



ACTPS EXECUTIVE HANDBOOK

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- 1. General obligations of public employees – Section 9 of the *Public Sector Management Act 1994***
- 2. Index of reference material**

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INTRODUCTION

ACT Public Service (ACTPS) executives¹ are employed under a single, service-wide contract system. This system was introduced, amongst other things, to consolidate employment arrangements for executives, and to strengthen individual performance and accountability. Executives are employees engaged on a performance-based contract for up to five years.

The executive contract system

This Handbook provides an overview of executive employment, discussing the terms, conditions and entitlements as prescribed in:

- the instrument of employment (the executive contract);
- the *Public Sector Management Act 1994* (the PSM Act);²
- the Public Sector Management Standards (the PSM Standards) or other instruments made from time to time under the PSM Act;
- determinations made by the ACT Remuneration Tribunal (the Tribunal) under the *Remuneration Tribunal Act 1995* (RT Act);³ and
- other enactments of the Australian Capital Territory (the Territory) as applicable.⁴

The executive contract

The executive contract establishes the employment relationship between the executive as an employee and the Territory as the employer. Unlike non-executive ACTPS officers, executives *do not* have tenure: the duration of employment is governed by the terms of the contract. There are two classes of contract:

- ‘long-term’ contracts, which cannot exceed five years; and
- ‘short-term’ contracts, which cannot exceed two years.

Executive contracts provide details of the terms of employment, such as remuneration, length of employment, termination provisions and obligations, and, in the case of long-term contracts, incorporate a performance agreement detailing agreed deliverables specific to the job. In respect of short-term contracts, it is normal practice for the executive to adopt the existing performance agreement for the position. If a performance agreement does not exist and the contract period is more than three months a performance agreement needs to be developed with the relevant chief executive.

¹ For the purposes of this Handbook, the term ‘executive’ includes ‘chief executive’, except where otherwise specified.

² Legislation referred to in this Handbook can be found on the ACT Legislation Register, accessible at <http://www.legislation.act.gov.au>

³ Remuneration Tribunal determinations can be found on the Tribunal website, accessible at <http://www.cmd.act.gov.au/governance/remtrib>

⁴ Fair Work instruments made under the Fair Work Act 2009 (Cwlth) do not apply to executives.

The Public Sector Management Act

The PSM Act provides the legislative framework for the use of contracts to employ executives. The PSM Act also sets out obligations, responsibilities and certain conditions of service, such as long service leave and maternity leave entitlements.

The Public Sector Management Standards

The PSM Standards support the PSM Act. Not all sections of the PSM Standards apply to executives. Conversely, certain sections of the PSM Standards apply exclusively to executives.

Determinations of the ACT Remuneration Tribunal

The Tribunal is empowered under the RT Act to determine the remuneration, allowances and other entitlements granted to executives. It must review remuneration, allowances and entitlements for executives annually. Any person may make a written submission to the Tribunal prior to a review.

To date, the Tribunal has made determinations covering executive salary rates, various employer provided benefits or allowances in lieu of benefits, a salary packaging scheme, and relocation expenses for executives engaged from interstate.

It should be noted that, to the extent of any inconsistency, Territory law, Commonwealth law, and instruments of appointment prevail over Tribunal determinations.

Current determinations are available at the Remuneration Tribunal website www.cmd.act.gov.au/governance/remtrib.

Chief Minister's Department Responsibilities

Administering Chief Executive

By virtue of the Administrative Arrangements Orders, the Chief Executive of the Chief Minister's Department is the 'administering chief executive' under the PSM Act and has responsibility for all matters relating to reengagement of executives, management of Service-wide executive numbers, and the maintenance of executive establishment, that is, the creation and abolition of executive positions.

The Chief Minister has delegated to the administering chief executive powers in relation to short-term chief executive contracts. The Chief Minister has not delegated powers in relation to long-term chief executive contracts.

Employment Policy Section

The Employment Policy Section, Governance Division, Chief Minister's Department (Employment Policy Section), is responsible for policy advice on the administration of executive contracts, including the preparation of this Handbook. The Employment Policy Section coordinates administrative arrangements for chief executive contracts, establishment actions and approval for new executive jobs; and maintains a database for record keeping and statistical purposes.

The Employment Policy Section also arranges the tabling of long-term and short-term executive contracts and contract variations in the Legislative Assembly, and the Gazettal of long-term contracts following advice from agencies and Shared Services.

A six-monthly report of the executive structure is also provided to the Chief Minister.

Inquiries regarding executive employment can be made to:

- Senior Manager, Employment Policy – ph. 620 75995;
- Executive contact officer, Employment Policy - ph. 620 77844; or
- Manager, Employment Policy - ph. 620 75586.

Agency/Shared Services Responsibilities

Agencies and Shared Services are responsible for the coordination of selection processes for executive positions, the engagement of executives, and the management of all contracts and contract variations.

Shared Services is required to provide the Employment Policy Section with copies of *all* contracts and contract variations for tabling in the Legislative Assembly, and in the case of long-term contracts, for Gazettal. The PSM Act requires that all contracts and contract variations be tabled within *six sitting days* after being made, and that long-term contracts are gazetted within 28 days of being made.

