

# Public Sector Management Amendment Standards 2024 (No 1)

## Disallowable instrument DI2024-19

made under the

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

## EXPLANATORY STATEMENT

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### 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 (Standards) for the purposes of the PSM Act.

#### End of Senior Executive Service (SES) member's engagement

Section 38 of the PSM Act provides circumstances when the engager of an SES member may end the SES member's engagement. Section 72 of the Standards provides a payment to an SES member for limited circumstances under s 38 of the PSM Act. One of the circumstances for which a payment is not provided for is when the engager loses confidence in the SES member's ability to exercise the functions for which they were engaged to perform (s 38 (d) of the PSM Act).

This amendment provides the payment under s 72 of the Standards for the circumstance at s 38 (d) of the PSM Act unless the reason for the loss of confidence is due to under performance. The amendment also provides that any payment will not be payable following a finding of serious misconduct, serious corrupt conduct and/or systemic corrupt conduct.

#### Payments to statutory office-holders on early termination of appointment

Section 115 of the Standards enlivens certain repealed standards for statutory office holders under the Public Sector Management Standards 2006 (repealed), including part 9.4 (Statutory office-holder financial entitlements).

This amendment relocates the provisions under part 9.4 to the current PSM Standards. It makes some changes, namely limiting the circumstances in which a payment may be made to a statutory office-holder when their appointment is ended early. Specifically, the payment will not be payable following a finding of serious misconduct, serious corrupt conduct and/or systemic corrupt conduct.

The amendment also omits superannuation provisions for statutory office-holders. Superannuation provisions are now provided under ACT Remuneration Tribunal Determination No. 5 of 2023 – Full-Time Statutory Office Holders.

### **Purposes of instrument**

This instrument amends the Standards with the following purposes:

- To update and modernise provisions relating to benefits payable to senior executives and statutory office-holders.
- To provide a payment to an SES member if their service is ended due to the engager losing confidence in their ability to fulfill the functions for which they were engaged to perform, unless the loss of confidence is due to under performance.
- To provide that an SES member is not eligible for a payment if their engagement is ended for serious misconduct, serious corrupt conduct or systemic corrupt conduct.
- To limit the circumstances in which a payment may be made to a statutory office-holder when their appointment is ended early.
- To remove superannuation provisions for statutory office-holders from the Standards.
- Make amendments to the Standard’s dictionary consequential upon other amendments made by this instrument.

### **Section 1 Name of Instrument**

This is a technical provision stating the name of the instrument as the *Public Sector Management Amendment Standards 2024 (No 1)*.

### **Section 2 Commencement**

This section states this instrument commences on the day after its notification.

### **Section 3 Legislation amended**

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

### **Section 4 Section 47 (2), note 2**

Section 4 amends a note in section 47 of the Standards. The note references sections of the Standards relating to an engager being satisfied that an SES member has engaged in serious misconduct. The amendment adds the terms ‘serious corrupt conduct’ and ‘systemic corrupt conduct’.

### **Section 5 Section 70 (2) (a)**

Section 5 amends paragraph 70 (2) (a) of the Standards which provides no minimum notice period is required to end an SES member’s long-term contract if the engager is satisfied the SES member has engaged in serious misconduct. The paragraph is amended to include the terms ‘serious corrupt conduct’ and ‘systemic corrupt conduct’.

## **Section 6      Section 72**

Section 6 amends section 72 of the Standards adding a new subsection 72 (1A). The section provides a payment in limited circumstances to an SES member who has had their engagement ended. The amendment adds the circumstance under paragraph 38 (d) of the PSM Act as one for which a payment must be made which is when the engager has lost confidence in the SES member's ability to perform the functions for which they were engaged. The payment is limited in that it is not to be paid if the reason for losing confidence in the SES member is due to under performance. The payment will also not be payable following a finding of serious misconduct, serious corrupt conduct and/or systemic corrupt conduct.

## **Section 7      Section 72**

Section 7 amends subsection 72 (1) of the Standards. The amendment is a minor technical change required to achieve the outcome outlined in section 6 of this instrument.

## **Section 8      New Part 7A**

Section 8 inserts new part 7A into the Standards. The new part relocates provisions under the Public Sector Management Standards 2006 (repealed), Part 9.4, enlivened by section 115 of the Standards. The following changes are made in the new sections that form Part 5A:

- a) Section 106A, formerly section 637 of the repealed Standards, provides who the part applies to. It makes minor technical amendments to the titles of some of the statutory office-holder positions that have changed.
- b) Section 106B, formerly section 638 of the repealed Standards, provides the definitions of terms used in the part. Only minor technical amendments are made.
- c) Section 106C, formerly section 639 of the repealed Standards, provides when a statutory office-holder must be paid in lieu of being provided notice that their appointment is ended early. New paragraph 106C (1) (d) is inserted which provides that the section does not apply if the appointment is terminated early because the appointer is satisfied the statutory office-holder has engaged in serious misconduct, serious corrupt conduct or systemic corrupt conduct.
- d) Section 106D, formerly section 640 of the repealed Standards, provides when a statutory office holder must be paid special benefits on early termination of appointment. Former section 640 did not specify the circumstances in which the payment is necessary which was not the intent. The new section provides the same circumstances provided for the payment in lieu of notice under section 106C including the new insertion that the appointer is satisfied the statutory office-holder has engaged in serious misconduct, serious corrupt conduct or systemic corrupt conduct.

Former subsection 640 (2) was unclear in that it may have been misinterpreted to provide that the payment amount was 2 weeks remuneration for each year of service plus an additional amount up to a maximum of 44 weeks remuneration. The intent was that 44 weeks is a limitation on the 2 weeks per year of service. This is changed to align with the benefit payable to an SES member which is the greater of the following:

- i) 2 weeks remuneration per year of service (limited to a maximum of 44 weeks), and
  - ii) 6 months remuneration.
- e) Section 106E, formerly section 641 of the repealed Standards, provides that a statutory office-holder whose appointment was ended early and was entitled to receive a payment, cannot be re-appointed as a statutory office holder or engaged in the ACTPS for the period that corresponds to their payment.
- f) Former section 642 provided superannuation entitlements for statutory office holders. The provisions were outdated and are updated provisions now provided under the ACT Remuneration Tribunal Determination No. 5 of 2023 – Full-Time Statutory Office Holders.

**Section 9      Section 115 (1) (d)**

Section 9 omits paragraph 115 (1) (d) from the Standards. This provision enlivened part 9.4 of the repealed Standards which is no longer required consequential upon section 8 of this instrument which inserts new Part 7A into the Standards.

**Section 10      Dictionary**

Section 10 inserts terms introduced by this instrument into the Dictionary of the Standards.