

Public Sector Management Amendment Standards 2019 (No 1)

Disallowable instrument DI2019-220

made under the

[Public Sector Management Act 1994](#), s 251 (Management standards)

EXPLANATORY STATEMENT

Background

The *Public Sector Management Act 1994* (the PSM Act) regulates the management of the public sector. Section 251 of the PSM Act empowers the Head of Service, with the written approval of the Chief Minister, to make Public Sector Management Standards (PSM Standards 2016) for the purposes of the PSM Act.

Under the current ACT Public Service (ACTPS) employment framework, long service leave (LSL) entitlements are provided through ACT public sector enterprise agreements and Part 4.3 of the *Public Sector Management Standards 2006* (repealed) (PSM Standards 2006). Part 4.3 of the repealed standards continue to apply by virtue of section 113 of the PSM Standards 2016.

In 2011, amendments were made to the PSM Act with the intention of placing all employee entitlements into enterprise agreements. Specifically, section 164 (Long Service Leave Benefits not to be granted) was removed from the PSM Act, however, no new provisions were inserted into the PSM Standards 2006 or the Enterprise Agreements in its place. Section 164 provided that LSL benefits are not to be granted under other laws to Territory employees.

The inadvertent removal of section 164 meant that the *Long Service Leave Act 1976* (LSL Act) applied to ACTPS employees. To rectify and clarify which LSL provisions are applicable to ACTPS employees, an amendment was made to the PSM Act through the *Public Sector Management Amendment Act 2019*.

To further support these arrangements, the Government is amending the PSM Standards 2016 that will sit alongside and complement the provisions of the repealed Standards to ensure that there is no detriment to either a current or future officer with five to seven years of service who have their employment terminated for reasons other than incapacity, illness, retirement, redundancy or serious misconduct.

Purpose of instrument

The instrument amends the PSM Standards 2016 to provide a provision that protects officers that may be affected by the amendments to the LSL Act. It provides a benefit in certain circumstances that could have applied had the officer continued to be covered by the LSL Act.

Section 1 Name of Instrument

This is a technical provision stating the name of the instrument as the *Public Sector Management Amendment Standards 2019 (No 1)*.

Section 2 Commencement

This section states this instrument commences on the commencement of the *Public Sector Management Amendment Act 2019*, section 3.

Section 3 Legislation amended

This section states that the instrument amends the *Public Sector Management Standards 2016*.

Section 4 New section 113A

This section inserts a new section into the *Public Sector Management Standards 2016*.

The new section applies to an officer whose employment is ended for reasons other than serious misconduct or a circumstance mentioned in the repealed standards section 307(3)(a) (Payment in lieu of long service leave – cessation of employment). An officer's employment may be terminated for a reason other than the person's serious or wilful misconduct, such as underperformance or less serious misconduct.

To align with the drafting style of the PSM Standards 2016, the term 'ending of employment' is used and is intended to capture those officers who have their employment 'terminated' as provided for under the LSL Act.

An officer who meets the above must be paid an amount equal to the amount of remuneration the officer would have been paid if they were eligible to take long service leave on the day their employment ended and had taken all the long service leave accrued to the officer on that day.

The payment will only also apply if on the day the employment ends, the officer's eligible employment for working out the officer's long service leave entitlement is at least 5 years but less than 7 years.

For the purposes of section 113A, an officer also includes an employee. The new section also provides a definition of 'serious misconduct'.