

## EXPLANATORY STATEMENT

### **PUBLIC SECTOR MANAGEMENT AMENDMENT STANDARD 2006 (No 1) DISALLOWABLE INSTRUMENT No 2006 -- 3**

*Public Sector Management Act 1994*

#### Legislative Context

The *Public Sector Management Act 1994* (the Act) regulates the management of the public sector and, in particular, section 251 of the Act empowers the Commissioner, with the written approval of the Chief Minister, to make Public Sector Management Standards (the Standards) for the purposes of the Act.

Sections 251(6) and (7) of the Act also provides that the Chief Minister can give a general approval for the making of Standards by the Commissioner for specified purposes. The purposes currently specified include amendments that are consistent with a policy direction previously endorsed by Government and changes of a technical nature, which do not include any significant policy changes, such as changes to clarify existing Standards, updating allowances and correcting typographical errors.

#### Outline

The Commissioner makes these amendments to the Standards in accordance with parameters agreed to by the Chief Minister under sections 251(6) and (7) of the Act.

The amendments update references, correct typographical errors and modify formatting within the Standards.

#### Correction of References

Standard 4, Part 8, Rule 2 was amended so that the full title of the *Safety, Rehabilitation and Compensation Act 1988* (Commonwealth) is referred to.

Standard 4, Part 8, Rule 4 was amended to change the reference from the *Privacy Act 1988* (Commonwealth), which does not apply to health records in the ACT, to reference to the *Health Records (Privacy and Access) Act 1997* (ACT) which covers the relevant health records.

#### Minor Amendments

Minor formatting, grammatical, or typographical amendments were made to:

- Standard 3, Part 7, Rule 4;
- Standard 3, Part 18, Rule 17;
- Standard 3, Part 19, Rule 1;
- Standard 3, Part 21, Rule 10;
- Standard 3, Part 21, Rule 21; and
- Standard 4, Part 8, Rule 2.

**SCHEDULE 1 TO EXPLANATORY STATEMENT  
PUBLIC SECTOR MANAGEMENT AMENDMENT STANDARD 2006 (No 1)  
DISALLOWABLE INSTRUMENT NO DI2006 --3**

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Standard 3, Part 7, Rule 4

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**4. Rates**

An eligible officer is entitled to an allowance:

- if a cook is provided by the agency - at the daily rate specified opposite item 1 in Column 2 of Rule 8.1 and
- if a cook is not provided by the agency - at the daily rate specified opposite item 2 in Column 2 of Rule 8.1.

Where an officer to whom this Rule applies is entitled to an allowance in accordance with that section, if they camp out in excess of seven days, they will also be entitled to an additional allowance for the period which is:

- if less than fourteen days - the amount specified in item 1 in Column 2 of Rule 8.2;
- if not less than fourteen days but is less than 21 days - the amount specified in item 2 in Column 2 of Rule 8.2; and
- any other case - the amount specified in item 3 in Column 2 of Rule 8.2.

Where an officer is not supplied with camping equipment by the agency and they hire it, in addition to the allowance under this Rule, they are entitled to be paid an allowance equal to the cost of hiring the equipment.

Where an officer is required to move from camp to camp and where they are not staying in a base camp, a caravan or a hut, then an additional allowance is to be paid at:

- the nightly rate specified in item 3 in Column 2 of Rule 8.1, if the period of camping out is more than one night but not more than five consecutive nights; and
- the nightly rate specified in item 4 in Column 2 of Rule 8.1, if the period is not less than six consecutive nights.

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Standard 3, Part 18, Rule 17

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**17. Infectious disease contacts**

Where an officer is prevented from attending for duty under Part 6 of the *Public Health Act* 1997 the Chief Executive may grant that officer personal leave. The officer may also apply for the absence or a part of it to be deducted from their recreation leave credit.

