

2016

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PUBLIC SECTOR MANAGEMENT STANDARDS 2016

DI2016-251

EXPLANATORY STATEMENT

**Presented by
Mr Andrew Barr MLA
Chief Minister**

Contents

| | |
|--|----|
| Outline..... | 6 |
| Part 1 Preliminary..... | 6 |
| Section 1 Name of Standard | 6 |
| Section 2 Commencement | 6 |
| Section 3 Dictionary | 7 |
| Section 4 Notes | 7 |
| Part 2 Selection process | 7 |
| Division 2.1 Important concepts-pt 2..... | 7 |
| Section 5 Definitions - pt2 | 7 |
| Division 2.2 Prescribed selection method..... | 7 |
| Sections 6 – 8 Prescribed selection process, Advertising, Comparative assessment..... | 7 |
| Division 2.3 Selection method for short-term employment..... | 7 |
| Section 9 Definitions – div 2.3 | 7 |
| Sections 10 and 11 Establishment of temporary employee register, Selection method-employment up to 12 months | 7 |
| Division 2.4 Circumstances when eligibility for selection may be limited..... | 7 |
| Section 12 Definitions-div 2.4 | 7 |
| Section 13 Identified position process | 8 |
| Section 14 Direct appointment of employee-general..... | 8 |
| Section 15 Direct appointment – Aboriginal and Torres Strait Islander traineeship | 8 |
| Section 16 Direct appointment – graduate program | 8 |
| Sections 17 – 18 Direct appointment of employee- Health Directorate and Education Directorate | 8 |
| Section 19 Direct appointment-long-term SES member | 8 |
| Section 20 Direct promotion - general..... | 8 |
| Sections 21 and 22 Direct promotion – Aboriginal and Torres Strait Islander traineeship and Graduate training office..... | 8 |
| Section 23 Direct redeployment-reduction in classification on request | 9 |
| Division 2.5 Selection committee..... | 9 |
| Sections 24 and 25 Selection committees-general and Constitution of joint selection committee | 9 |
| Part 3 Being an eligible person | 9 |
| Division 3.1..... | 9 |
| Section 26 Requesting supporting evidence | 9 |
| Section 27 False supporting evidence..... | 9 |
| Section 28 Employment in anticipation of supporting evidence | 9 |
| Division 3.2 Loss of eligibility | 9 |
| Section 29 Notifying loss of eligibility..... | 9 |
| Section 30 Head of service believes public servant no longer eligible person..... | 10 |
| Section 31 Anticipated reduction in classification or retirement-officers | 10 |
| Section 32 Loss etc of working with vulnerable people registration..... | 10 |
| Division 3.3 Assessment of incapacity | 10 |
| Section 33 Definitions-div 3.3 | 10 |

| | |
|--|----|
| Section 34 Head of service believes public servant has physical or mental incapacity | 10 |
| Sections 35-38 Requirement to undergo health assessment | 10 |
| Part 4 Notifications | 11 |
| Division 4.1 Gazette notifications..... | 11 |
| Section 39 Notification of direct appointment or promotion..... | 11 |
| Section 40 Gazette notification of employment matter with errors..... | 11 |
| Division 4.2 Notification of public servant..... | 11 |
| Section 41 Notification of public servant | 11 |
| Section 42 Notice of retirement-officers..... | 12 |
| Part 5 SES members..... | 12 |
| Division 5.1 Important concepts pt-5..... | 12 |
| Section 43 Definitions - pt 5 | 12 |
| Division 5.2 Management of SES employment..... | 12 |
| Section 44 SES performance | 12 |
| Section 45 SES under-performance procedure | 12 |
| Section 46 SES member must disclose material interest..... | 12 |
| Section 47 SES misconduct procedure | 12 |
| Section 48 Disciplinary action for SES misconduct | 13 |
| Division 5.3 SES classification and salary | 13 |
| Section 49 Meaning of relevant base salary-div 5.3 | 13 |
| Section 50 SES classification..... | 13 |
| Section 51 SES base salary | 13 |
| Section 52 Salary above base in certain conditions | 13 |
| Section 53 SES superannuation | 13 |
| Division 5.4 Long-term or short-term SES employment..... | 13 |
| Section 54 Long-term and short-term SES employment | 13 |
| Section 55 Consecutive long-term SES member engagement..... | 14 |
| Section 56 Certain long-term SES member SETs must be presented | 14 |
| Division 5.5 Executive vehicles and parking..... | 14 |
| Section 57 Definitions-div 5.5 | 14 |
| Section 58 Executive vehicle | 14 |
| Section 59 Payment instead of vehicle | 14 |
| Section 60 Part-time SES member..... | 14 |
| Section 61 Parking or payment instead of parking | 14 |
| Section 62 Vehicle damaged by driver | 15 |
| Division 5.6 Application of industrial instrument | 15 |
| Section 63 SES leave entitlements..... | 15 |
| Section 64 SES salary sacrifice arrangements | 15 |
| Section 65 SES vacation childcare subsidy | 15 |
| Section 66 Disapplication of Legislation Act, s 47 (6)..... | 15 |
| Division 5.7 Change to SES members SETs | 15 |
| Section 67 SES member's SETs must be changed – increased responsibility | 15 |
| Section 68 SES member's SETs must be changed – misconduct procedure..... | 16 |
| Section 69 Consultation requirements-change to SETs..... | 16 |
| Division 5.8 End of engagement..... | 16 |
| Section 70 Notice period for ending engagement..... | 16 |
| Section 71 Notice period for resignation by SES member | 16 |
| Section 72 Payment at end of SES member's employment..... | 16 |
| Part 6 Officers | 17 |