Agencies administer executive entitlements and allocations such as motor vehicles, mobile telephones, lap top computers, travel bookings, and reimbursement of other appropriate and relevant employment and administration expenses.

Pay Processing

Shared Services is responsible for the pay processing for executives. Inquiries regarding pay arrangements, superannuation and leave entitlements should be directed in the first instance to the agency's relevant Human Resource area or Shared Services. The Customer Service Portal for Shared Services can be viewed at <http://sharedservices>.

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1. GENERAL OBLIGATIONS

1.1 Values and Ethics

In performing their duties, all ACTPS employees, including executives, must comply with the general obligations, or code of ethics, set out in section 9 of the PSM Act.

A breach of section 9 may constitute grounds for suspension or termination of employment. The executive contract also includes provisions about disclosure of confidential information and the requirement that executives provide information about their financial interests. Section 9 is included at **Attachment 1**.

A guide to Ethics in the ACTPS is also available under 'A-Z listing of publications' on the Governance Division website <http://www.cmd.act.gov.au/governance/public/publications>.

1.2 Disclosure of interests

Both within and outside the ACTPS, decisions made by executives should be, and should be seen to be, professional, impartial and beyond reproach. Executives need to be aware that their decisions are likely to be subject to both internal and external scrutiny. Maintaining public confidence in the integrity and honesty of the ACTPS is crucial to good Government.

A potential conflict of interest arises where private interests are, or are perceived to be, in conflict with official duties. That is, a potential conflict can be either real or perceived. These interests can be either financial (such as directorships, share-holdings, ownership of real estate and/or being the trustee or beneficiary of a trust), or personal (such as personal relationships built on common interests like sporting, social or cultural activities, as well as family and other personal relationships), and can sometimes extend to the interests of an executive's immediate family.

Executives are not only required to disclose their interests, but also take any reasonable steps to avoid a conflict, or the appearance of a conflict.

All executives are required to provide a written statement of their personal and financial interests on commencement. For a chief executive, this statement should be provided to the relevant Minister(s) for information and forwarded to the Chief Executive, Chief Minister's Department. For an executive, this statement is to be provided to the relevant chief executive. The statements are securely stored.

The purpose of disclosure is to ascertain and address any perceived or actual conflict of personal interest and public duty. This written statement should be updated:

- every twelve months at the same time as the annual performance review;
- as soon as possible after any relevant facts requiring a change have come to the employee's notice; and
- whenever the circumstances change.

1.3 Second jobs

Under sections 35 and 244 of the PSM Act, prior written approval must be obtained before engaging or continuing in other employment or professional practice or acting as a director of a company or incorporated society (otherwise than in accordance with public service duties). In the case of chief executives, written approval must be sought from the Chief Executive, Chief Minister's Department. In the case of executives, written approval must be sought from the relevant chief executive.

1.4 Other contractual requirements

1.4.1 General principles

Under the contract executives are required to warrant that:

- they are and will continue to be a fit and proper person; and
- they have no prior criminal convictions other than those disclosed.

1.4.2 Fit and proper person

The term "fit and proper" is usually taken to involve three things; honesty, knowledge and ability. Beyond this, its meaning is to be determined by the particular circumstances of each case within the framework and nature of public service employment, the general obligations of public employees imposed by the PSM Act and PSM Standards, the terms of the contract and the duties performed.

1.4.3 Disclosure of criminal convictions

On commencement, all ACTPS employees, including executives, are required to complete a criminal history record check form. This form:

- provides the opportunity for the executive to disclose any previous criminal convictions; and
- gives the employer the authority to ask the police to check records for any convictions.

A prior conviction does not necessarily mean that a person cannot be employed in the ACTPS as an executive. However, non-disclosure of a prior criminal conviction is a serious breach of the employment contract and may constitute grounds for termination of the contract.

1.4.4 Spent convictions

The obligation to disclose prior criminal convictions is subject to the *Spent Convictions Act 2000* for convictions recorded after 30 June 1990. After a period of ten years some convictions expire and an employer cannot ask that they be disclosed.

For convictions that occurred prior to 30 June 1990, the Spent Convictions Scheme contained in the *Crimes Act 1914* (Cwlth) applies.

1.5 Executive Capabilities

Executive Capabilities are a way of describing the behaviours that characterise successful ACTPS executives and the values and personal attributes that support these behaviours. They also provide an integrated and consistent means of assisting executives to identify developmental needs and achieve significant and measurable growth in areas such as leadership, strategic vision and effective management.

The Executive Capabilities are as follows:

Leads and values people

- = Motivates and develops people
- = Values diversity and respects individuals
- = Builds a culture of improving practice



Shapes strategic thinking

- = Inspires a sense of purpose and direction
- = Encourages innovation and engages with risk
- = Thinks broadly and develops solutions



Achieves results with integrity

- = Develops organisational capability to deliver results
- = Manages resources wisely and with probity
- = Progresses evidence based policies and procedures
- = Shows sound judgement, is responsive and ethical



Fosters collaboration

- = Listens and communicates with influence
- = Engages effectively across government
- = Builds and maintains key relationships



Exemplifies citizen, community and service focus

- = Understands, anticipates and evaluates client needs
- = Creates partnerships and co-operation
- = Works to improve outcomes

Information on Executive Capabilities for the ACTPS is available on the Governance Division website <http://www.cmd.act.gov.au/governance>.