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 Standard 3, Part 19, Rule 1
 

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## 1. Application

Part VII of the Act applies to officers and statutory office holders described in section 3 of the Act. It does not apply to a person who is:

- a member of the ACT Legislative Assembly;
- employed under the *Legislative Assembly (Members' Staff) (LA(MS)) Act 1989*;
- employed in an honorary capacity only;
- remunerated by way of fees, allowances or commission only;
- a Judge, as defined by section 4 of the *Judges' Pensions Act 1968 (Commonwealth)*;
- temporarily transferred to employment with the Territory or whose services are temporarily loaned to the Territory by another Australian Government or a public authority of another Australian government; or
- appointed or engaged for employment outside Australia only.

Section 156 of the Act refers to the instances in which a period of leave with pay or part pay or leave without pay, will count as service for the purpose of LSL.

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 Standard 3, Part 21, Rule 10
 

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## 10. Defence service leave

A Chief Executive may grant leave without pay to an officer to undertake a period of specified defence service.

A period of *specified defence service* is service set out in this Rule.

Leave granted after the commencement of a period of leave is deemed to take effect at the commencement of that period (that is, retrospective approval).

The relevant Chief Executive may grant leave to an officer to enable them to perform full time defence service as set out in this Rule.

A Chief Executive may grant leave for an officer to perform full-time service in time of war as defined in the *Defence Act 1903 (Commonwealth)* and/or for the purposes of the United Nations in:

- the Defence Force;
- a naval, military or air force of a country allied or associated with Australia for the purposes of defence; or
- a naval, military or air force of the United Nations.

A Chief Executive may grant leave for an officer to undertake continuous full-time service as a member of the Navy, Army or Air Force for a period not exceeding 4 years for which the officer or employee has volunteered.

If an officer, under Commonwealth law is required to render additional service at the conclusion of the period of service for which they have volunteered to serve, the leave granted under this Rule by a Chief Executive to that officer is extended for the period necessary to enable the officer to undertake that additional service.

Leave granted under this Rule is with pay for the first fourteen days and without pay for the remainder of the time. The leave counts as service for all purposes except recreation leave. If an officer does not return to duty with the ACTPS the LWOP does not count as service for any purpose.

The relevant Chief Executive may grant an officer leave with pay to enable them to undertake the following defence service training:

- annual training as a member of the Navy, Army or Air Force;
- training for a continuous period of not less than 28 days, including Saturdays and Sundays, in the case of members of the Navy who are not required to perform annual training, but who are required to undergo a period of training at intervals of not less than two years; or
- attendance at a school, class, or course of instruction, conducted for the training of members of the Navy, Army or Air Force.

The maximum period of leave in a year that may be granted for the purpose of annual training is:

- in the case of a member of the Navy - thirteen days;
- in the case of a member of the Army - fourteen days; and
- in the case of a member of the Air Force - sixteen days.

The maximum period of leave in a year that may be granted for the purpose of attendance at a school, class, or course of instruction, conducted for the training of members of the Navy, Army or Air Force is:

- in the case of a member of the Navy - 13 days;
- in the case of a member of the Army - 16 days; or
- in the case of a member of the Air Force - 16 days.

The maximum period of defence service leave set out above includes any Saturday and Sunday between the first day of a period of leave in respect of a continuous period of training and the last day of that period of leave.

If a person who is the commander of an officer in relation to an officer's membership of the Navy, Army or Air Force, certifies in writing that attendance by the officer for the purposes of annual obligatory defence service training for a period in addition to those specified above is necessary, leave with pay not exceeding four days in a year may be granted to the officer to enable them to undertake that additional training.

If in a year an officer is required to engage as a member of the Army in a continuous period of training of not less than 33 days, including Saturdays and Sundays, leave of absence may be granted to the officer to enable them to engage in that continuous period of training.

A period, or periods of leave, not exceeding 33 days in aggregate, granted under this Rule in a year, is with pay and counts as service for all purposes.

A Chief Executive may grant leave with pay to an officer to attend an interview or medical examination in connection with their enlistment in a Reserve Force of the Defence Force. Leave granted counts as service for all purposes.