| | |
|--|----|
| Section 73 Selected for multiple positions..... | 17 |
| Section 74..... | 17 |
| Section 75 When promotion starts..... | 17 |
| Section 76 Cancellation of promotion | 17 |
| Section 77..... | 17 |
| Section 78 Cancellation of transfer..... | 17 |
| Section 79 Salary on transfer | 18 |
| Section 80 Agreement required for transfer to lower classification | 18 |
| Section 81 Officer engaged as short-term SES..... | 18 |
| Section 82 When reappointment starts | 18 |
| Section 83 Consideration of unsuitability criteria – officer on probation | 18 |
| Section 84 Reappointment on probation in certain circumstances | 19 |
| Part 7 Public servant entitlements..... | 19 |
| Division 7.1 Important concepts-pt 7..... | 19 |
| Section 85 Meaning of accrual method – pt 7 | 19 |
| Division 7.2 Eligible employment for working out certain entitlements..... | 19 |
| Section 86 Application-div 7.2 | 19 |
| Section 87 Meaning of eligible employment..... | 19 |
| Section 88 Other eligible employment | 20 |
| Section 88 provides a head of power for the head of service to recognise a period of prior employment as being “eligible employment” where Table 87 would otherwise be ineligible. This would only be used in exceptional circumstances where the otherwise ineligible service was primarily related to a public purpose, or the ineligible break period caused by compelling or unusual circumstances.. | 20 |
| Section 89 Working out accrual of entitlements..... | 20 |
| Division 7.3 Cash out of certain entitlements..... | 20 |
| Section 90 Definitions – div 7.3 | 20 |
| Section 91 Annual leave cash out..... | 20 |
| Section 92 Annual leave loading cash out - officers..... | 21 |
| Section 93 Annual leave cash out following death..... | 21 |
| Division 7.4 Entitlements in certain circumstances – public servants..... | 21 |
| Section 94 Lease of Territory dwelling | 21 |
| Section 95 Payment in relation to life insurance | 21 |
| Section 96 Reimbursement for loss or damage..... | 21 |
| Section 97 Retrospective salary payment | 21 |
| Section 98 Work outside ordinary hours | 21 |
| Section 99 Personal leave if health a danger to others..... | 22 |
| Section 100 Non-continuous primary caregiver leave..... | 22 |
| Division 7.5 Entitlements in certain circumstances – officers and employees..... | 22 |
| Section 101 Payment of skills and qualification allowance in certain circumstances..... | 22 |
| Sections 102 – 103 Sunday and Public holiday salary | 22 |
| Section 104 Salary increment delayed in certain circumstances | 23 |
| Section 105 PSSAP eligibility | 23 |
| Section 106 Unauthorised absences..... | 23 |
| Part 8 Public sector standards | 23 |
| Section 107 Codes of conduct..... | 23 |
| Section 108 Second jobs | 23 |
| Section 109 Unauthorised disclosure of information..... | 24 |
| Part 9 Investigations by commissioner | 24 |

| | |
|--|----|
| Section 110 Commissioner’s powers for investigation | 24 |
| Part 10 Industrial matters in transition..... | 24 |
| Division 10.1 Preliminary-pt 10 | 24 |
| Section 111 Inconsistency with new industrial instrument..... | 24 |
| Division 10.2 Repealed Standards | 24 |
| Sections 112 - 115..... | 24 |
| Division 10.3 Certain matters in relation to payments | 24 |
| Section 116 First aid allowance for officer with certain qualifications | 24 |
| Section 117 Salary deduction..... | 24 |
| Division 10.4 Certain matters in relation to overtime..... | 24 |
| Section 118 Payment for overtime in certain circumstances | 24 |
| Section 119 Payment for meal break in certain circumstances..... | 25 |
| Section 120 Payment for travel in certain circumstances | 25 |
| Division 10.5 Certain matters in relation to people covered by ACT Public Sector Medical Practitioners Enterprise Agreement 2013 – 2017 | 25 |
| Section 121 - 126 | 25 |
| Part 11 Other transitional matters | 25 |
| Section 127 Existing codes of conduct | 25 |
| Section 128 Expiry – pt 11..... | 25 |

Outline

The Public Sector Management Standards 2016 (the PSM Standards) is to be created as subordinate legislation to the Public Sector Management Act 1994 (the PSM Act).

On 1 September 2016 the PSM Act was amended to cover all ACT Public Sector entities except Territory Owned Corporations. The amendments also formally establish the Senior Executive Service and contain heads of power for the employment of ACT public servants. The amendments further embed the concept of a values-based service by vesting all employment powers at the Head of Service level and applying the ACTPS values to the whole of the public sector.

The Public Sector Management Standards 2006 have become unwieldy and disjointed due to multiple amendments over the last 10 years. A decision has therefore been taken to rewrite the PSM Standards as opposed to amending the existing instrument.

The PSM Standards contain new clauses which reflect the primary changes to the PSM Act and provide detail to make the high level powers operable. Several areas of the previous Standard have been consolidated resulting in a streamlining of the Standard, reducing the number of sections from 661 sections to 128 sections.

Much of the old Standards have, however, been preserved through transitional arrangements and industrial matters in transition. This reflects areas of the previous Standards that are more appropriately contained in industrial instruments as opposed to employment legislation. Indeed, many of these items were initially placed in the Standards purely as an interim measure to provide legal authority until negotiation of a new round of agreements occurred. Part 10 is time limited, with an end date to coincide with the next round of agreements. It is anticipated that some of these provisions will have been superseded by further enterprise agreements and could be deleted or allowed to sunset without replacement

Human rights issues

The Standards give effect and operability to the primary legislation. All human rights issues were comprehensively considered and addressed during the scrutiny period in relation to the Public Sector Management Amendment Bill 2016. Accordingly there are no human rights implications arising from this Standard.