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2. THE LONG-TERM CONTRACT

2.1 Overview

The legislative basis for the employment of executives in the ACTPS is the PSM Act.

Under the PSM Act, a long-term contract for a position may be entered into following a merit based selection process and can be for up to five years duration.

Structure of a contract

The long-term executive contract (under section 72 of the PSM Act) and long-term chief executive contract (under section 28 of the PSM Act) comprise:-

Main Body: includes such matters as general obligations, termination arrangements and disclosure;

Schedule A: includes name, work address, job title and number, level and the term of the contract;

Schedule B: sets out the value of the total remuneration package, and its components;

Schedule C: is an undertaking to enter into a performance agreement within twenty-eight days of commencement (note that failure to enter into a performance agreement within this timeframe may lead to the contract being terminated); and

Schedule D: which is discretionary, but is the mechanism to enable the insertion of any agreed “special” conditions that may have been negotiated when the contract was offered. Schedule D may also be used to formalise any changed conditions negotiated and agreed after the commencement of the contract, for example, contract extensions or assignment at level.

(A short-form contract (under section 76 of the PSM Act) is used for short-term executive engagements. It omits the performance agreement (Schedule C) as a formal part of the contract – see section 3.)

2.2 The long-term contract process

2.2.1 Offer of a contract

The offer of an executive contract is made on behalf of the Territory by a letter of offer from the relevant chief executive, or in the case of chief executive contracts, a letter of offer from, or on the behalf of, the Chief Minister. The letter of offer is accompanied by a contract, an election form, a declaration of private interests proforma and, in the case of non-ACTPS staff, a criminal history record check.

The offer should be accepted, or in-principle agreement notified within 21 days. The accompanying documents are to be completed before the executive commences. The performance agreement, which forms part of the contract, **must** be completed within 28 days of commencement. As a minimum, performance agreements should be reviewed at

the beginning of each financial year to reflect changes to budget outcomes. However, performance agreements may be reviewed from time to time depending on operational and organisational changes. It is a requirement of the PSM Standards (section 41) that all executives must participate in an annual review of their performance (see clause 2.3).

Generally, officers of the ACTPS who accept a long-term executive contract will not have a right of return to the non-executive Service at the end of the contract.

2.2.2 Signatories to the contract

The parties to sign the contract are the executive and, on behalf of the Territory, the relevant chief executive or, in the case of a long-term chief executive contract, the Chief Minister.

2.2.3 “Making” the contract

After they are signed executive contracts should be returned to the relevant agency contact officer and chief executive contracts should be signed and returned to the Employment Policy Section.

The performance agreement, which is a formal part of the contract, must also be completed within 28 days of commencement and forwarded (as above) when completed.

Once the contract is made, that is, when it is signed and the performance agreement is completed, agencies will provide the contract to Recruitment Services, Shared Services where it will be retained. Arrangements will then be made by Recruitment Services for the Employment Policy Section to arrange tabling in the Legislative Assembly within six sitting days of the date the contract is made and to Gazette the contracts within 28 days. The tabling and Gazettal of contracts are requirements under the PSM Act.

2.3 Performance management

2.3.1 Negotiation of a performance agreement

The performance agreement is useful in monitoring performance and the progress of Government business and is an essential component in the process for improving performance and accountability in the Service.

When an executive enters into a long term contract, they make a legal undertaking to enter into a performance agreement. A performance agreement must be negotiated with the relevant chief executive within 28 days of commencement. In the case of a chief executive, the performance agreement should be negotiated with the relevant Minister(s) and forwarded to the Chief Executive, Chief Minister’s Department.

2.3.2 Key Accountabilities

A chief executive’s performance agreement should reflect the responsibilities of the job and have regard to the Government’s policies, initiatives and commitments. The performance

agreement will incorporate reporting areas for the agency. It should also reflect Budget Papers and Outcomes, and any other requirements of the chief executive.

Performance agreements for executives will usually have a relationship to the relevant chief executive's performance agreement.

It is essential that the performance agreement contains meaningful performance indicators and timeframes against reporting commitments. Key Accountabilities in the performance agreement, as modified from time to time, might include:

- the Government's key objectives;
- strategic plans in the executive's area of responsibility;
- leadership;
- people management, including:
 - ~ implementing performance management plans;
 - ~ improved OH&S performance; and
 - ~ effective application of equity and diversity policies
- financial management; and
- corporate behaviour, training and development.

2.4 Variations to the contract

2.4.1 Assignment

There may be circumstances where it is necessary to review and revise an executive's duties. These changes may be short or long-term; they may have been initiated by the executive or agency; they may be as a result of the absence of another executive; a career development opportunity; an agency restructure or changes to the ACTPS Administrative Arrangements; and they may involve different duties and could be at different levels. These changed arrangements may be handled by way of an assignment.

