) access records about employment in the service;
  - (d) require a person to appear before the commissioner to give evidence, including by:
    - (i) taking an oath;
    - (ii) answering a question;
    - (iii) producing a stated document or other relevant thing.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see [Legislation Act](#), dict, pt 1).

*Note 2* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.
- (3) If a person is required to give evidence—
  - (a) the commissioner must give the person written notice of the day and time when, and place where, the person is required to give the evidence; and

- (b) if the person is not an officer or employee—the person is not required to comply with the notice unless a reasonable amount for any expenses the person incurs in complying with the notice is paid to the person—
  - (i) when the notice is given to the person; or
  - (ii) within a reasonable time before the date for compliance mentioned in the notice.
- (4) The commissioner may, in writing, authorise another person to exercise 1 or more of the commissioner’s powers.
- (5) In exercising a power under this part, the commissioner—
  - (a) is not subject to direction by anyone; and
  - (b) must act in accordance with the principles of natural justice and procedural fairness.

## **Part 10**                      **Industrial matters in transition**

*Note*     The purpose of this part is to preserve the operation of certain provisions in the *Public Sector Management Standards 2006* (DI2006-187) (repealed) so that the matters dealt with in those provisions can be negotiated in the next relevant enterprise bargaining process.

### **Division 10.1**                      **Preliminary—pt 10**

#### **111**                      **Inconsistency with new industrial instrument**

- (1) This section applies if an industrial instrument (a *new industrial instrument*) is made after the commencement of this part which deals with a matter in this part.
- (2) If a provision in a new industrial instrument is inconsistent with a provision in this part, the provision in the new industrial instrument prevails to the extent of the inconsistency.

### **Division 10.2**                      **Repealed standards**

#### **112**                      **Meaning of *repealed standards*—div 10.2**

In this division:

*repealed standards*—see section 113 (1).

#### **113**                      **Certain repealed standards continue to apply**

- (1) The following provisions of the *Public Sector Management Standards 2006* (DI2006-187) (the *repealed standards*), in force immediately before 1 September 2016, continue to apply:
  - (a) part 2.3 (Fraud and corruption);
  - (b) section 16 (Interpretation—pt 2.4);
  - (c) section 17 (Alcohol);
  - (d) section 19 (Personal use of IT resources);

- (e) section 64 (Recognition of prior service—long service leave);
  - (f) part 3.10 (Structure and classification standards);
  - (g) section 256 (Continuity of service—long service leave);
  - (h) part 4.3 (Long service leave);
  - (i) section 307 (Payment in lieu of long service leave—cessation of employment);
  - (j) section 308 (Payment in lieu of long service leave—death);
  - (k) section 309 (Payment in lieu of long service leave—members of the teaching service);
  - (l) part 7.1 (Travel—domestic and international);
  - (m) part 7.2 (Non-executive vehicles);
  - (n) part 7.4 (Training and development).
- (2) In giving effect to this section, the repealed standards—
- (a) must be applied with any necessary changes; and
  - (b) prevail to the extent of any inconsistency with a provision in these standards.

**114 Existing requirements for classifications continue to apply**

- (1) If the head of service appoints a person under the [Act](#), section 68 or employs a person under the [Act](#), section 110 to a classification mentioned in the repealed standards, part 3.10—
- (a) any eligibility requirement under the repealed standards for the classification is taken to be a requirement for the [Act](#), definition of *eligible person*, for the position; and
  - (b) any selection requirement or selection arrangement under the repealed standards continues to apply; and



- (c) if the classification has a training requirement under the repealed standards—for the [Act](#), section 106 (1) (a)—
  - (i) the office to which the classification relates is a prescribed class of office; and
  - (ii) the training is required training for the class of office.
- (2) In giving effect to this section, the repealed standards—
  - (a) must be applied with any necessary changes; and
  - (b) prevail to the extent of any inconsistency with a provision in these standards.

**115 Certain repealed standards continue to apply—statutory office-holders**

- (1) The following provisions of the repealed standards, in force immediately before 1 September 2016, continue to apply in relation to a full-time statutory office-holder:
  - (a) part 3.6 (Recognition of prior service on appointment or engagement);
  - (b) part 4.1 (Continuity of service);
  - (c) part 5.5 (Payment in lieu of entitlements on cessation of employment or death);
  - (d) part 9.4 (Statutory office-holder financial entitlements);
  - (e) part 9.5 (Executive and statutory office-holder vehicle entitlements);
  - (f) part 9.6 (Executive employee and statutory office-holder leave and other entitlements).

