

Public Sector Management Amendment Standards 2014 (No 1)

Disallowable instrument DI2014-66

made under the

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

EXPLANATORY STATEMENT

This Explanatory Statement relates to the *Public Sector Management Standards 2006*.

Outline

This instrument makes amendments to the Management Standards across three separate matters:

- Identified Positions;
- Appointment; and
- Working with Vulnerable People (Background Checking).

Identified Positions (Clause 4 & 6)

This Instrument amends Section 29 of the Management Standards, to ensure terminology used regarding eligibility for positions that are restricted to Aboriginal or Torres Strait Islander persons is current and consistent with terminology used by the Commonwealth Government and to limit any potential confusion about the definition of designated positions. The terminology will also be used for positions that are restricted to People with Disability.

Appointment (Clause 5, 7, 8, 9, 10 & 11)

This Instrument amends Section 53 of the Management Standards to preserve, through a Standard, certain terms and conditions of employment from enterprise agreements under which employees employed under the *Public Sector Management Act 1994* (PSM Act) may be appointed.

The terms that are specific to particular Directorates are contained in separate sections. These terms have been removed from enterprise agreements and the amendments to the Management Standards maintain their continuity.

Inserting these conditions in the Management Standards, where under existing arrangements they are more appropriately located, provides the ability, in future, to align these terms with changes to employment arrangements arising from the review of the PSM Act.

Working with Vulnerable People (Background Checking) (Clause 12)

The *Working with Vulnerable People (Background Checking) Act 2011* (WwVP Act) is the primary law in the ACT that provides for background checking as part of a risk assessment of people working with children and disadvantaged adults in the Territory. Industrially, the registration requirements imposed by the WwVP Act compels the Territory to consider its redeployment, suspension and retirement options for employees already engaged in a position who:

- Have their registration suspended or cancelled;
- Are granted conditional or role-based registration;
- Are refused registration; or
- Surrender their registration.

Part 4.9 provides the Head of Service with the necessary powers to exercise as an employer and in a manner consistent with the requirements of the *Fair Work Act 2009* (Cwth) to effectively manage employees who have had their registration suspended, restricted and/or lost registration. This includes providing the Head of Service with the power to retire an employee from the Service.

Conditions

Clause 1 Name of Instrument

This clause is a technical clause stating the title of the instrument as the *Public Sector Management Amendment Standards 2014 (No 1)*.

Clause 2 Commencement

This clause is a technical clause which explains when the new Standards will commence. This particular instrument commences on the day after its notification day.

Clause 3 Legislation Amended

This clause explains that the amendments contained in the instrument apply to the *Public Sector Management Standards 2006*.

Clause 4 Section 29

This clause substitutes section 29 which states the eligibility for an identified position. The provisions of the Section have been amended as follows:

- a) a new subsection 29(3) to ensure nomenclature is current, that is, a reference to a designated position, in relation to an employment matter is taken to be a reference to an identified position.
- b) new definitions for *employment matter* and *identified positions* are inserted at subsection 29(4).

Clause 5 Advertising – New section 32(1)(g)

Section 32 – Advertising, has been amended by inserting a new subsection 32(1)(g) that references Sections 53G, 53H and 53I.

Clause 6 Section 32 (3)(b) – New Note

Section 32(3) (b), new note has been amended by inserting a note that references Section 29(3).

Clause 7 Application Pt 3.3 – New Section 39(c)

Part 3.3 – Application, has been amended by inserting a new subsection 39(c) that references Section 53G.

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

Section 41(3) –Procedure of a joint selection committee, has been amended by replacing ‘or transfer’ with ‘transfer or appointment’.

Clause 9 New section 50A

A new Section 50A – Interpretation, has been inserted in Part 3.4 that defines terms used in the amendments to Section 53.

Clause 10 Section 53

Section 53 sets the general conditions that apply to the appointment of employees following a period of temporary engagement. These general terms will apply unless different conditions are specified under the following Sections.

Clause 11 New sections 53A to 53I

Section 53A sets the conditions that apply to the appointment of non-teaching employees following a period of temporary engagement by the Canberra Institute of Technology. This Section is based on clause M4 in the ACT Public Service Canberra Institute of Technology Enterprise Agreement 2011-2013.

Section 53B sets the conditions that apply to the appointment of teaching employees following a period of temporary engagement by the Canberra Institute of Technology. This section is based on clause 20 in the ACT Public Service Canberra Institute of Technology (Teaching Staff) Enterprise Agreement 2011-2013.

Section 53C sets the conditions that apply to the appointment of employees following a period of temporary engagement by the Education and Training Directorate. This section is based on clause R1 in the ACT Public Service Education and Training Directorate Enterprise Agreement 2011-2013.