Under section 80A of the PSM Act, the relevant chief executive (or Chief Minister in respect of chief executives) may transfer an executive to another position at the same level or assign the executive to undertake other stated functions. This will not affect the remuneration of the executive or alter the period of the long-term contract.

The views of the executive will be taken into consideration before a decision is made to transfer or assign the executive.

Where the transfer or assignment involves a change in reporting arrangements across agencies there will be consultation between the relevant chief executives.

2.4.2 Contract variation to increase remuneration

Where the job responsibilities have grown, an independent work value assessment may be requested from the approved provider (currently Mercer Human Resource Consulting). If the work value assessment recommends a higher remuneration level for a position, it is possible under section 39 of the PSM Standards to vary an executive's long-term contract

to increase remuneration to the reassessed level. However, variation to an executive contract to increase remuneration can only be made within a remuneration Zone, for example, executive level 1.2 to 1.3. Additionally, if the job responsibility increases within Zone 3, the contract variation is limited to no more than two executive levels, for example, executive level 3.7 to 3.9.

If a position is assessed and found to be in a higher Zone, for example executive level 1.3 to 2.4 or 2.6 to 3.7, in accordance with the requirements of section 65 of the PSM Act, a merit process is required to fill the position at the higher level on a long-term basis.

2.4.3 Extension of a long-term contract

If the initial long-term contract was for a period of less than five years it is possible to extend the contract, provided:

- the total period does not exceed five years; and
- the extension relates to the existing contract and the same work value level.

The contract may be extended more than once within the five-year limit.

An extension is at the discretion of the relevant chief executive (for executives) or the Chief Minister (for chief executives).

2.5 Long-term reengagements

At the expiration of an existing contract a new contract may be offered without a merit process, provided the duties are the same or similar. There is a requirement for the Chief Executive, Chief Minister's Department (as the administering chief executive) to certify in writing that it is in the interests of the Service to reengage the executive. This certification would follow a recommendation by the relevant chief executive. When a person is reengaged without a merit process, the subsequent contract must commence immediately after the previous contract.

Before the relevant chief executive recommends reengagement of an executive to the administering chief executive a performance assessment should be made, preferably twelve months before the expiry date of the contract. This will enable sufficient time for a decision to be made about reengagement with a view to advising the executive of the outcome at least six months before the contract ceases.

Reengagements may be for a period of up to five years, and there is no limit on how often a person can be reengaged.

2.6 Termination of a contract

Termination provisions are prescribed in the contract.

2.6.1 Termination by an executive

An executive may terminate a long-term contract at any time by giving eight weeks notice in writing. An executive is not required to give reasons in the notice. In some

circumstances it may be possible for the executive to reach agreement with the relevant chief executive to cease duty earlier.

2.6.2 Termination by the employer

The relevant chief executive may terminate a contract early if he/she is of the opinion that:

- the executive is guilty of serious or gross misconduct;
- the executive has failed to comply with the terms of the contract, including their performance agreement;
- operational requirements have changed, resulting in a substantial change in the nature of the work required; or
- the executive is in breach of their warranty in the contract.

Except for termination for gross misconduct where the termination may be without notice, the relevant chief executive shall give eight weeks notice in writing. Either the executive or the employer may elect for payment of the notice period (base salary only) in lieu of working during the notice period.

If the relevant chief executive terminates the contract, the executive will be provided with written notice, including the reason for the termination.

2.6.3 Termination entitlements

On termination of the contract by the employer, the executive will be entitled to receive:

- payment of salary, allowances and entitlements to the date of cessation;
- payment in lieu of notice where this has not been worked;
- payment of salary in lieu of accrued recreation leave; and/or
- payment of salary in lieu of accrued long service leave.

2.6.4 Termination benefits

In some circumstances, the executive may also be eligible for payment of a “special benefit”. The benefits prescribed in the PSM Standards are where termination is because of:

- serious or gross misconduct - no benefit payable;
- failure to comply with the terms of the contract - no benefit payable;
- changed operational requirements - the prescribed benefit is two weeks of base remuneration for every completed year of continuous recognised service, up to a maximum of 44 weeks remuneration⁵. (This is in addition to any notice period provided in the contract of employment);
- a breach of the warranty in clause 16 of the contract - up to the equivalent of one months salary.

⁵ A transitional executive is entitled to a maximum of 52 weeks pay on early termination. A transitional executive is defined in section 29 of the PSM Standards.

Where a special benefit is payable the amount is calculated having regard to the executive's length of 'recognised' service. Continuous service for the purpose of calculating special benefits payments is calculated in the same way an officer's period of service is calculated for long service leave under section 154 of the Act and excludes any period of service for which the chief executive, executive or full time statutory office holder has previously received a special benefit or redundancy type payment in the ACTPS or another jurisdiction

2.6.5 Financial and Career Counselling

Where an executive's contract is terminated early due to operational reasons, the executive is entitled to:

- supplementation of accredited financial counselling up to the maximum identified in the template enterprise agreement for non-executive staff, billed directly to the agency; and
- supplementation of accredited career/outplacement counselling up to a maximum of \$5,000, billed directly to the agency.