Leave must not be granted under this Rule if an officer is eligible to be granted leave in special circumstances in accordance with Standard 3, Part 18 Rule 6B.

In this Rule, unless the context indicates otherwise, *a year* means any period commencing on 1 July and ending on the following 30 June.

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## Standard 3, Part 21, Rule 21

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### **21. Parental leave**

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

#### **21.1 *Primary care givers' leave***

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

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

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

Unless the Chief Executive determines otherwise in extenuating circumstances:

- a) a new-born must not be more than 14 weeks old before the commencement of the primary care givers' leave; or
- b) in the case of an adoption, the primary care givers' leave must commence no later than 14 weeks after the officer assumes responsibility for the child.

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

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

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

- a) an officer who is entitled to maternity leave is not entitled to primary care givers' leave;
- b) an officer may take primary care givers' leave up to a maximum of 14 weeks, provided:

- i. section 173 of the Act is satisfied;
- ii. this leave is not taken at the same time as any other officer is receiving paid maternity leave or paid leave under Standard 3 Part 21 Rule 20 or Standard 2 Part 1 Rule 4 in relation to the same child; and
- iii. the officer's entitlement to paid primary care givers' leave is reduced by the amount of paid maternity leave already taken by the other officer referred to in subsection 21.1 b) ii) above.

### **21.2 *Paid bonding leave***

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

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

### **21.3 *Unpaid Parental leave***

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

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

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

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

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

The *Workplace Relations Act 1996 (Commonwealth)* sets out minimum entitlements to parental leave. These minimum entitlements allow the child's primary carer 52 weeks to care for the child in the first year of the child's life.

The 52 weeks can be shared between the parents whether employed inside or outside the ACTPS.

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

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

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

The maximum leave available under this provision is seven years.

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## Standard 4, Part 8, Rule 2

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### 2. Interpretation

In this Part, unless the contrary intention appears:

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

*'approved rehabilitation provider'* means a provider of rehabilitation services who is registered by COMCARE as an approved provider under the *Safety Rehabilitation Compensation Act* (Commonwealth)

*'case manager'* means an officer nominated by a Chief Executive to be responsible for monitoring a compensation case where an officer is or is likely to be, absent from work due to injury or illness for an extended period of time, or requires rehabilitation or support to return to work

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

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

*'compensation case'* means a case where the injury or illness is the subject of a compensation claim for which liability has been accepted under the *Safety Rehabilitation Compensation Act*

*'Comsuper'* means the Commonwealth Superannuation Administration, formerly the Retirement Benefits Office

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

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

*'medical officer'* means a legally registered medical practitioner engaged to conduct medical examinations on behalf of the ACT Public Service, including examinations in connection with fitness for continued duty

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

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

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

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

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

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

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

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#### Standard 4, Part 8, Rule 4

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#### **4. Health assessment - non-compensation cases**

A health assessment will be paid for by the agency in which an officer is working at the time the injury is sustained or the illness is diagnosed.

The relevant Chief Executive must direct an officer to attend a health assessment if:

- the officer has been absent on account of illness for a total of thirteen weeks in any 26 week period; or
- reports from a treating doctor indicate the officer is unfit for their duties and that the prognosis is unfavourable.



The grant of further personal leave will be subject to the outcome of this medical examination.

A health assessment must be conducted by:

- an approved medical practitioner;
- a medical officer;
- a registered medical specialist; and
- not by the treating doctor.

A reasonable time before an officer is to be examined as part of a health assessment, the relevant Chief Executive must advise the officer, in writing of:

- the time and place of the examination;
- the purpose of the examination;
- the relevant provisions of the *Privacy Act 1988 (Commonwealth)* relating to confidentiality of medical information and the officer's right to have access to any information provided to the person conducting the health assessment; and
- the officer's right to submit supporting material for consideration by the person conducting the health assessment.

On receipt of a health assessment, the Chief Executive must provide a copy of the assessment report to the officer as soon as possible, subject to the rules on handling sensitive medical information.