- (2) In giving effect to this section, the repealed standards—
- (a) must be applied with any necessary changes; and
  - (b) prevail to the extent of any inconsistency with a provision in these standards.

### **Division 10.3 Certain matters in relation to payments**

#### **116 First aid allowance for officer with certain qualifications**

A first aid allowance may be paid to an officer or employee as if the officer or employee holds an accredited first aid certificate, if the officer or employee—

- (a) is a nurse or nurse practitioner; or
- (b) holds a Medical Trade Certificate issued by the Australian Defence Force.

#### **117 Salary deduction**

An officer or employee may, in writing, authorise a deduction from the officer's or employee's salary.

### **Division 10.4 Certain matters in relation to overtime**

#### **118 Payment for overtime in certain circumstances**

- (1) This section applies to an officer or employee if the officer or employee is paid for working overtime in accordance with an industrial instrument.
- (2) Payment for working overtime is paid—
  - (a) if the period of overtime covers more than 1 day—
    - (i) on each day at the relevant rate for that day; or

- (ii) if the period starts on a Sunday and ends on a Monday—  
at the Sunday overtime rate; and
- (b) if the period of overtime reaches the time when the officer or  
employee would otherwise have started work (the *start time*)—  
until start time; and
- (c) if the period of overtime is not a full overtime shift and  
includes the period when the time is changed for the start or  
end of daylight saving—for the period actually worked; and
- (d) if the period of overtime is on a public holiday—
  - (i) for a full-time employee—for the greater of 4 hours or the  
hours worked; and
  - (ii) for a part-time employee—for the hours worked.

*Note* Industrial instruments also set out requirements in relation to officers  
and employees working overtime.

### **119 Payment for meal break in certain circumstances**

In addition to any requirement set out in an industrial instrument, an  
officer or employee may be paid for a meal break if the head of  
service is satisfied it is reasonable.

### **120 Payment for travel in certain circumstances**

An officer or employee may be paid for the time spent travelling to  
or from overtime work if the travel—

- (a) is because the head of service requires the officer or employee  
to travel on official business; or
- (b) relates to the exercise of an emergency function.

**Division 10.5**                    **Certain matters in relation to people covered by ACT Public Sector Medical Practitioners Enterprise Agreement 2013-2017**

*Note*        The agreement is available at [www.jobs.act.gov.au](http://www.jobs.act.gov.au).

**121**            **Definitions—div 10.5**

In this division:

*pathologist* means a person who is qualified as a pathologist and—

- (a) appointed to an office with the classification of specialist or senior specialist to exercise the functions of a pathologist; or
- (b) employed to exercise the functions of a pathologist in an office with the classification of specialist or senior specialist.

*specialist* means a person—

- (a) appointed to an office with the classification of specialist or senior specialist; or
- (b) employed to exercise the functions of an office with the classification of specialist or senior specialist.

**122**            **Pathologist allowance**

A pathologist must be paid an allowance the higher of—

- (a) 35% of the pathologist's gross annual salary; and
- (b) the amount payable for bonuses and expenses under a scheme under the *ACT Public Sector Medical Practitioners Enterprise Agreement 2013-2017*, clause 47 (Rights of Private Practice Arrangements for Specialist and Senior Specialists).

**123 Specialist allowance**

- (1) This section applies to a specialist, other than a pathologist, if the specialist has chosen not to be paid under a scheme under the *ACT Public Sector Medical Practitioners Enterprise Agreement 2013-2017*, clause 47 (Rights of Private Practice Arrangements for Specialist and Senior Specialists).
- (2) The specialist must be paid an allowance of 16% of the specialist's gross annual salary.

**124 Additional leave for medical officers**

- (1) For every Sunday worked by a medical officer, the medical officer accrues an amount of leave worked out as follows:

$$\frac{1}{10} \times \text{average weekly hours}$$

- (2) For subsection (1), the medical officer is taken to have worked on a Sunday if all or part of the medical officer's shift fell on a Sunday and the total period of the shift is at least 3 hours.
- (3) Leave accrued under this section is taken to be annual leave.
- (4) In this section:

*average weekly hours*, for a medical officer, means the average weekly hours for the last year worked by the medical officer.

*medical officer* means a person—

- (a) appointed to an office with a medical officer classification; or
- (b) employed to exercise the functions of an office with a medical officer classification.