2.7 Non-renewal of contract

Where an executive is not to be reengaged at the end of a long-term contract, the relevant chief executive (or Chief Minister in the case of chief executives) must give a minimum of three months written notice that the person will not be reengaged. This notice requirement also applies if an executive has been engaged for less than five years and the contract is not to be extended.

A payment equal to $\frac{1}{4}$ of the executive's final annual base salary is payable where the contract ends and the appropriate notice has not been given. This payment is not required if the executive has accepted another position in the public sector or is entitled to a special benefit or redundancy type payment.

2.8 Entitlements on resignation

On resigning, executives are entitled to be paid out any outstanding salary, and any accrued recreation leave (also known as annual leave) and long service leave entitlements.

Note that recreation leave and long service leave payments are calculated on cash salary and do not include any employer provided benefits or cash in lieu of such benefits.

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3. THE SHORT-TERM CONTRACT

3.1 The short-term contract process

3.1.1 Offer of a contract

The offer of a short-term executive contract is made on behalf of the Territory by a letter of offer from the relevant chief executive, or in the case of chief executive contracts, a letter of offer from the Chief Executive, Chief Minister's Department. The letter of offer is accompanied by a contract, an election form, a declaration of private interests proforma and, in the case of non-ACTPS staff, a criminal history record check form.

3.1.2 Signatories to the contract

The parties to sign the contract are the executive and, on behalf of the Territory, the relevant chief executive or, in the case of a short-term chief executive contract, the Chief Executive, Chief Minister's Department.

3.1.3 "Making" the contract

After they are signed executive contracts should be returned to the relevant agency contact officer and chief executive contracts should be signed and returned to the Employment Policy Section.

Once the contract is made, that is, when it is signed, agencies will provide the contract to Recruitment Services, Shared Services where it will be retained. Arrangements will then be made by Recruitment Services for the Employment Policy Section to arrange tabling in the Legislative Assembly within six sitting days of the date the contract is made. The tabling of contracts and contract variations is a requirement under the PSM Act.

3.2 Assignment at a higher level

Assignment at a higher level on a short-term basis might be appropriate due to:

- an absence of an existing executive;
- a vacancy because the previous occupant ceased employment; or
- the creation of a new position; or
- the need to fill a position prior to a formal selection process.

In relation to short-term chief executive contracts, the administering chief executive has advised agency heads that a contract will only be issued in cases where it will operate for two weeks or more.

While it is a matter for a chief executive to determine policy on issuing short-term executive contracts within an agency, it is expected that a similar approach be adopted.

In these cases, there will be no change to the officer or executive's remuneration. Although a formal contract will not be issued in these circumstances, an instrument of delegation may

be appropriate to ensure that the person performing the duties is able to exercise all the necessary powers associated with the position.

If the executive or officer is to be paid at the higher level then a short-term contract is required.

There are two versions of the short term contract, one for existing executives and one for non-executives. The contract for existing executives includes a provision to enable the executive to revert to their long-term contract at the completion of the short-term contract. In the case of non-executives, their employment status is not affected by the executive contract (sub-section 76(7) of the PSM Act).

Where the contract is for less than three months, executives will usually adopt the existing performance agreement for the position rather than be required to develop a new one. A new performance agreement is required where the contract is for a period of three months or more and an agreement does not exist.

Under the PSM Act, the maximum period for a short-term contract is two years. Additionally, a merit process is required where the contract is for nine months or more. Although the PSM Act does not require a merit process for periods less than nine months, a chief executive may consider it appropriate to undertake a selection process by seeking expressions of interest through a Whole of Government Notice or in the Staff Bulletin. In some circumstances it may be appropriate to advertise the short-term vacancy more widely. Short-term vacancies may be filled by an existing executive, a non-executive or by engaging another person on a short-term basis.

3.3 Extension of a contract

Short-term contracts can be extended up to a maximum period of two years. However, if the contract is extended beyond nine months a merit process must be undertaken. The PSM Act specifically prohibits any extension beyond this two-year period.

3.4 Termination by an Executive

An executive may terminate a short-term contract by giving one weeks notice in writing.

3.5 Termination by the Employer

The relevant chief executive may terminate the contract early by giving one weeks notice where he or she is of the opinion that:

- the executive is guilty of serious or gross misconduct;
- the executive has failed to comply with the terms of the contract, including their performance agreement;
- operational requirements have changed, resulting in a substantial change in the nature of the work required; or
- the executive is in breach of their warranty in the contract.

4. EXECUTIVE DEVELOPMENT AND MOBILITY

4.1 Overview

Under sub-section 78(3) of the PSM Act, chief executives must have regard to the advice of the Chief Executive, Chief Minister's Department (as the administering chief executive), when filling an executive office on a short-term or long-term basis.

4.2 Executive development programs

Training and development opportunities for executives are important. Some requirements may be identified through the annual review of performance or when the performance agreement is reviewed. When performance agreements are discussed with executives, specific training needs and opportunities should be examined and agreed. Others may be evident from strategic planning. Agencies and their executives identify and source specific training and development opportunities for individuals within the agencies.

