

## EXPLANATORY STATEMENT

### **PUBLIC SECTOR MANAGEMENT AMENDMENT STANDARD 2006 (No 6) DISALLOWABLE INSTRUMENT NO DI2006-142**

*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 six main amendments to the Standards covering statutory office holder and executive conditions and executive and non-executive motor vehicles.

The first amendment relates to requirements for notice and entitlements to special benefits for statutory officer holders in certain circumstances. Statutory office holders are appointed under a range of ACT legislation. The Act sets in place certain entitlements for statutory office holders, and the Act also provides that the Standards can set further terms and conditions for statutory officer holders.

The amendment sets in place mandatory notice requirements where the appointment of a statutory office holder is to end, before the appointment was due to end. This excludes circumstances relating to the retirement of the statutory office holder, expiry of appointment or circumstances where the office holder has been terminated under the enactment that appointed them, for instance under provisions that allow for the removal from office in certain circumstances, such as misconduct. The amendment also permits the notice period to be met by a payment in lieu of notice, at the election of the chief executive or office holder. In this context, the chief executive means the head of the department that has responsibility for the enactment under which the office-holder is appointed.

Under the arrangements, where a statutory officer holder is entitled to notice, the office holder is also entitled to a special benefit based on two weeks' remuneration for every year of continuous recognised service, up to a maximum of 44 weeks' remuneration.

The second amendment relates to notice requirements for executive (including chief executive) staff. Terms and conditions for executives are set in Act, Standards, contracts of employment and determinations by the Remuneration Tribunal.

Executive contracts require that notice of termination of employment be provided in certain circumstances. The amendments permit this notice to be constituted by a payment in lieu, at the election of the employer or employee.

The third amendment relates to employer superannuation contributions for statutory office holders. In accordance with Government policy for new staff, the amendments set in place standard employer contributions based on 9% of remuneration. The amendment also

reflects that a 10% employer contribution will be paid, where the statutory office holder contributes 3% or more of their remuneration to the superannuation fund, as personal superannuation contributions. The amendment applies to statutory office holders appointed from 1 July 2006 but will not affect continuity of membership for existing members of the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS).

The fourth amendment implements the same employer superannuation contribution arrangements for executives and chief executives, as the amendments for statutory office holders which are described above. The amendments also preserve continuity of members for existing members of the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS), and persons not members of the CSS or PSS but engaged in the ACT Public Service before the arrangements took effect.

The fifth amendment updates the arrangements for the approval and administration of non-executive vehicles consistent with whole-of-government policy. The amendments place responsibility with agency chief executives for the administration of non-executive motor vehicles.

In the administration of non-executive vehicles, Chief Executives should have regard to whole-of-government policy. The current whole-of-government policy is *ACTPS Non-Executive Passenger and Light Commercial Vehicle Management Policy*, which reflects the use of fuel efficient, low emission vehicles.

The final amendment restricts Executive and statutory officer vehicles to four-cylinder vehicles unless otherwise determined by the administering Chief Executive for operational reasons. The administering Chief Executive is defined in the Act, and is the Chief Executive responsible for the administration of the Act under the administrative arrangements. This is currently the Chief Executive of the Chief Minister's Department.

Other changes were made to Executive vehicles including that the Part will apply to statutory office holders from 1 July 2006.

Minor grammatical and technical changes were also made to the Standards.

#### Financial Impact

Any increased operational costs will be absorbed by agencies.

#### 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 6)  
DISALLOWABLE INSTRUMENT NO DI2006 –142**

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Standard 2, Part 1, Rule 6

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**6. Payment of special benefits in certain circumstances**

For the purpose of this Rule, a period of continuous recognised service is calculated in the same way an officer's period of service is calculated for long service leave under section 154 of the Act.

a) Special benefits on early termination of contract

Except where Rule 6(b) applies, if a Chief Executive's or Executive's contract of employment is terminated on a ground involving changes to operational requirements which result in a substantial change to the nature of the work required under the contract, for the purposes of section 28A or 73 of the Act, the prescribed benefit is two weeks remuneration for every completed year of continuous recognised service, up to a maximum of 44 weeks remuneration. This is in addition to any notice period provided in the contract of employment.

If a Chief Executive's or Executive's contract of employment is terminated because of a failure to disclose a prior criminal conviction, subject to the Spent Convictions Scheme in the *Crimes Act 1914* (Commonwealth), the prescribed benefit for the purpose of sections 28A and 73 of the Act is two weeks remuneration for every completed year of continuous recognised service, up to a maximum of 1 month's remuneration.

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

In the case of transitional executives who have been offered one or more consecutive contracts, the prescribed benefit payable for the purpose of sections 28A and 73 of the Act is two weeks remuneration for every completed year of continuous recognised service, up to a maximum of 52 weeks remuneration if an employer:

- i) terminates the contract as a result of changes to operational requirements that result in substantial change to the nature of the work required under the contract;
- ii) immediately following the expiration of an existing contract does not offer a further contract, provided the reasons for not offering a new contract do not relate to poor performance, misconduct or failure to disclose a prior criminal conviction, subject to the Spent Convictions Scheme in the *Crimes Act 1914* (Commonwealth); or
- iii) immediately following the expiration of an existing contract offers a further contract in respect of an executive office that has a significantly lower work value level than the office relating to the expired contract and the Executive does not accept the further contract.

## **PART 3 - Non EXECUTIVE VEHICLES**

### **1. Authorised use**

An ACTPS vehicle must be made available for use by authorised personnel during normal working hours.

The use of a non-Executive vehicle must be approved by a Chief Executive and include authority to drive and to carry passengers.

