

Australian Capital Territory

EXPLANATORY STATEMENT

Public Sector Management Amendment Standards 2010 (No 5)

Disallowable instrument DI2010-206

made under the

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

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Background

Attracting and retaining appropriately qualified and skilled chief executive officers has been a challenge for the ACT public sector. Of the various reasons contributing to the challenges are those regarding disparity of executive remuneration between the private and public sectors, as well as between jurisdictions, nationally and internationally.

Overview

Whereas previous to these amendments chief executive employment benefits were capped at 20%, the amendments now make it possible for the Chief Minister to approve chief executive employment benefits greater than 20% after being satisfied of the requirements set out in new section 29A (2) (b).

1 Name of instrument

This clause is a technical clause stating the title of the instrument as the *Public Sector Management Amendment Standards 2010 (No 5)*.

2 Commencement

This clause is a technical clause stating that the instrument will commence the day after it is notified.

3 Legislation amended

This clause is a technical clause stating the instrument being amended as the *Public Sector Management Standards 2006*.

4 Section 29 Interpretation—Pt 3.1 remuneration

This clause updates the interpretation of remuneration to refer to the most up to date determination of the Remuneration Tribunal.

5 Section 29A (2)

The approval process for the payment of an employment benefit to a chief executive is divided into two categories based on the value of the employment benefit as a percentage of a chief executive's remuneration. The two categories are:

- (1) employment benefits that are 20%, or less than 20% of the chief executive's remuneration; and
- (2) employment benefits that are greater than 20% of the executive's remuneration.

For employment benefits that are 20%, or less than 20% of the chief executive's remuneration, the approval process remains the same as in the past.

For employment benefits that are greater than 20% of the chief executive's remuneration, the approval process is set out in new section 29A (2) (b), which does the following:

- (1) requires the Chief Minister, or an appropriate delegate, to get an independent evaluation report from an independent evaluator, which the Chief Minister must then consider when determining whether to approve an employment benefit under section 29A (2) (b);
- (2) requires the Chief Minister to consider section 29A (3);
- (3) enables the Chief Minister to consider market pressures;
- (4) enables the Chief Minister to consider the specialist skill or technical knowledge of the chief executive;

Note The following are relevant questions for determining the significance of a chief executive's specialist skill and technical knowledge:

- Are the chief executive's skills unique or highly specialised, for example, requiring post-graduate qualification for practice or admission to a profession?

- Does the chief executive possess more than one area of specialist skill that is relevant to the office of chief executive? If yes, what is the significance of the other specialist skill?
- Is the chief executive's technical knowledge unique and highly specialised, for example, only people with the chief executive's qualifications and experience possess the level and kind of technical knowledge that the chief executive possesses?
- Will the chief executive's technical knowledge and specialist skill add value to the office of chief executive?

(5) enables the Chief Minister to consider any other relevant matter.

In applying the 20% rules set out in section 29A (2), it is sufficient to quote, refer to, calculate, or use in any reasonable and practical manner, an amount, as opposed to a percentage. It is only necessary to consider percentages when determining which of the two categories at sections 29A (2) (a) or (b) apply.

Example 1

Chief Executive X (**X**) is approved an employment benefit of \$65,000. X's remuneration is \$350,000. It is sufficient to quote in X's contract of employment that X is approved an employment benefit of \$65,000. It is not a requirement that the amount be quoted as 18.57% (the percentage value of the \$65,000 employment benefit). However, this does not prevent the use of percentages if it is convenient to do so.

6 Section 29A (4)

Minor amendments are made to section 29A (4) to reflect the introduction of new section 29A (2) (b).