Part 1 Preliminary

Section 1 Name of Standard

This is a technical clause that names the standard. The name of the standard will be the *Public Sector Management Standards 2016*.

Section 2 Commencement

Section 2 provides that the Standard commences on 1 September 2016.

Section 3 Dictionary

This clause provides that the Dictionary at the end of the standard forms part of the standard.

Section 4 Notes

This is a technical provision setting out that notes in the standard provide guidance but are not part of the standard

Part 2 Selection process

Division 2.1 Important concepts-pt 2

Section 5 Definitions - pt2

This section defines important concepts for Part 2 including; Aboriginal or Torres Strait Islander person, employ, identified position, joint selection committee, prescribed selection process, selection committee and selection criteria.

Division 2.2 Prescribed selection method

Sections 6 – 8 Prescribed selection process, Advertising, Comparative assessment

Sections 6-8 support section 27 of the PSM Act in regard to the application of the merit principle. This includes how and where particular vacancies must be advertised, the range of options available for conducting a comparative assessment, that an order of merit is valid for a period of 12 months and that the Head of Service must consult with the Chief Minister and the relevant minister for an administrative unit in regard to the appointment of a Director-General.

Division 2.3 Selection method for short-term employment

Section 9 Definitions – div 2.3

Section 9 defines “short-term employment” and “temporary employee register”.

Sections 10 and 11 Establishment of temporary employee register, Selection method-employment up to 12 months

Sections 10 and 11 provide for the establishment of a temporary employee register and set out the method for identifying and engaging suitable candidates for periods of temporary employment of up to 12 months.

Division 2.4 Circumstances when eligibility for selection may be limited

This Division provides for circumstances where limits may be placed on eligibility for selection for positions within the ACTPS.

Section 12 Definitions-div 2.4

Section 12 defines key terms for the division including “casual employee”, “continuous period”, “fixed term employee”, and “nominally vacant office”.

Section 13 Identified position process

Section 13 allows the Head of Service to nominate a nominally vacant role as an identified position. This may restrict eligibility to Aboriginal and Torres Strait Islander people, people with a disability or any other class of people in order to counter any identified disadvantage.

Section 14 Direct appointment of employee-general

Section 14 allows for the appointment of a fixed term employee as an officer under certain conditions including that the original advertisement for the role stated that the successful applicant for the temporary role may be eligible for appointment, sustained satisfactory performance has been demonstrated and there are no suitable excess officers available.

Section 15 Direct appointment – Aboriginal and Torres Strait Islander traineeship

Section 15 provides detail as to the requirements for a person engaged to undertake an Aboriginal and Torres Strait Islander traineeship.

Section 16 Direct appointment – graduate program

Section 16 provides for the direct appointment of a person as a Graduate Administrative Assistant.

Sections 17 – 18 Direct appointment of employee- Health Directorate and Education Directorate

Sections 17 and 18 provide for the direct appointment of Health and Education directorate temporary employees in certain circumstances. These Directorates are identified separately due to a higher level requirement for consultation with the relevant unions.

Section 19 Direct appointment-long-term SES member

Section 19 provides a mechanism for a long-term SES member to be appointed as an officer without a merit process. This allows for SES members to request a permanent voluntary reduction in classification in the event that their personal circumstances change such that they can no longer perform the role of an executive.

Section 20 Direct promotion - general

Section 20 provides for the direct promotion of officers in certain circumstances including that a selection process was undertaken at some point, that the original advertisement for the process stipulated that the successful candidate may be eligible to be appointed to the role, that the officer has performed the role for 12 months or more and that there is no suitable excess officer available.

Sections 21 and 22 Direct promotion – Aboriginal and Torres Strait Islander traineeship and Graduate training office

Sections 21 and 22 provide a mechanism for the direct promotion of officers who successfully complete the Aboriginal and Torres Strait Islander Traineeship to the ASO2 classification, and officers who successfully complete the graduate program to the ASO5 classification.

Section 23 Direct redeployment-reduction in classification on request

Section 23 provides a mechanism to directly redeploy an officer to a lower classification where the officer requests.

Division 2.5 Selection committee

Sections 24 and 25 Selection committees-general and Constitution of joint selection committee

Sections 24 and 25 set out the minimum requirements for establishing selection committees and joint selection committees. The difference between a management initiated joint selection committee and a union agreed joint selection committee is that a union agreed JSC contains an agreed union representative whereas a management initiated JSC does not. Additionally all decisions of a management initiated JSC up to the Senior Officer Grade C classification are appellable and unanimous decisions of a union agreed JSC are not appellable.

Part 3 Being an eligible person

Division 3.1

Division 3.1 contains requirements for prospective employees to provide supporting evidence to demonstrate they are eligible for employment in the service.

Section 26 Requesting supporting evidence

Section 26 provides an authority for the head of service to request evidence demonstrating the person is eligible for employment.

Section 27 False supporting evidence

Section 27 provides that where false supporting evidence is provided, the employment must be ended if they are not an eligible person and may be ended if they are an eligible person. This section also provides that giving false evidence may constitute misconduct.

Section 28 Employment in anticipation of supporting evidence

Section 28 provides authority for a person to commence employment prior to providing supporting evidence. It also provides that if the supporting evidence is not provided within a reasonable time, the employment must be ended.

Division 3.2 Loss of eligibility

Division 3.2 sets out the processes for managing cases where an SES member, employee or officer becomes ineligible for their role during the course of their employment.

Section 29 Notifying loss of eligibility

Section 29 places an obligation on public servants to inform the head of service where they become aware of no longer being an eligible person.

Section 30 Head of service believes public servant no longer eligible person

Section 30 provides a mechanism for the head of service to initiate proceedings where it is reasonably believed an employee may no longer be an eligible person. The procedures for determining eligibility as well as the procedures to be followed where loss of eligibility is demonstrated are set out.