*medical officer classification* means any of the following classifications:

- (a) Resident Medical Officer 1;
- (b) Senior Resident Medical Officer 1;

- (c) Senior Resident Medical Officer 2;
- (d) Senior Resident Medical Officer 3;
- (e) Registrar 1;
- (f) Registrar 2;
- (g) Registrar 3;
- (h) Registrar 4;
- (i) Senior Registrar;
- (j) Career Medical Officer 1;
- (k) Career Medical Officer 2;
- (l) Senior Career Medical Officer;
- (m) Transitional Career Medical Officer Grade 1;
- (n) Transitional Career Medical Officer Grade 2;
- (o) Transitional Career Medical Officer Grade 3.

## **125 Conference leave for specialists**

- (1) A specialist accrues up to 1 week leave to attend a medical conference (*conference leave*)—
  - (a) on the day the specialist begins employment as a specialist; and
  - (b) on the anniversary of the day the specialist began employment as a specialist.
- (2) The total amount of accrued conference leave must not exceed 2 weeks leave.
- (3) The head of service may grant a specialist conference leave for a period up to the specialist's accrued conference leave.

- (4) For a specialist granted conference leave—
- (a) the period of the leave—
    - (i) must be paid; and
    - (ii) is eligible employment for all leave and other entitlements; and
  - (b) the specialist is entitled to payment equal to the cost of return business class air travel to enable attendance at a medical conference if—
    - (i) the air travel is by the most direct practicable route; and
    - (ii) the cost does not exceed the maximum fare between any 2 Australian capital cities on the same day.

**126 Medical study leave for specialists**

- (1) A specialist accrues 3 months leave for the purpose of undertaking medical study (*medical study leave*) after 5 years of employment as a specialist.
- (2) A specialist accrues additional medical study leave at either of the following rates, selected, in writing, by the specialist:
  - (a) 3 months medical study leave for every 5 years of completed service;
  - (b) 6 weeks medical study leave for every 3 years of completed service.
- (3) The total amount of accrued medical study leave must not exceed 6 months leave.
- (4) The head of service may grant a specialist medical study leave for a period up to the specialist's accrued medical study leave.

- (5) For a specialist granted medical study leave—
- (a) the period of the leave must be paid; and
  - (b) the specialist is entitled to payment equal to the cost of return business class air travel for study purposes if—
    - (i) the air travel is by the most direct practicable route; and
    - (ii) the cost does not exceed the maximum fare between any 2 Australian capital cities on the same day.



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## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this standard.

*Note 2* For example, the [Legislation Act](#), dict, pt 1 defines the following terms:

- Australian citizen
- Chief Minister
- corporation
- doctor
- domestic partner
- entity
- estate
- exercise
- fail
- function
- gazette
- month
- nurse
- nurse practitioner
- oath
- position
- public servant
- remuneration tribunal
- State
- working day
- year.

*Note 3* Terms used in this standard have the same meaning that they have in the [Public Sector Management Act 1994](#) (see [Legislation Act](#), s 148.) For example, the following terms are defined in the [Public Sector Management Act 1994](#), dict:

- administrative arrangements
- administrative unit
- appeal
- appellable classification
- authorised doctor

- best practice principle
- classification
- commissioner
- director-general
- eligible person
- employee
- engager
- excess officer
- executive
- head of service
- incapacitated
- industrial instrument
- ineligible
- joint selection committee
- merit and equity principle
- misconduct
- office
- officer
- principal union
- promotion
- public sector
- public sector principles
- qualification
- relevant union
- reviewable decision
- senior executive service
- service
- SES member
- SES position
- SETs
- transfer
- unattached officer
- unsuitability criteria
- vacant office.

**Aboriginal or Torres Strait Islander person**, for part 2 (Selection process)—see section 5.

**accrual method**, for a public servant's entitlement, for part 7 (Public servant entitlements)—see section 85.

**appellable promotion** means a promotion—

- (a) to an appellable classification; and
- (b) for which there is an appeal process.

**band 1 executive**, for part 5 (SES members)—see section 43.

**band 2 executive**, for part 5 (SES members)—see section 43.

**band 3 executive**, for part 5 (SES members)—see section 43.

**base salary**, for an SES classification, for part 5 (SES members)—see section 43.

**business use**, of an SES member's executive vehicle, for division 5.5 (Executive vehicles and parking)—see section 57.