Approval to carry persons other than ACTPS employees may only be given where the use is related to the business operations of an agency or as a result of an emergency or special circumstance. If a person other than an ACTPS employee is transported in an ACTPS vehicle in an emergency or special circumstance the driver must advise their supervisor as soon as possible as to the circumstances.

### **2. Driver responsibilities**

A driver is responsible for the care of an ACTPS vehicle in their control in accordance with the guidelines set out in the *ACTPS Non-Executive Passenger and Light Commercial Vehicle Management Policy* as provided from Totalcare Fleet and the general obligations of public employees as set out in section 9 of the Act.

A driver must hold a current, valid and appropriate licence, or where they are required to upgrade an existing driver's licence for employment purposes they must comply with the relevant conditions set out in the *ACTPS Non-Executive Passenger and Light Commercial Vehicle Management Policy* including obtaining the prior approval of their supervisor.

A driver of an ACTPS vehicle must not:

- smoke in an ACTPS vehicle;
- consume alcohol in an ACTPS vehicle; or
- carry alcohol in or on an ACTPS vehicle unless special approval has been given by the relevant Chief Executive.

A driver is personally responsible for any breaches of ACT Road Transport Law if they are in control of a vehicle and must pay any fine incurred.

### **3. Home garaging**

Home garaging of non-Executive vehicles is not permitted unless approved by the Chief Executive in accordance with the *ACTPS Non-Executive Passenger and Light Commercial Vehicle Management Policy*.

Home garaging of non-Executive vehicles outside the ACT must be approved by the Commissioner.

Approval for home garaging of a non-Executive vehicle extends to travel to and from work for the purposes of home garaging, but does not extend to the private use of the vehicle. A

home garaged vehicle must be parked behind the property line and, if available, under cover.

#### **4. Private use**

Private use of a non-Executive vehicle is not permitted unless:

- approved by an officer in the Chief Minister's Department; or
- formalised through the Enterprise Bargaining or Australian Workplace Agreement processes after consultation with the Chief Minister's Department.

#### **5. Recording and reporting**

An agency must keep appropriate records of ACTPS vehicles, including home garaging and private use, and comply with the reporting requirements set out in the *ACTPS Non-Executive Passenger and Light Commercial Vehicle Management Policy*.

#### **6. Vehicle replacement**

The relevant officer in the Chief Minister's Department will determine the range of vehicles available to agencies and the related replacement parameters. A hiring agency is responsible to meet Sales Tax liability and financial penalties resulting from an early sale of a vehicle.

#### **7. Additional vehicles**

An additional non-Executive vehicle must be justified on the grounds of operational necessity or cost effectiveness and approved by the relevant Chief Executive.

#### **8. Vehicle hire**

Vehicles must not be hired on a short term basis to cover a long term need. Each vehicle hire must be individually justified and approved by a Chief Executive.

#### **9. Private plated vehicles**

A private-plating of a non-Executive vehicle is limited to special circumstances and subject to approval from the relevant officer in the Chief Minister's Department. A request for approval must outline the purpose, requirements and justification for the request including details of compliance with government policy.

#### **10. Vehicle maintenance**

An ACTPS vehicle is to be maintained in a safe and roadworthy condition and serviced in accordance with the *ACTPS Non-Executive Passenger and Light Commercial Vehicle Management Policy*.

An agency must advise Totalcare Fleet of a defect requiring correction or arrange to have the defect corrected by an authorised repairer. A vehicle with a defect that renders it unsafe must not be driven.

An ACTPS vehicle must not be modified or have accessories added without the prior approval of Totalcare Fleet. Prior approval by the relevant Chief Executive is required before any logos are affixed to ACTPS vehicles.

## **11. Purchase of fuel**

A fuel card is to be used only for the purchase of fuel and top up oil from approved outlets for the official use of specified ACTPS vehicles.

The use of a fuel card for any other vehicle or receptacle or for other than official purposes is not permitted.

An accurate odometer reading must be recorded each time an ACTPS vehicle is supplied with fuel.

A loss of fuel from an ACTPS vehicle is to be reported to agency management.

Damage to a fuel card must immediately be reported to the agency contact officer and to Totalcare Fleet

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### Standard 6, Part 4, Rule 1

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## **1. Choice of motor vehicles**

If a Chief Executive or Executive elects to retain the use of an employer-provided motor vehicle, that vehicle must be chosen from the approved vehicle list in the Schedule to the ACT Remuneration Tribunal determination on Executives of the ACTPS, except where otherwise approved by the Commissioner in accordance with *ACTPS Policy for the Management and Use of Executive Vehicles*.

An item of equipment fitted to an Executive vehicle must:

- comply with the manufacturer's specifications;
- maintain a highly professional image of the ACTPS; and
- not detract from the potential resale value of the vehicle.

A modification to an ACTPS vehicle must have the approval of the Commissioner. If a modification is made, any cost of restoration must be met by the Executive who requested the modification.

An executive vehicle is one which provided, as self drive and private plated, to a Chief Executive or Executive as part of their total remuneration package, and includes any vehicle provided in lieu of that vehicle.

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### Standard 6, Part 4, Rule 2

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## **2. Vehicle transfer and return**

An agency must notify Totalcare Fleet of a transfer of an Executive vehicle from one agency to another.

If an Executive vehicle is no longer required by a Chief Executive or Executive that vehicle must either be:

- returned to the agency for reallocation;
- replated as a 200 series vehicle and reallocated within the agency concerned; or
- returned to Totalcare Fleet, and any Sales Tax or other direct or indirect costs incurred by the ACTPS as a result of the early sale of the vehicle must be met by the agency concerned.