

## EXPLANATORY STATEMENT

### **PUBLIC SECTOR MANAGEMENT AMENDMENT STANDARD 2006 (No 4) DISALLOWABLE INSTRUMENT NO DI2006-31**

*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.

#### Outline

There are four main amendments to the Standards.

#### Introduction Standards

The amendments to the Introduction Standard remove provisions that are more akin to guidance material, or have their legal source of authority in other legislation. Rules 1 and 2 of Part 1 (Introduction: Standard) are revoked, as they are more akin to guidance material. Rule 3 of Part 1 (Introduction: Standard) is revoked as the application of the Act is governed by section 5 of the Act. Rules 4, 5 and 6 of Part 1 (Introduction: Standard) are revoked as these Rules are governed by other legislation.

Rules 1 and 3 of Part 2 (Introduction Standard) are also revoked as they pertain to matters of general legislative interpretation principles that are governed by the Legislation Act 2001 (ACT).

#### Salaries

The amendments to Standard 3 (Part 1, Rules 2 and 3) update the method for commencing salary on appointment and promotion, in accordance with the method set in the Template Agreement of core conditions (Template Agreement).

The Template Agreement was negotiated during the 4<sup>th</sup> round of enterprise bargaining in the ACT Public Service (ACTPS) and includes a set of core conditions for staff in the administrative, professional, technical, general service officer and ambulance classifications.

The Standards previously provided discretion for the Chief Executive to pay above the minimum salary point in the applicable classification on appointment but no Chief Executive discretion was provided on promotion. Under the Template Agreement, the discretion is provided for appointments and promotions, and the amendments bring the Standards in line with the approach under the Template Agreement.

The reference to the definitions of promotion and higher classification in Standard 3 Part 1 Rule 3 are removed as they are defined elsewhere in the Act.

#### Payments to staff in lieu of leave

The amendments to Standard 3 (Part 2 Rule 3) update the amount of loading payable to staff in lieu of leave, in accordance with the decision of the Australian Industrial Relations Commission (AIRC) and subsequent updates to awards. This loading applies to casual staff in lieu of recreation and personal leave, and has been updated to 20%.

#### Planning and Land Management

Standard 7, Part 6 transferred staff of Planning and Land Management to the Planning and Land Authority and Land Development Agency. The Part is revoked as the transfer is complete, and section 84 of the Legislation Act 2001 ensures that the revocation of Standard 7 Part 6 does not affect anything done under that Standard whilst it was in operation.

#### Financial Impact

Nil. The increase in loading in lieu of leave is funded by agencies and changes to these loading payments were in place before this amendment, in accordance with the order of the AIRC.

#### Schedule 1 to this Explanatory Statement

To provide context for these amendments, the text of each Rule immediately before this instrument took effect are contained in Schedule 1. Where a new Rule is inserted, and there is no corresponding previous rule, this will be reflected in the instrument using the words '*Insert Standard ...*'.

**SCHEDULE 1 TO EXPLANATORY STATEMENT  
PUBLIC SECTOR MANAGEMENT AMENDMENT STANDARD 2006 (No 4)  
DISALLOWABLE INSTRUMENT NO DI2006 –31**

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Introduction Standard, Part 1

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## **Part 1 - Overview**

### **1. The Public Sector Management Act**

The *Public Sector Management Act 1994* (the Act) provides the legislative framework for the ACT Public Service. The Act sets out general provisions (for example, values, principles, ethics), and contains primary employment provisions on issues such as categories of employment, promotion and transfer, officers' rights to appeal, review mechanisms and discipline.

The Act also deals with aspects of social justice such as Equal Employment Opportunity, Industrial Democracy and Access and Equity.

### **2. The Public Sector Management Standards**

The Public Sector Management Standards operate under the Act and provide the legal basis for personnel and administrative actions which have no source of authority elsewhere.

The Standards have been rewritten to provide users with a more concise set of rules which are not simply repetitions of rules in other sources.

These Standards replace the original Standards made under Instrument 1/1994 and as subsequently amended. Conditions of service have not been altered in this version.

### **3. Who they apply to**

The Act and Standards apply to all Australian Capital Territory Public Service (ACTPS) officers and employees, whether located in agencies or in the authorities staffed under the Act. They do not apply to:

- employees of government companies;
- Calvary Hospital staff outside the Public Hospital Division; or
- staff of Total Care ACTAID who are not employed under the Act.

### **4. Relationship between the Act and the Standards**

The Standards are subordinate legislation made under the Act by the Commissioner, with the approval of the Chief Minister.

The Standards are required to be consistent with the Act. If there is any inconsistency between the two, the Act always prevails.