Section 31 Anticipated reduction in classification or retirement-officers

Section 31 provides that an officer may request to be retired prior to action being taken under s122 of the Act.

Section 32 Loss etc of working with vulnerable people registration

Section 32 sets out the process to be applied where a public servant (temporary, officer or SES) loses their working with vulnerable people registration, where the holding of such registration is an essential condition for performing their role. If the loss of registration is for a significant period, the public servant can be suspended from duty (with or without pay), until such time as a suitable alternate position can be identified or the registration is restored.

Where no suitable alternate position can be identified under section 122 of the Act, the public servant may be reduced in classification or retired from the Service under section 123 of the Act.

Division 3.3 Assessment of incapacity

Division 3.3 houses the processes and considerations for determining appropriate methods for managing public servants with non-compensable illnesses and/or injuries.

Section 33 Definitions-div 3.3

Section 33 defines the key concepts of “health assessment”, “non-compensable physical or mental condition” and “treating doctor”.

Section 34 Head of service believes public servant has physical or mental incapacity

Section 34 sets out that there are dual considerations for assessing whether a public servant is incapacitated. The first is that a public servant has been, or is likely to be absent for a continuous period of 13 weeks. The second issue is that the head of service (or delegate) believes that the absence is due to a non-compensable physical or mental condition, and, that the condition significantly reduces the public servants ability to perform their role.

This section goes on to describe the requirements for giving a public servant an opportunity to respond to the assessment by the head of service. This section then provides for possible redeployment or end of employment across all employment types.

Sections 35-38 Requirement to undergo health assessment

Section 35 provides that if the head of service considers any information provided by the public servant in relation to their medical condition, and requires further

information for making a full assessment, the public servant may be required to undergo a health assessment.

Section 36 describes the requirements for a health assessment, provides that previous health assessments may be considered in forming a view, and provides that the administrative unit in which the public servant works is responsible for paying for the health assessment.

Section 37 provides that a copy of the health assessment is to be provided to the public servant as soon as practicable and sets out the options for the head of service having considered the assessment. These options are, if satisfied the public servant has a non-compensable medical condition, approve further leave, arrange a suitable return to work plan, or to declare the public servant incapacitated. If the head of service is not satisfied the public servant has a non-compensable medical condition, the public servant may be directed to return to work within 14 days of receiving such a direction.

Section 37 also provides a mechanism for disputing such an assessment made by the head of service and provides recourse to a medical review panel for final determination.

Section 38 provides detail as to the establishment and composition of a medical review panel under section 37. It also provides that where a medical review panel determine that a public servant does not have a non-compensable medical condition, and fails to comply with a direction to return to work, abandonment of engagement processes may be commenced for SES members, and forfeiture of office proceedings may be commenced for an officer.

Part 4 Notifications

Division 4.1 Gazette notifications

Section 39 Notification of direct appointment or promotion

Section 39 provides that any appointment or promotion under division 2.4 of the Act must be notified in the Gazette.

Section 40 Gazette notification of employment matter with errors

Section 40 requires that any notification that contains significant errors must be corrected and published in the Gazette as soon as practicable.

Division 4.2 Notification of public servant

Section 41 Notification of public servant

Section 41 sets out all of the matters that a public servant (SES, officer, employee) must be notified of on appointment to the service.

Section 42 Notice of retirement-officers

Section 42 sets out the content requirements for notices of retirements including the reasons for the retirement and the appeal rights of the officer where they have not consented to the retirement.

Part 5 SES members

Division 5.1 Important concepts pt-5

Section 43 Definitions - pt 5

Section 43 provides key definitions for SES members including Band 1,2 and 3 executive, base salary, SES classification and SES position evaluation.

Division 5.2 Management of SES employment

Section 44 SES performance

Section 44 sets out that an executive is required to give their engager (or delegate) a draft performance agreement within three months of their appointment. For Directors-General the draft performance agreement will be provided to the head of service. For all other executives this will be to the person to whom they directly report.

This section also sets out that an underperformance process may be undertaken should an executive fail to meet the expectation set out in the performance agreement.

Section 45 SES under-performance procedure

Section 45 sets out the minimum requirements for conducting an under-performance process for an SES member. The person to whom the SES member reports (the engager) must inform the SES member of the reasons why the engager believes the SES member has failed to meet one or more of the agreed performance expectations. This section also sets out that if the SES member does not meet the performance expectation within a stated period, the SES members SETs may be changed, or their employment may be ended.

Section 46 SES member must disclose material interest

Section 46 establishes a requirement for an SES member, engaged for a period of more than 6 months, to disclose any material interest the SES member may have that may impact on their ability to exercise the functions of the role in an impartial manner. This includes an obligation to disclose any familial and other close relationships that may impact on the impartiality of the SES member.

Section 47 SES misconduct procedure

This section sets out that misconduct allegations against SES members must be referred to the Public Sector Standards Commissioner. The section also sets out that

SETs may be changed during the investigation and that an SES member may be suspended, with or without pay while the investigation is conducted.

Section 48 Disciplinary action for SES misconduct

Section 48 sets out the range of sanctions available where an SES member is found to have engaged in misconduct.

Division 5.3 SES classification and salary

Section 49 Meaning of relevant base salary-div 5.3

Section 49 defines relevant base salary for an executive

Section 50 SES classification

Section 50 establishes the range of classifications that an SES member can be engaged to perform.

Section 51 SES base salary

Section 51 sets out that an SES member's base salary can not be less than that which attaches to the classification which they are engaged to perform.