Currently a customised whole of service Executive Leadership Development Program is provided by Yellow Edge for ACTPS executives. There are currently three programs a year – two for zone 1 executives (in February and September) and one for zone 2 executives (in July). This program is coordinated by the Public Sector Management Group (PSMG) within Chief Minister's Department. For further information please contact either PSMG or the HR Director in your agency.

The ACT Government is a member of the Australia and New Zealand School of Government (ANZSOG) and as such is entitled to 2 places per year in the Executive Master of Public Administration Program (zone 1 executives) and 1 place in the Executive Fellows Program (zone 2 executives). PSMG coordinate the application process and nominations for both programs are through Agency Chief Executives to Management Council.

4.3 Mobility arrangements

In addition to these development programs, an executive will have the opportunity to be considered for both short-term and long-term vacancies either at or above their current executive level.

Mobility with other public services can be facilitated if development needs and the overall best interests of the ACTPS can be demonstrated.

5. GENERAL CONDITIONS OF SERVICE

5.1 Relocation costs

5.1.1 General

If an executive is recruited from outside the ACT, and moves to the ACT, Queanbeyan or the surrounding area to take up employment, the executive may be entitled to an allowance to **assist** in the payment of **some** of the costs associated with the move.

The allowance is in the form of reimbursement of expenses on production of receipts, or other acceptable evidence of expenditure. Some benefits e.g. assistance with rental costs may continue up to a maximum of six months.

The ACT Remuneration Tribunal (the Tribunal) determines executive relocation provisions including the maximum amount to be reimbursed to executives. Executives should refer to the latest Tribunal determination and contact the agency executive contact officer to confirm their entitlements and to make arrangements to claim them. The latest executive determination, including the maximum entitlement, can be accessed on the Tribunal website at www.cmd.act.gov/governance/remtrib.

5.1.2 Reimbursable items

The range of items for which reimbursement may be made include:-

- packing of personal effects and furniture belonging to the executive and his or her partner and family;
- necessary storage of personal effects and furniture;
- removal costs and associated insurance of personal effects and furniture;
- unpacking of personal effects and furniture;
- costs of travel, accommodation and meals between the former location and the ACT, Queanbeyan and surrounding district;
- temporary accommodation costs at the former location and in the ACT, Queanbeyan and surrounding district subject to a maximum period in all of six months, or in exceptional circumstances, nine months with the approval of the Tribunal;
- costs of disconnection and reconnection of utilities;
- stamp duty costs;
- costs of legal and professional services associated with the sale of the residence at the former location and/or the purchase of a residence or lease on a block of land in the ACT or the purchase of a residence or a block of land in Queanbeyan or surrounding district; and
- subject to the approval of the ACT Remuneration Tribunal, any other reasonable expenses necessarily incurred in relocating.

5.2 Remuneration

5.2.1 The ACT Remuneration Tribunal

The Tribunal is an independent body established by the *Remuneration Tribunal Act 1995* with jurisdiction to determine remuneration for executives and a range of other offices. It is required to undertake reviews of remuneration and other entitlements for executives at least annually.

5.2.2 Method for setting remuneration

The Tribunal determines executive remuneration annually, with determinations ordinarily coming into force on 1 July each year.

5.2.3 Allowances and Employer Provided Benefits

The Tribunal has jurisdiction to determine allowances and other entitlements to the extent that an allowance or entitlement of a particular kind is not paid or granted under a law of the Territory or the Commonwealth.

In addition to the relocation allowance mentioned above, the Tribunal has determined various employer provided benefits and a salary packaging scheme.

The entitlement to an employer provided vehicle is prescribed in the PSM Standards.

5.3 Superannuation

If the executive is a member of the Commonwealth Superannuation Scheme (CSS) or the Public Sector Superannuation Scheme (PSS), or has a preserved or deferred benefit in one of these schemes, the employer superannuation contributions will be paid to that scheme.

If the executive is not a member of CSS or PSS they may elect to join First State Super (the default scheme for the ACT Government) or have employer superannuation contributions directed to a superannuation fund nominated by the executive provided that the fund complies with all relevant superannuation and taxation legislation.

In choosing a superannuation fund it is the executive's responsibility to meet any employee requirements of the fund.

For executives who commenced with the ACTPS on or after 1 July 2006, employer superannuation contributions depend on whether or not the executive is already a member of the PSS or CSS superannuation schemes.

If a new executive is an existing member of the PSS or CSS scheme, employer contribution arrangements will continue to be made to the relevant fund. The schemes, however, have been closed off to new members.

In respect of executives who are not CSS or PSS members and were not employed in the ACTPS before 1 July 2006, the employer contribution is 9% of the salary component of the contract, or 10% if the executive contributes 3% or more of his or her salary component to

an agreed superannuation fund in the form of superannuation contributions. The First State Super fund is an agreed superannuation fund.

The employer superannuation contributions are prescribed in section 42 of the PSM Standards.

It is advisable that executives seek independent professional advice in relation to their superannuation before making any arrangements.

5.4 Vehicle

Executives may elect the use of a government provided motor vehicle or cash in lieu of a vehicle.

A government provided vehicle must be a **four-cylinder** vehicle.