**casual employee**, for division 2.4 (Circumstances when eligibility for selection may be limited)—see section 12.

**continuous period**, in an office, for division 2.4 (Circumstances when eligibility for selection may be limited)—see section 12.

**dependant**, of a public servant, for division 7.3 (Cash out of certain entitlements)—see section 90.

**disability**—see the [Discrimination Act 1991](#), section 5AA.

**eligible employment**—see section 87.

**employ**, for part 2 (Selection process)—see section 5.

**executive vehicle**, for division 5.5 (Executive vehicles and parking)—see section 58 (2).

**fixed term employee**, for division 2.4 (Circumstances when eligibility for selection may be limited)—see section 12.

**health assessment**, of a public servant's physical or mental condition, for division 3.3 (Assessment of incapacity)—see section 33.

**identified position**, for part 2 (Selection process)—see section 5.

**impaired decision-making ability**, for division 7.3 (Cash out of certain entitlements)—see section 90.

**joint selection committee**, for part 2 (Selection process)—see section 5.

**legal disability**, for division 7.3 (Cash out of certain entitlements)—see section 90.

**long-term SES member**—see section 54 (1).

**nominally vacant office**, for division 2.4 (Circumstances when eligibility for selection may be limited)—see section 12.

**non-appellable promotion** means a promotion that is not an appellable promotion.

**non-compensable physical or mental condition**, for division 3.3 (Assessment of incapacity)—see section 33.

**pathologist**—for division 10.5 (Certain matters in relation to people covered by ACT Public Sector Medical Practitioners Enterprise Agreement 2013-2017)—see section 121.

**prescribed selection process**, for part 2 (Selection process)—see section 6.

**relevant base salary**, for a person, for division 5.3 (SES classification and salary)—see section 49.

**repealed standards**, for division 10.2 (Repealed standards)—see section 113 (1).

**selection committee**, for part 2 (Selection process)—see section 5.

**selection criteria**, for a proscribed selection process for a position, for part 2 (Selection process)—see section 5.

**SES classification**, for part 5 (SES members)—see section 50.

***SES member vehicle policy***, for division 5.5 (Executive vehicles and parking)—see section 57.

***SES position evaluation***, for part 5 (SES members)—see section 43.

***short-term employment***, for division 2.3 (Selection method for short-term employment)—see section 9.

***short-term SES member***—see section 54 (1).

***specialist***, for division 10.5 (Certain matters in relation to people covered by ACT Public Sector Medical Practitioners Enterprise Agreement 2013-2017)—see section 121.

***supporting evidence***, for being an eligible person includes information about 1 or more of the following:

- (a) the person's identity;
- (b) the person's nationality;
- (c) for a person who is not an Australian citizen—the following:
  - (i) the person's residency status;
  - (ii) the person's visa status;
- (d) for a person who has had previous paid or unpaid employment—
  - (i) the person's employment history; and
  - (ii) the person's conduct during previous employment;
- (e) the person's health;
- (f) the person's qualifications (if any);
- (g) the person's criminal convictions (if any).

***temporary employee register***, for division 2.3 (Selection method for short-term employment)—see section 9.

***treating doctor***, for a public servant, for division 3.3 (Assessment of incapacity)—see section 33.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

**Public Sector Management Standards 2016 DI2016-251**

notified LR 31 August 2016

s 1, s 2 commenced 31 August 2016 (LA s 75 (1))

remainder commenced 1 September 2016 (s 2)

as amended by

**Public Sector Management Amendment Standards 2017 (No 1)  
DI2017-38**

notified LR 8 May 2017

s 1, s 2 commenced 8 May 2017 (LA s 75 (1))

remainder commenced 9 May 2017 (s 2)

### 4 Amendment history

**Commencement**

s 2 om LA s 89 (4)

**SES member must disclose material interest**

s 46 am [DI2017-38](#) s 4, s 5; ss renum R2 LA

**Other transitional matters**

pt 11 hdg exp 1 September 2017 (s 128)

**Existing code of conduct**

s 127 exp 1 September 2017 (s 128)

**Expiry—pt 11**

s 128 exp 1 September 2017 (s 128)

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Sept 2017	1 Sept 2017– 8 May 2017	not amended	new instrument
R2 9 May 2017	9 May 2017– 1 Sept 2017	<a href="#">DI2017-38</a>	amendments by <a href="#">DI2017-38</a>

#### 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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