Section 52 Salary above base in certain conditions

Section 52 provides a mechanism for the head of service to approve additional salary up to 10% higher than the base salary to attract new executives to the service. It is premised on a range of preconditions including; that an executive evaluation identifies that the base salary for a particular role is less than the salary applicable to similar roles outside the service, that a previous selection process did not identify a suitable candidate, that the proposed candidate possesses a skill or expertise that is uncommon and/or that the person's salary outside the service is above the relevant base salary.

This is only available on initial engagement and does not apply to re-engagements.

Section 53 SES superannuation

Section 53 applies to SES members that do not have membership of the CSS or PSS superannuation schemes. It allows for an additional 1% (in addition to any legislated minimum) to apply to the employer contribution rate where the executive elects to make a personal contribution of 3% or more into a nominated superannuation fund.

Division 5.4 Long-term or short-term SES employment

Section 54 Long-term and short-term SES employment

Section 54 differentiates between a long term SES engagement and a short term SES engagement. Long-term refers to a period of not more than 5 years, short-term refers to a period of not more than 2 years. The primary difference between the two options is that where an officer is engaged as a short term SES member, they retain their tenure as an officer.

Section 55 Consecutive long-term SES member engagement

Section 55 provides for the re-engagement of long-term executives without the need for a new merit process where all performance expectations have been met and there is no break in service. This section also provides that long-term executives must be given a minimum of three months notice where they are not going to be re-engaged, or paid in lieu of this notice.

Section 56 Certain long-term SES member SETs must be presented

Section 56 sets out the requirements for the tabling of new long-term SES contract information in the Legislative Assembly. The information to be tabled includes: the long-term SES member's name, the classification at which they are engaged and, if the salary is higher than the base salary for the position, the salary must be included.

Division 5.5 Executive vehicles and parking

This division houses the arrangements for the provision of executive vehicles, parking or cash in lieu of a vehicle or parking.

Section 57 Definitions-div 5.5

Section 57 defines the terms "executive vehicle", "business use" and "SES member vehicle policy".

Section 58 Executive vehicle

Section 58 provides that a long-term SES member may elect to lease a vehicle in accordance with the Territory's leasing arrangements and specifies that any vehicle leased under these arrangements is a Territory resource. The section sets out the maximum lease costs (per annum) for the different executive bands.

A short-term SES member can not enter into a lease arrangement.

Section 59 Payment instead of vehicle

Section 59 provides for an allowance to be paid to short-term SES members, and also to long-term SES members where they elect to be paid in lieu of leasing a vehicle. The section sets out the relevant allowance for each of the SES bands and specifies that the allowance is paid in fortnightly instalments.

Section 60 Part-time SES member

Section 60 sets out that the head of service may exercise their discretion in determining whether a part time SES member is entitled to a leased vehicle or payment in lieu. The head of service will consider the part time hours being worked and decide whether it is reasonable in the circumstances to provide a leased vehicle or whether the part time SES member should receive a pro-rated allowance consistent with their hours.

Section 61 Parking or payment instead of parking

Section 61 provides an entitlement for all SES members to an allocated parking space at or near their place of work. SES members may elect to be paid an allowance of \$2500 per year (paid in fortnightly instalments) in lieu of an allocated parking space.

Section 62 Vehicle damaged by driver

Section 62 sets out that where damage is caused to an executive vehicle by the conduct of the driver, and that damage is not covered by the Territory's insurance arrangements, repair costs must be paid by the driver. Under this section the driver may be the SES member who leases the vehicle or the public servant who was actually driving the vehicle at the time the damage to the vehicle was sustained.

Division 5.6 Application of industrial instrument

Division 5.6 calls up a range of provisions from the Administrative and Related Classifications Enterprise Agreement 2013 - 2017 (and/or subsequent applicable industrial instrument) in providing certain entitlements for SES members.

Section 63 SES leave entitlements

Section 63 sets out that leave provisions for SES members are those entitlements contained in the Administrative and Related Classifications Enterprise Agreement 2013 – 2017. This section stipulates that SES members are not entitled to annual leave loading.

Section 64 SES salary sacrifice arrangements

Section 64 provides a mechanism for SES members to participate in salary sacrifice arrangements under the provisions that apply under the Administrative and Related Classification Enterprise Agreement 2013 – 2017 and any subsequent Enterprise Agreement.

Section 65 SES vacation childcare subsidy

Section 65 provides a mechanism for SES members to access vacation childcare subsidy arrangements under the provisions that apply under the Administrative and Related Classification Enterprise Agreement 2013 – 2017 and any subsequent Enterprise Agreement.

Section 66 Disapplication of Legislation Act, s 47 (6)

Section 66 means that changes to or replacement of the Administrative and Related Classification Enterprise Agreement 2013 – 2017, are not required to be notified to the legislation register.

Division 5.7 Change to SES members SETs

This division describes the circumstances that create the need for changes to SES members SETs

Section 67 SES member's SETs must be changed – increased responsibility

Section 67 provides a mechanism for an SES members salary and/or classification to be increased, without conducting a merit process. This can only happen within a classification Band. Where the recommended change crosses a classification band, or in the cases of a band 3 SES member, increases by more than 2 classification levels, a full merit process is required.

In cases where an increase in classification or salary does not occur in line with a recommendation, the role and function of the SES member must be changed so that the level of responsibility is appropriate to the SES member's classification.

Section 68 SES member's SETs must be changed – misconduct procedure

Section 68 requires an SES member's SETs to be changed during a misconduct process. This is premised on it not being in the interests of the service for the SES member to be suspended or to remain in their current position during the investigation. The section provides for the movement of the SES member to an alternate function until the investigation is finalised.

Section 69 Consultation requirements-change to SETs

Section 69 specifies what actions can be taken in relation to changes to SETs with and without consultation. Consultation is not required to assign a new function to the SES member's responsibilities, to remove a function from the SES member, to move an SES member between administrative units or to increase an SES member's salary.