Vehicle entitlements, including the lease rate or cash in lieu amounts an executive is entitled to, are covered in part 7.3 of the PSM Standards and the *Guidelines for the Management and Use of Executive Vehicles*. The relevant Corporate Services area can assist with the range of vehicles that meet the requirements.

5.5 Salary packaging

Executives may participate in salary packaging arrangements subject to the conditions prescribed in the Tribunal's determination and the salary packaging guidelines issued by the Commissioner for Public Administration. In accordance with the guidelines, executives may be required to obtain professional advice before participating in the salary packaging scheme. Information about the scheme may be obtained from the relevant agency executive contact officer or the relevant Human Resources areas of Shared Services.

Full details of the policy for salary packaging are also available on the Governance Division website www.cmd.act.gov.au/governance.

5.6 Leave

At August 2009, interim arrangements were in effect to cover executive leave pending a formal Standard being developed and notified. The interim arrangements were put in place during 2008 but **do not** affect long service leave or maternity leave (as these types of leave are covered in the PSM Act). For the most up to date information consult the 'Executive Leave Arrangements' note available on the Governance website at www.cmd.act.gov.au/governance/public/publications/advices.

Executives should apply to the relevant chief executive for leave while chief executives should seek approval from the relevant Minister(s).

It should be noted that any period of leave will not affect the contract end date.

5.6.1 Recreation leave

An executive is entitled to the equivalent of four weeks recreation leave. Recreation leave may be granted at half pay.

Executives must seek prior approval from the relevant chief executive before taking recreation leave and comply with ordinary leave application processes. Chief executives should advise the Minister(s) of any proposed leave.

Recreation leave is covered in section 31 and Part 4.16 of the PSM Standards.

5.6.2 Personal leave

On commencement the executive has a personal leave credit of 18 days at full pay. On each anniversary of the executive's commencement a further 18 days will be credited. Eligible prior service may be recognised for personal leave purposes.

Where possible, the executive should provide satisfactory documentary evidence to substantiate any personal leave taken.

There are a number of conditions applicable to personal leave and the executive should seek advice from the relevant Human Resources area or Shared Services for further details.

There are different personal leave entitlements in respect of executives engaged for a period of twelve months or less.

Personal leave for executives is covered in section 30 and Part 4.17 of the PSM Standards.

5.6.3 Bereavement leave

An executive is entitled to an additional three days full paid personal leave (non-accumulative) on each occasion of a death of a member of their immediate family or household. The delegate may approve leave for bereavement purposes on the death of a foster parent, step parent, step sibling, guardian or foster child. Bereavement leave for executives is covered in sections 393 and 395 of the PSM Standards.

5.6.4 Long service leave

Long service leave of three months on full-pay accrues after ten years of recognised service, and thereafter at the rate of nine calendar days per year.

Unlike other forms of leave, long service leave is calculated on calendar days. The executive may elect whether to take long service leave at full-pay or at half-pay. Unused credits will be paid-out at the conclusion of employment.

Details of long service leave are covered in Part 7 of the PSM Act.

Eligible prior service may be recognised for long service leave purposes. Section 403 of the PSM Standards provides further details.

5.6.5 Maternity leave

Paid maternity leave is available and details are included in Part 8 of the PSM Act. Advice can be obtained from the relevant Human Resources area or Shared Services.

5.6.6 Parental leave

An executive may have an entitlement to various forms of parental leave including primary care giver leave and bonding leave for a new born or adopted child – refer to Division 4.20.3 of the PSM Standards.

5.6.7 Leave for other purposes

An executive may need to access leave for purposes other than outlined above. The relevant chief executive may grant an executive leave on a case-by-case basis, with or without pay – refer to section 32 of the PSM Standards.

5.6.8 Access to recreation and long service leave

An executive may apply at any time for recreation leave or long service leave where an entitlement exists. Such applications are granted at the discretion of the relevant chief executive.

5.6.9 Christmas Shutdown

An executive is entitled to two days paid leave for those working days between Christmas and New Year's Day where a public holiday does not fall – refer to Division 4.20.2 of the PSM Standards.

5.7 Suspension and misconduct

5.7.1 General principles

The suspension and misconduct provisions for executives are provided in the contract.

There are no provisions in the contract or the PSM Act or PSM Standards to enable an appeal against a decision to suspend or to terminate employment on grounds of misconduct.

5.7.2 Suspension

The employer can suspend an executive from duty at any time after having formed the reasonable opinion that the executive is, or may be, guilty of misconduct. The executive will be provided with a written notice of suspension containing the reason for the suspension and the expiration or review date.

The suspension may be with or without pay. While it would normally be expected that a suspension would be without pay the employer may have regard to the reasons for the suspension and the potential for financial hardship.

Ultimately, an executive's contract may be terminated on the grounds of serious or gross misconduct.

The contract includes further details regarding suspension and termination.

ATTACHMENT 1

5.7.3 Misconduct

Section 9 of the PSM Act details each executive's general obligations as an employee. Misconduct includes a breach of section 9.

5.8 Grievance and discipline resolution

5.8.1 General principles

Provisions in the PSM Act relating to grievances and appeals **do not** apply to executives i.e. there are no prescribed processes in the PSM Act.