Section 53D sets the conditions that apply to the appointment of employees following a period of temporary engagement by the Health Directorate. This section is based on clause M6 in the ACT Public Service Health Directorate Enterprise Agreement 2011-2013 and clause M4 in the ACT Public Service Health Directorate (Health Professionals) Enterprise Agreement 2011-2013.

Section 53E sets the conditions that apply to the appointment of employees following a period of temporary engagement by the Justice and Community Safety Directorate. This section is based on clause M10 in the ACT Public Service Justice and Community Safety Directorate Enterprise Agreement 2011-2013.

Section 53F sets the conditions that apply to the appointment of employees following a period of temporary engagement by the Economic Development Directorate or the Territory and Municipal Services Directorate. This section is based on clause M1 in the ACT Public Service Economic Development Portfolio Enterprise Agreement 2011-2013 and clause M2 in the ACT Public Service Territory and Municipal Services Directorate Enterprise Agreement 2011-2013.

Section 53G sets the conditions that apply to the appointment of employees to certain health professional classifications in the Community Services Directorate, Health Directorate and the Justice and Community Safety Directorate. This section is based on clause N6 in the ACT Public Service Community Services Directorate Enterprise Agreement 2011-2013, clause M5 in the ACT Public Service Health Directorate (Health Professionals) Enterprise Agreement 2011-2013 and clause Q7 in the ACT Public Service Justice and Community Safety Directorate Enterprise Agreement 2011-2013.

Section 53H sets the conditions that apply to the appointment of employees to other specified classifications in the Health Directorate. This section is based on clause M5 in the ACT Public Service Health Directorate Enterprise Agreement 2011-2013, clause M3 in the ACT Public Service Health Directorate (Health Professionals) Enterprise Agreement 2011-2013 and clause 71 in the ACT Public Service Nursing and Midwifery Enterprise Agreement 2011-2013.

Section 53I sets the conditions that apply to the appointment of employees to certain school assistant classifications in the Education and Training Directorate. This section is based on clause R4 in the ACT Public Service Education and Training Directorate Enterprise Agreement 2011-2013.

Clause 12 New part 4.9 – Working with vulnerable people

Section 287A establishes the definition of an ‘employee’ and ‘Working with Vulnerable People Act’ for the purposes of this section.

Section 287B establishes to whom Part 4.9 – Working with vulnerable people applies. For the purposes of this Act, this part applies if an employee is engaged in a regulated activity as defined in the *Working with Vulnerable People Act (Background Checking) Act 2011* (the WwVP Act) (See section 8) and if under the WwVP Act the activity in which they are engaging has a requirement to be registered.

Section 287C stipulates that the Head of Service must give an employee alternative duties or redeploy the employee, if an employee’s registration is suspended or cancelled, as defined in the WwVP Act.

Section 287D provides the Head of Service with the power to suspend an employee from employment with pay, while redeployment options are being investigated and up until a final decision is made by the Commissioner for Fair Trading to either cancel or reinstate registration.

Subsection 287D(2) allows for suspension to occur as quickly as required depending on how difficult it will be to change duties or redeploy the employee for some specialised positions.

Subsection 287D(2)(c) specifies that the period of suspension would be for at least six weeks or up until registration is cancelled. This ensures that six week consistency as a minimum of suspension with pay and there is no opportunity for an employee to claim a second period of suspension with pay where registration is cancelled.

Section 287E deals with the situation when working with vulnerable people registration is not held, that is, where registration is refused, cancelled, has a condition placed that the employer cannot meet or surrendered by the holder (as provided for under the WwVP Act).

Subsection 287E(2) applies section 143 (3) to (8) of the *Public Sector Management Act 1994* (PSM Act), so that reasonable steps will be taken by both the Head of Service and the Commissioner for Public Administration to identify a vacant position for redeployment of the employee.

Section 287F provides the Head of Service with the power to suspend an employee from employment with pay if the employee fails to hold registration under the WwVP Act, while redeployment options are being investigated, for a period of up to six weeks. This allows for suspension to occur as quickly as needed depending on how difficult it will be to change duties or redeploy for some specialised positions.

Section 287G(1) provides that an employee can be retired from the service where registration has been suspended under Section 287D for six weeks or more and then cancelled or suspended under Section 287F for six weeks or more.

In section 287G(1)(b) 'or more' has been used to allow for any administrative error in calculating the six week timeframe, so that where suspension was longer, retirement could still occur under this provision.

Section 287G (2) applies section 143(9) of the PSM Act. It provides the Head of Service with the power to reduce the employee's classification or retire the officer from the service, upon receiving a referral under subsection 143 (8) of the PSM Act.