Consultation is required for a reduction in salary, a change from full time to part time hours or part time to full time hours (or a variation of agreed part time hours), or a change to the period the SES member is engaged for, subject to the legislative maximum engagement of five years.

Division 5.8 End of engagement

Section 70 Notice period for ending engagement

Section 70 sets out that an SES member must be provided with a maximum of 8 weeks notice in the event that their contract is terminated earlier than the specified cessation date. An SES member may be paid in lieu of the 8 weeks notice at the request of the SES member or at the direction of the SES member's engager.

Section 70(2)(b) sets out that there is no minimum notice period where the SES member is paid an amount equal to 8 weeks. There is no minimum notice period where the SES member's contract is ended due to serious misconduct.

Section 71 Notice period for resignation by SES member

Section 71 requires a long term SES member to give a minimum of 8 weeks notice where they elect to resign. This period may be shorter than 8 weeks where the SES member's engager agrees to the shorter period.

Section 72 Payment at end of SES member's employment

Section 72 provides for a payment to be made where the SES member is surplus to requirements for the effective and efficient operation of the service. The SES member is entitled to the greater of two weeks salary for each year of continuous service up to a maximum of 44 weeks or 6 months salary. Payment of 8 weeks salary instead of notice is in addition to these amounts.

Part 6 Officers

This part houses arrangements relating to movement within the service for officers, specifically in regard to appointments, transfers, or promotions.

Section 73 Selected for multiple positions

Section 73 sets out that where a person is selected for appointment, transfer or promotion and prior to the appointment, transfer or promotion taking effect the person is selected for one or more other roles, the head of service determines which role the person is appointed, transferred or promoted to. The selected person must tell the head of service their order of preference for the roles and the head of service must take this into consideration in determining which role the person is appointed, transferred or promoted to.

Section 74

Section 74 operates to ensure that a new appointee does not commence until the day stated in writing by the head of service. It also provides that where a person does not start work on the day stated in writing by the head of service, the appointment does not start until the appointee attends for duty.

Section 75 When promotion starts

Section 75 stipulates the date on which a promotion takes effect. This is one week after notification for a non appellable promotion, three weeks after notification for an appellable promotion where no appeal is lodged. Where an appeal is lodged the promotion takes effect at the later of three weeks after notification of the promotion or the day the appeal is dismissed or lapses. A promotion that appellable does not take effect until any appeal has been determined. There is nothing to prevent an officer being placed on higher duties pending finalisation of an appeal.

Section 76 Cancellation of promotion

Section 76 sets out the timeframe for an officer to request that a promotion be cancelled. For a non appellable promotion the request to cancel the promotion must be made within one week of the promotion being notified. For an appellable promotion, a request to cancel the promotion must be made within three weeks.

Section 76(2) sets out that the head of service, having received a request to cancel the promotion, can either cancel the promotion or confirm the promotion.

Section 77

Section 77 stipulates when a transfer starts. This section provides a minimum seven day notice period to an officer that a transfer is to occur. The officer may agree to a later commencement date than the minimum seven days or the date stated in the transfer notice.

Section 78 Cancellation of transfer

Section 78 provides that an officer may request that a transfer be cancelled. Any such request must be made within seven days of the officer receiving a transfer notice.

Section 78(2) sets out that the head of service, having received a request to cancel the transfer, can either cancel the transfer or confirm the transfer.

Section 79 Salary on transfer

Section 79(a) provides that where an officer is transferred to an office with a lower classification, they are entitled to be paid at the lowest increment of that classification.

Section 79(b) provides that where an officer is transferred to an office with the same classification as their substantive role, the officer maintains the same pay point as they were at in the previous office.

Section 79(c) provides that where an officer is transferred to an office with a higher classification, they are entitled to be paid at the lowest increment for that classification.

Section 79 also provides for higher pay points within the classification of the office to which the officer is transferred to be paid, provided that the relevant Enterprise Agreement stipulates this and there is sufficient justification to pay above the base increment.

Section 79(2) requires payment of an allowance that applies in the office to which an officer is transferred to where the officer has the relevant skills to which the allowance applies.

Section 80 Agreement required for transfer to lower classification

Section 80 prohibits the transfer of an officer to a lower classification without the written consent of the officer.

Section 81 Officer engaged as short-term SES

Section 81 provides that officers retain their tenure as officers during periods in which they are engaged on a short-term executive contract. These officers have a right of return to their previous roles at the conclusion of their short-term SES contract.

Section 82 When reappointment starts

Section 82 operates to ensure that a former officer who is reappointed does not commence until the day stated in writing by the head of service. It also provides that where a former officer is reappointed and does not start work on the day stated in writing by the head of service, the reappointment does not start until the reappointee attends for duty.

Section 83 Consideration of unsuitability criteria – officer on probation

Under the previous standards, an officer on probation had to satisfy the engager that they were a “fit and proper person” for their appointment to be confirmed at the satisfactory completion of a specified probation period. The “fit and proper person” test has been replaced with a set of “unsuitability criteria” set out in section 70(4) of the Act. Section 83 requires an engager to notify an officer on probation if they believe one or more of the unsuitability criteria apply and which unsuitability criteria is considered to apply. The officer must be given a reasonable opportunity to respond

in writing and any response must be considered in making a final determination as to whether the appointment should be confirmed.

Section 84 Reappointment on probation in certain circumstances

Section 84 sets out that if an officer is on probation when their previous employment ended and they are reappointed, the reappointment must be on probation for the balance of the original probation period which applied.

Part 7 Public servant entitlements

Division 7.1 Important concepts-pt 7

Section 85 Meaning of accrual method – pt 7

Section 85 relates to the calculation of redundancy benefits for an SES member as per section 72 of the Standard. It also relates to the way non SES employees and officers accrue leave credits in accordance with Enterprise Agreements, and the way service is calculated for redundancy benefit purposes.

