

## EXPLANATORY STATEMENT

### **PUBLIC SECTOR MANAGEMENT AMENDMENT STANDARD 2005 (No 4) DISALLOWABLE INSTRUMENT NO DI2005-49**

*Public Sector Management Act 1994*

#### Legislative Context

The *Public Sector Management Act 1994* (the Act) regulates the management of the public sector. 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

The amendments to the Standards support the ACT Public Service (ACTPS) Employment Framework for People with a Disability, launched on 9 September 2004. One of the Framework's objectives includes ensuring that all legislation encourages and supports inclusive work practices and diversity.

The primary amendment introduces new Part 11 in Standard 2 to provide for Equal Employment Opportunity Programs in accordance with sections 39, 40, 65(3) and 109 of the Act. The first program is the Disability Employment Program, which provides employment opportunities in the ACTPS for people with disabilities. It is expected that other Equal Employment Opportunity Programs will be developed.

New Part 11 (Division 11.1) of Standard 2 deals with the Disability Employment Program, which supports the employment of people with disabilities in the ACTPS.

Standard 2, Part 11, Division 11.1, Rule 1 contains interpretation of specific terms. The Standard defines a "person with a disability" as a person who has an employment restriction because of a disability. Disability is not defined as it is not intended to limit the program by a potentially restrictive definition when there are already relevant definitions in anti-discrimination laws.

Access to some elements of the program, such as recruitment through a pool of applicants provided by the specialist employment services, is restricted to the eligibility requirements of those services. These are set-up under Commonwealth laws and funded by the Commonwealth. These arrangements are supported by an agreement between the Territory, the disability employment services and the Commonwealth Department of Education, Science and training, New Apprenticeship Centres, to facilitate the employment of people with disabilities in the ACT Public Service and provide specific recruitment and support services.

The Standard (Standard 2, Part 11, Division 11.1, Rule 2) explains that the program will promote opportunities for people with disabilities to access permanent employment at various levels in the ACTPS. It will also provide temporary contract engagement as an Executive or temporary employment opportunities that provide valuable training opportunities that may lead to opportunities for permanent employment either within the ACTPS or elsewhere. The Program is consistent with the objectives of section 17(c) of the

*Human Rights Act 2004*, section 27 of the *Discrimination Act 1991* (ACT) and section 45 of the *Disability Discrimination Act 1992* (Cwlth).

To be eligible to participate in the Disability Employment Program, a person with a disability must meet the general eligibility criteria for appointment to the ACTPS set out in section 68 of the Act and meet the definition of a person with a disability. To be eligible for recruitment through a Commonwealth funded Employment Service a person must meet the eligibility requirements of that agency (Standard 2, Part 11, Division 11.1, Rule 3). These organisations register persons with a disability that are seeking employment or further career development opportunities.

The Program allows Chief Executives to adopt all or any the following measures to achieve the best match between the needs of the organisation and the needs of people with a disability:

- Identify vacancies for temporary or permanent employment. The identified vacancy is to be filled from the pool of applicants provided by an Employment Service;
- For temporary employment less than 12 months, engage a person from a employment register provided by an Employment Service;
- Without limiting the powers of a Chief Executive, provide permanent or temporary employment by appointing, engaging, transferring or promoting a person with a disability under this Program; and
- Redesign positions or workplace arrangements to remove barriers to the employment of people with disabilities.

The Standard also explains managers' legal responsibilities under anti-discrimination laws to apply the principle of reasonable adjustment to the recruitment and ongoing employment of persons with a disability (Standard 2, Part 11, Division 11.1, Rule 5).

Various other consequential changes are made to the Standards to recognise the new Program. This includes changes to Standard 2 (Part 2, Rules 2 and 3), (Part 3, Rule 2), (Part 4, Rule 3), (Part 9, Rule 1) and Standard 4, Part 1, Rule 3. This provides that normal recruitment and selection arrangements may not apply to the Equal Employment Opportunity Program. While the principle of merit continues to apply, elements of a competitive process may be modified to support the recruitment of people who have employment restrictions due to a disability.

Other amendments to Standard 2, Part 2 (Rules 1 and 2) reflect that Chief Executives are responsible for the recruitment of staff to ACTPS classifications and remove outdated references to the role of the Commissioner in recruiting to base grade recruitment.

The amendment to Rule 2 (Standard 2 Part 2) also updates the program, 'Graduate Administrative Assistant (Aboriginal Services)' to 'Graduate Administrative Assistant (Indigenous Employment)' to provide consistency with other parts of the Standards that currently use the term 'Graduate Administrative Assistant (Indigenous Employment)'. This amendment also removes outdated approved programs under section 65(3) and section 109 of the Act, including the Intellectual Disability Access Program (IDAP), which is replaced by the new Disability Employment Program (Standard 2 (Part 2 Rule 2) (Part 10 Rule 10 and Rule 12.3)).

### Financial Impact

Any operational costs will be absorbed by agencies.