### **5. Relationship with industrial Awards and Agreements**

The Standards do not replace existing Awards and industrial agreements.

Award provisions will always override both the Act and the Standards because Awards and industrial agreements are made by the Australian Industrial Relations Commission and therefore have the force of Commonwealth law.

## 6. Continuation of previous employment matters

Section 12 of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994* provides that if the Rules outlined in this document are silent on a particular matter, then former Commonwealth provisions will continue to apply. Section 12 also ensures that any employment matters pending when the Act comes into effect, will be treated as if action commenced under the Act.

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### Introduction Standard, Part 2, Rule 1

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#### 1. Words with special meanings

In the Public Sector Management Standards, unless the contrary intention appears:

'*must*' or '*shall*' refers to something that is mandatory under the Standards, or under the Act or an Award

'*may*' refers to something that is discretionary

'*should*' refers to something that is strongly recommended but not mandatory

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### Introduction Standard, Part 2, Rule 3

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#### 3. General interpretation

Unless the contrary intention appears, reference to a '*section*' should be taken to be a reference to a section of the Act.

Gender-neutral terms such as '*tradesperson*' include the corresponding gender-specific terms such as '*tradeswoman*' and '*tradesman*'.

A Standard is subordinate to the Act, to other Acts and to Awards, and should be read as subject to them.

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### Standard 3, Part 1, Rule 2

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#### 2. Commencing salary

An officer is entitled to be paid salary at a pay point in the salary scale that relates to the office they hold or occupy. This pay point may be above the minimum pay point if so determined by the relevant Chief Executive.

A Chief Executive must appoint an officer at the minimum salary payable for the classification unless:

- qualifications are set for which a higher salary is payable; or
- the Chief Executive is satisfied that it is reasonable to approve payment of salary at a higher salary point within the classification and can provide reasons for the approval, by considering
  - the length and nature of the applicant's work experience;
  - how relevant that experience is to the position;
  - how recent that experience is;
  - their present salary and the lowest salary they are prepared to accept;
  - what sort of immediate contribution the person will make to the position;
  - how this contribution relates to the work of other employees doing similar work; and
  - how difficult it has been to find suitable people to do the job.

### 3. Salary on promotion

*'Promotion'* is defined in section 3 of the Act and *'higher classification'* is defined in subsection 56(3) of the Act.

If an officer is promoted to an office they are entitled to be paid the minimum salary payable to holders of that office unless the officer is entitled to a higher salary under this Part or Part 3 - Increments.

An officer who is promoted is entitled to be paid the increment above the minimum salary if:

- they have been paid at the maximum salary in their previous office for 12 months or more; and
- the salary increase to the minimum salary in the new salary range is less than the amount of the increment to the maximum salary paid in their previous office.

### 3. Part-time temporary employees

The hourly rate at which salary is payable to a part-time temporary employee, except those described in the next paragraph, is at the same hourly rate as that of an equivalent full-time employee.

Unless provided for elsewhere in the Standards, the hourly rate at which salary is payable to a part-time employee who is required to attend for duty:

- for less than 24 hours a week; and
- on less than four days a week.

must be fifteen per cent greater than the hourly rate payable to an equivalent full-time employee (*'the 15% loading'*).

A part-time employee to whom the 15% loading applies is not entitled to payment for recreation or personal leave.

*Note* See Standard 2 Part 10 Rule 13; where an independent reviewer must be paid the loading irrespective of hours worked or attendance period in lieu of recreation or personal leave.

## PART 6 – PLANNING AND LAND MANAGEMENT

### 1. Interpretation

In this Part, unless the contrary intention appears:

*'staff'* includes an officer, employee and unattached officer

*'Kingston Foreshore Development Authority'* means the Authority established under the *Kingston Foreshore Development Authority Act 1999*

## **2. Staff transfers**

All positions and staff attached to Planning and Land Management, Department of Urban Services on 30 June 2003 are transferred to the Planning and Land Authority established under the Planning and Land Act 2002.

All positions and staff attached to the Kingston Foreshore Development Authority on 30 June 2003 are transferred to the Land Development Agency established under the Planning and Land Act 2002.

The positions and staff listed at Rule 3 of this Part are transferred from the Land Group, Department of Urban Services to the Planning and Land Authority established under the Planning and Land Act 2002.

## **3. Transfer of certain Land Group staff**

Name	Position Number	Classification
Peter Ball	05537	SOGC
Kathleen Pooley	55241	SOGC
Virginia Ebsworth	02037	ASO6
John Paull	13601	ASO5
Roger Risk	13904	ASO3
Briony Young	55250	ASO4