Division 7.2 Eligible employment for working out certain entitlements

Section 86 Application-div 7.2

Section 86 provides that this division applies to the assessment of public servant's employment prior to joining the ACTPS and whether that employment is recognised as prior service and/or continuous service for leave accrual and other entitlements.

Section 87 Meaning of eligible employment

Section 87 consolidates all of the information in relation to employment prior to joining the ACTPS and whether that service is eligible to be recognised as prior service for leave accrual purposes. It also sets out the relevant timeframes that make a period of service ineligible for leave accrual purposes, and continuity of service purposes.

Table 87 sets out that prior service with the ACTPS, APS, State or territory public employment, public health employment or employment with an entity that is at least 50% owned by a territory, the Commonwealth or a state is eligible service for the accrual of personal leave, provided that any break between that service and commencement with the ACTPS is 2 months or less.

Items 2, 3, 4 and 5 in Table 87 relate to continuity of service. Prior service with the ACTPS, APS, State or territory public employment, public health employment or employment with an entity that is at least 50% owned by a territory, the Commonwealth or a state is eligible service for paid maternity leave/paid primary care giver leave provided there is no break between the prior service and joining the ACTPS.

For annual leave accrual/leave loading, operational service personal leave and redundancy payments, only prior service with the ACTPS or the APS is eligible to be recognised for continuity of service purposes. Any break in service for items 2 – 5 renders that service non continuous and therefore ineligible for consideration for leave accrual and severance benefit purposes.

Section 88 Other eligible employment

Section 88 provides a head of power for the head of service to recognise a period of prior employment as being “eligible employment” where Table 87 would otherwise be ineligible. This would only be used in exceptional circumstances where the otherwise ineligible service was primarily related to a public purpose, or the ineligible break period caused by compelling or unusual circumstances.

Section 89 Working out accrual of entitlements

Section 89 sets out the considerations for the leave entitlements applying to a person who joins the ACTPS on their first day with the ACTPS.

These leave entitlements will be the total of any leave becoming due to the person on commencement under the relevant Enterprise Agreement, plus any leave due to the person stemming from recognised prior service.

The leave accruing to a person from recognised prior service is reduced by any period of such leave that has been taken or for which a payment has been made to the person.

Section 89 provides that periods of full time training and documented illness periods during what would otherwise have been ineligible break periods, extend those break periods by the period of the full time training or illness period.

Section 89 also provides that where a person’s prior employment is recognised as eligible employment but there is no record of the person’s personal leave usage, they will accrue 5 days of personal leave for each year of the eligible employment.

Division 7.3 Cash out of certain entitlements

Division 7.3 houses the authority for accrued leave entitlements to be paid to an officer or their dependants in certain circumstances.

Section 90 Definitions – div 7.3

Section 90 defines the terms “dependant”, “impaired decision making ability” and “legal disability”.

Section 91 Annual leave cash out

Section 91 provides that an employees accrued leave entitlement is able to be paid out to them when they leave the service. However, accrued annual leave can not be paid out where the employee is separating from the service to join another employer who gives the employee an equivalent entitlement or equivalent payment.

Section 92 Annual leave loading cash out - officers

Section 92 provides for officers to be paid any unpaid annual leave loading on separation from the service. This is pro rated where the officer leaves part way through a calendar year.

Section 93 Annual leave cash out following death

Section 93 provides authorisation for a public servant's accrued annual leave entitlements to be paid to their dependants in the event of the death of the public servant.

Where there are multiple dependants and any of those dependants challenge the making of the payment, the payment is instead made to the public servant's estate.

Where a dependant to whom a payment is being made has a legal disability, the payment can be made to a trustee for the dependant or the dependants legal representative.

Division 7.4 Entitlements in certain circumstances – public servants

Section 94 Lease of Territory dwelling

Section 94 provides authority for the head of service to enter into a lease arrangement with a public servant for the lease of a Territory owned dwelling where occupancy of the dwelling relates to the public servant's employment.

Section 95 Payment in relation to life insurance

Section 95 provides the head of service with authority to reimburse a public servant where the cost of the public servants life insurance is increased due to the public servant's employment. The amount that can be reimbursed is limited to the additional cost directly attributable to the public servants employment.

Section 95(3) sets out that where a public servant has their life insurance policy invalidated as a direct result of their employment, the head of service may agree to indemnify the public servant, a named beneficiary in the policy or a legal representative for the public servants estate.

Section 96 Reimbursement for loss or damage

Section 96 provides authority to reimburse a public servant for loss or damage to personal effects incurred in the performance of the public servants duties. Reimbursement can only be made where the public servant does not receive compensation for the loss or damage from the third party.

Section 97 Retrospective salary payment

Section 97 provides that the head of service must approve retrospective payment of unpaid salary as soon as practicably after becoming aware of the non payment.

Section 98 Work outside ordinary hours

Section 98 provides the authority for the head of service to direct an officer, an employee, or an SES member to work additional hours to their normal hours of duty.

Any direction under this section is subject to the payment of overtime under the relevant enterprise agreement for officers and employees and the reasonable additional hours considerations contained in the *Fair Work Act 2009* for all public servants.

Section 99 Personal leave if health a danger to others

Section 99 sets out that a public servant can be required to undergo a medical assessment where the head of service believes the public servant's health puts another person at risk.

Such an assessment will be paid for by the Territory.

Having considered the medical report, the head of service may require the public servant to take personal leave. The public servant may choose to utilise any of their paid leave entitlements in regards to such an absence. If the public servant has exhausted all of their paid leave entitlements, the head of service may authorise another leave type in accordance with the relevant Enterprise Agreement.