5.8.2 Informal grievance/appeal process

Most issues in relation to the workplace can be resolved through regular communication; or through advice from the various particular areas (eg. the relevant Human Resources area, the Employment Policy Section). However there may be some instances where an executive may prefer to seek an informal review.

The first option is to seek a review of the matter by the relevant chief executive. The second is to seek a review by the Chief Executive, Chief Minister's Department (this is the first option for chief executives). The final avenue is a review by another, agreed person such as a chief executive from another agency or a person not employed in the ACTPS.

Such an independent review would focus on realistic outcomes and resolution through adoption of recommendations. There are no decision-making powers associated with such a review.

Issued by
Employment Policy
Public Sector Management Group, Governance Division, CMD
Contact Numbers: 620 75995, 620 75586 and 620 77844

General Obligations of Public Employees – Section 9, *Public Sector Management Act 1994*

A public employee shall, in performing his or her duties:

- (a) exercise reasonable care and skill;
- (b) act impartially;
- (c) act with probity;
- (d) treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;
- (e) in dealing with members of the public, make all reasonable efforts to assist them to understand their entitlements under the territory laws and to understand any requirements that they are obliged to satisfy under those laws;
- (f) not harass a member of the public or other public employee, whether sexually or otherwise;
- (g) not lawfully coerce a member of the public or another public employee;
- (h) comply with this Act, the management standards and other territory laws;
- (i) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (j) if the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties –
 - (i) disclose the interest to his or her supervisor;
 - (ii) take reasonable action to avoid the conflict;
as soon as possible after the relevant facts come to the employee's notice;
- (k) not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person;
- (l) for the benefit of the employee or any other person, of any information acquired or any document to which the employee has access, as a consequence of his or her employment;
- (m) not disclose, without lawful authority –
 - (i) any information acquired by him or her as a consequence of his or her employment; or
 - (ii) any information acquired by him or her from any document to which he or she has access as a consequence of his or her employment;

- (n) not make a comment that he or she is not authorised to make where the comment may be expected to be taken to be an official comment;
- (o) not make improper use of the property of the Territory;
- (p) avoid waste and extravagance in the use of the property of the Territory;
- (q) report to an appropriate authority –
 - (i) any corrupt or fraudulent conduct in the public sector that comes to his or her attention; or
 - (ii) any possible maladministration in the public sector that he or she has reason to suspect.

INDEX OF REFERENCE MATERIAL

Issue	PSM Act	PSM Standards	Other
Assignment at level	Section 33A – chief executive Section 80A – executive		
Assignment at higher level – short-term	Section 30 – chief executive Section 76 – executive		Short-term executive contract
Bereavement leave		Section 393	
Budget responsibilities	Section 9		Executive contract – clause 7 Performance agreement
Christmas shutdown		Division 4.20.3	
Contract	Section 72 – long-term Section 76 – short-term		
Criminal convictions – disclosure			Executive contract – clause 16
Disclosure of information	Section 9		Executive contract – clause 20
Disclosure of interests	Section 9	Section 12	Executive contract – clause 17
Employment authority	Section 31 – chief executive Section 78 – executive		Executive contract
Ethics and values	Section 9	Chapter 2	Ethics in the ACT Public Service guide - Governance website (publications)

Issue	PSM Act	PSM Standards	Other
Executive Capabilities			ACT Public Service Executive Capabilities publication - Governance website (publications)
Financial interests – disclosure	Section 9	Section 12	Executive contract – clause 17
Fit and proper person			Executive contract – clause 16
Gazettal of long-term contracts	Section 34 – chief executives Section 81 – executives		
Leave not prescribed elsewhere		Section 32	Governance Advice 3/2008
Long service leave	Part 7	Section 403	
Maternity leave	Part 8		
Merit principle – application	Section 65		
Non-renewal of contract	Section 75A		
Parental leave		Division 4.20.3	
Performance agreement/review		Section 41	Executive contract – clause 7
Personal leave		Section 30 Part 4.17	
Prior service recognition	Section 154		
Recreation leave		Part 4.16	
Reengagement/Non-reengagement	Sections 28C and 28D – chief executive Sections 75 and 75A – executive		
Relocation costs			Remuneration Tribunal determination

Issue	PSM Act	PSM Standards	Other
Remuneration package			Remuneration Tribunal determination
Remuneration increase – position review		Section 39	
Salary packaging	ACT		Remuneration Tribunal determination Guidelines issued by the Commissioner for Public Administration
Second jobs	Sections 35 and 244	Section 13	Executive contract – clause 8
Superannuation		Section 42	
Suspension			Executive contract – clause 13
Tabling of contracts and variations	Section 31A – chief executives Section 79 – executives		
Termination – authority	Section 28A – chief executive Section 73 – executive		Executive contract – clauses 9 and 10
Termination – benefits		Sections 35 and 37	
Values and ethics	Section 9	Chapter 2	Ethics in the ACT Public Service guide - Governance website (publications)
Vehicles and cash out		Sections 551-556	Guidelines for the Management and Use of Executive Vehicles - Governance website (publications)

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