

# Public Sector Management (Transitional Provisions) Regulation 2018

## Subordinate Law SL2018–10

made under the

**Public Sector Management Act 1994, s 299 (Transitional regulations)**

## EXPLANATORY STATEMENT

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The *Public Sector Management Act 1994* (the PSM Act) regulates the management of the public sector. Section 299 of the PSM Act provides for transitional regulations to be made to outline transitional matters necessary or convenient to be prescribed because of the enactment of the PSM Act.

In 2016 changes were made to the PSM Act to formally establish the Senior Executive Service, modernising their employment conditions, facilitating executive mobility and further embedding the concept of a values-based service by vesting all employment powers to the Head of Service.

Sections 291, 292 and 293 of the PSM Act provides for the employment contracts for the Head of Service, Directors-General and executives entered into prior to 1 September 2016 to continue until the contract ends. This also provides for the other employment conditions, including the *Public Sector Management Standards 2006*, applying immediately before 1 September 2016 to continue to operate, even though the PSM Standards 2006 have subsequently been repealed. This was the policy intent at the time of the changes in 2016.

Section 55 of the *Public Sector Management Standards 2016* (PSM Standards 2016) provides for a consecutive long-term re-engagement of an SES member. A re-engagement provision has been in place within the executive employment framework for a number of years. Section 55 allows for a long-term SES member to be re-engaged without an additional merit process if the engager is satisfied that during the engagement, the SES member has met all the expectations set out in the relevant performance agreement. As part of the re-engagement process, an appraisal process is undertaken. If it is decided that the SES member will be re-engaged, the SES member's engager certifies that it is in the effective and operational interests of the ACT Public Service to re-engage the SES member, and a new employment contract is entered into.

Given the operation of sections 291, 292 and 293 of the PSM Act, it has been identified that it is difficult to apply section 55 of the PSM Standards 2016 to executives engaged prior to 1 September 2016, when the PSM Standards 2016 commenced. This is a technical and legal issue which is inconsistent with the policy intent of section 55.

In order to rectify this technical legal issue, the *Public Sector Management (Transitional Provisions) Regulation 2018* has been prepared as a transitional arrangement to allow long-term executives that were engaged prior to 1 September 2016 to be re-engaged as a long-term SES member and associated provisions under the PSM Standards 2016.

### **Section 1      Name of regulation**

This is a technical provision stating the name of the regulation as the *Public Sector Management (Transitional Provisions) Regulation 2018*.

### **Section 2      Commencement**

This is a technical provision which provides that the Regulation commences on the day after its notification day.

### **Section 3      Modification of Act, pt 18, Act s 299 (2)**

This is a technical provision stating that the Regulation will amend the *Public Sector Management Act 1994* by inserting the sections of this Regulation in Part 18.

Section 293A provides for the consecutive engagement of the Head of Service, Directors-General and executives engaged prior to 1 September 2016 to be re-engaged as a long-term SES member and associated provisions under the PSM Standards 2016.

Section 293A also clarifies the definition of a pre-amendment executive.

### **Section 4      Expiry**

Section 4 provides for this Regulation to expire on the day that Part 18 expires.