Section 100 Non-continuous primary caregiver leave

Section 100 allows primary caregiver leave to be accessed in non-continuous periods. For example, a public servant may take primary caregiver leave in two blocks of nine weeks. However the public servant in such a case would need to return to work during the period between the two blocks as no annual leave or long service can be approved during the intervening period that would otherwise make the period continuous.

Division 7.5 Entitlements in certain circumstances – officers and employees

Section 101 Payment of skills and qualification allowance in certain circumstances

Section 101 provides that if an officer or employee is normally paid an allowance in relation to a skill or qualification, the officer or employee is entitled to continue to receive that allowance during an approved absence on paid leave.

Any such allowance is proportionally pro rated if the paid absence is on less than full pay.

Sections 102 – 103 Sunday and Public holiday salary

Sections 102 and 103 provide that where an allowance is payable during the course of ordinary hours of work and that allowance is taken to be part of the officer or employees salary, the allowance component is applied in the calculation of salary for penalty payments in relation to work performed on Sundays or public holidays.

Incidental allowances are not increased for work performed on Sundays or public holidays.

Section 104 Salary increment delayed in certain circumstances

Section 104 provides that an officer or employee will have their increment date deferred by 22 working days for each 22 working days where they have been absent without authorisation, on leave without pay that does not count as service or on another type of leave that is not eligible employment.

The 22 working days is calculated from the date on which the last increment was applied. In the case of an appointment or promotion to the base increment, it is calculated from the date of appointment or promotion.

For clarity, an officer or employee can be absent on a leave type that is not eligible employment or on an unauthorised absence for up to 21 working days without impacting the officer's or employee's increment date.

Section 105 PSSAP eligibility

Section 105 provides that an officer or employee who was appointed to or employed by the Territory (including casuals who were engaged on a regular and systematic basis), and who, as at 6 October 2006, held an existing membership with the Public Sector Superannuation Accumulation Plan scheme, is entitled to continue membership in that scheme and have appropriate employer contributions paid to the scheme by the Territory.

Any break in service of these officers, employees or regular and systematic casuals renders them ineligible for employer contributions into the PSSAP and they would need to elect a fund of choice for any subsequent appointment or engagement.

Section 106 Unauthorised absences

Section 106 provides authority for the head of service to manage the unauthorised absence of an officer or employee.

Part 8 Public sector standards

Section 107 Codes of conduct

Section 107 requires the Public Sector Standards Commissioner to develop a code of conduct in consultation with the head of service.

Section 108 Second jobs

Section 108 requires a public servant to obtain approval to undertake secondary employment prior to the secondary employment being undertaken.

Approval must not be given for secondary employment that is inconsistent with the public sector principles and/or that would create a real or perceived conflict of interest.

Section 109 Unauthorised disclosure of information

Section 109 requires former public servants not to disclose confidential information without the written approval of the head of service.

Part 9 Investigations by commissioner

Section 110 Commissioner's powers for investigation

Section 110 sets out the steps the Public Sector Standards Commissioner is empowered to take in conducting an investigation.

Part 10 Industrial matters in transition

Part 10 houses all of the matters intended to be negotiated in the bargaining round for industrial instruments which expire on 30 June 2017. Matters that are unable to be negotiated will remain in the Standards, matters that are successfully negotiated will be contained wholly in industrial instruments and will be removed from the Standards.

Division 10.1 Preliminary-pt 10

Section 111 Inconsistency with new industrial instrument

Section 111 gives primacy to the provisions of a new Enterprise Agreement over the terms in Part 10 to the extent of any inconsistency.

Division 10.2 Repealed Standards

Sections 112 - 115

Sections 112 – 115 provide that certain aspects of the Public Sector Management Standard 2006 that were in force immediately before 1 September 2016, continue to apply.

Division 10.3 Certain matters in relation to payments

Section 116 First aid allowance for officer with certain qualifications

Section 116 provides a head of power that allows a first aid allowance to be paid to a nurse or nurse practitioner or to an officer or employee who holds a Medical Trade Certificate issued by the Australian Defence Force, whether or not the officer or employee holds an accredited first aid certificate.

Section 117 Salary deduction

Section 117 provides that an officer or employee may authorise, in writing, a deduction from their salary

Division 10.4 Certain matters in relation to overtime

Section 118 Payment for overtime in certain circumstances

Section 118 sets out arrangements where overtime spans more than one rate of pay, the higher rate applies to the whole period.

Where overtime is performed during the change over to or from daylight saving the hours to be paid are those that are actually worked.

Where a period of overtime is continuous with an officer or employee's scheduled start time, overtime is not payable beyond the start time.

Where overtime is performed on a public holiday, the minimum payment for a full time employee is 4 hours, for a part time employee the payment is made for hours actually worked.

Section 119 Payment for meal break in certain circumstances

Section 119 provides a discretionary power for the head of service to approve payment for a meal break period. This would only be in exceptional circumstances such as during an emergency response.

Section 120 Payment for travel in certain circumstances

Section 120 provides authority for an officer or employee to be paid for time spent travelling to or from overtime work where the travel is on official business or relates to the exercise of an emergency function.

Division 10.5 Certain matters in relation to people covered by ACT Public Sector Medical Practitioners Enterprise Agreement 2013 – 2017

Section 121 - 126

Sections 121 – 126 contain entitlements for pathologists and medical specialists in relation to allowances, additional leave, conference and study leave.

Part 11 Other transitional matters

Section 127 Existing codes of conduct

Section 127 provides that the code of conduct made in relation to the Public Sector Management Standard 2006 is taken to be a code of conduct is taken to be a code of conduct made under section 107 (2) of this Standard.

Section 128 Expiry – pt 11

Section 128 provides that part 11 expires on 1 September 2017