



# Forfeiture of Office Policy

**Policy number: 29/2021**

**Issue Date: March 2022**

ISSUED BY:

OFFICE OF INDUSTRIAL  
RELATIONS AND  
WORKFORCE STRATEGY,  
CMTEDD

## DOCUMENT CONTROL

<b>Prepared for</b>	<b>ACT Public Service Directorates and Agencies</b>
<b>Document owner</b>	Office of Industrial Relations and Workforce Strategy
<b>File name</b>	Forfeiture of Office Policy
<b>Version</b>	1.1
<b>Final</b>	1

## Revision

This policy will be reviewed every 3 years or more frequently following major changes to business operations and/or priorities.

Revision	Description	Date	Author
0.1	Draft version to cover all ACTPS employees	November 2021	Office of Industrial Relations and Workforce Strategy
1	Final version	March 2022	Office of Industrial Relations and Workforce Strategy
1.1	Minor technical update to paragraph 16	September 2023	Office of Industrial Relations and Workforce Strategy

## Authorisation

Dr Damian West  
Deputy Director-General  
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Chief Minister, Treasury and Economic Development Directorate  
On behalf of the Head of Service  
March 2022

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## Introduction

1. The Forfeiture of Office Policy (this policy) explains how and when an officer may be subject to forfeiture of office under section 127 of the *Public Sector Management Act 1994* (PSM Act), the options available to them and what actions are required.

## Application

2. This policy is a whole-of-government strategy issued by the Head of Service under section 17(2)(a) of the PSM Act and binds all officers engaged under the PSM Act and all public sector employers within the meaning of section 152(1) of the PSM Act.
3. For the purpose of this policy, **officer** means a person appointed under section 68 of the PSM Act (i.e. a permanent employee).
4. For the purpose of this policy, any reference to the Head of Service is also taken to be a reference to a public sector employer within the meaning of section 152(1).
5. All directorates/agencies are expected to adhere to this policy as a minimum standard. While directorates/agencies may put in place their own policy and procedural documents to recognise operational differences, in the case of an any inconsistency between this policy and a directorate's policy, this policy applies.
6. This policy should be read in conjunction with provisions dealing with physical or mental incapacity set out under Part 6 of the PSM Act.

## Key Legislative Provisions

7. Section 127(1) of the PSM Act states that Forfeiture of Office provisions will apply to officers who are absent from work without permission (i.e. an unauthorised absence) for a continuous period of 4 weeks or more.
8. Section 127(2) of the PSM Act states that the Head of Service (or delegate) may give the officer a written notice telling them that they will be taken to have retired from the ACT Public Service (ACTPS) 2 weeks from the day the notice was sent unless, within the 2-week period, the officer does one of the following:
  - a. returns to work; or
  - b. explains the absence and asks the Head of Service (or delegate) for any further period of absence that may be necessary, having regard to that explanation.
9. Section 127(3) of the PSM Act states that the officer is taken to have retired from the ACTPS on the day after the end of the 2-week period unless they do one of the following:
  - a. returns to work; or
  - b. explains the absence.
10. Section 127(4) of the PSM Act states that if the officer explains the absence and asks the Head of Service (or delegate) for a further period of absence, the Head of Service (or delegate) must do the following:
  - a. as soon as practicable, consider the matter; and
  - b. tell the officer, in writing, that either:
    - i. the officer is granted leave for the period, including any conditions on the leave; or

- ii. the officer must return to work within a stated period (of at least 2 weeks), the officer will be taken to have retired from the ACTPS at the end of the stated period.
- 11. Section 127(5) of the PSM Act states that if an officer is required to return to work within a period stated (of at least 2 weeks) and they do not return to work in this period, the officer will be taken to have retired from the ACTPS on the day after the end of the period.

## Principles

- 12. Forfeiture of office occurs when an officer, including an unattached officer, is taken to have retired from the ACTPS due to being absent from work without permission. To be considered for forfeiture of office, an officer must have been absent from work without permission for a continuous period of 4 weeks or more.
- 13. Forfeiture of office cannot apply to temporary employees as they do not hold an office. Directorates/agencies should deal with unauthorised absences by temporary employees as a disciplinary matter under section H of the common terms of the relevant ACTPS enterprise agreement (or equivalent clauses) or, where applicable, as a termination of employment. Where a directorate/agency intends to allege a breach or repudiation of employment contract, legal advice should first be sought.
- 14. Directorates/agencies should familiarise themselves with the legislative requirements associated with the dismissal of officers and employees. It is important to note that it is unlawful to terminate an employee's employment in certain circumstances, for example, due to temporary absence from work due to illness or injury (see *Fair Work Act 2009* (Cth) section 352 and Fair Work Regulation 3.01).
- 15. In the case of both officers and temporary employees procedural fairness must be applied, including taking all reasonable steps to contact the officer or temporary employee, including where necessary contacting the officer's next of kin.

## Procedure

- 16. Where the Head of Service (or delegate) considers it appropriate to commence forfeiture of office procedures, the Head of Service (or delegate) must, in consultation with the relevant HR area, send the officer a written notice by registered or express post to the last known address of the officer, by email to the last known email address of the officer, or by another method as outlined in Section 247 of the Legislation Act.
- 17. The notice must contain all of the following information:
  - a. that within 2 weeks from the date of the notice, the officer must either:
    - i. return to work; or
    - ii. explain their absence in writing and seek permission from the Head of Service (or delegate) for any further period of absence that may be necessary having regard to the explanation.
  - b. that unless the officer undertakes one of the above courses of action, they will be taken to have retired from the ACTPS 2 weeks from the date of the notice; and

- c. that after the 2-week period has expired and the officer is taken to have retired from the ACTPS, the only option available to the officer for reinstatement is reappointment to the ACTPS (see Reappointment of Officers below).
18. A copy of section 127 and section 135 of the PSM Act should also be enclosed with the notice.
19. Where the officer provides a response to the notice, the Head of Service (or delegate) will, as soon as practical, consider any explanation provided and take appropriate action in accordance with the following table:

Officer's Response	Delegate Actions	Authority
<b>The officer returns to work within the 2-week period specified in the notice.</b>	<p>No further action should be taken in relation to the forfeiture of office.</p> <p>Disciplinary action may be appropriate if the absence is not satisfactorily explained.</p> <p>Other potential actions, listed under the 'What Other Options are Available' section below, may be used as appropriate.</p>	Clause H6 of the common terms of the relevant enterprise agreement, or equivalent clauses.
<b>The officer explains their absence within the 2-week period specified in the notice and seeks permission from the Head of Service (or delegate) for a further period of absence.</b>	<p>The Head of Service (or delegate) will, as soon as practicable, consider the explanation and inform the officer by written notice, either that:</p> <ul style="list-style-type: none"> <li>○ the officer has been granted leave of absence and any conditions attached to the leave approval; or</li> <li>○ the officer is required to return to work within a specified period of at least 2 weeks from the date of the notice, and if they do not return by that time the officer will be taken to have retired from the ACTPS at the end of the 2-week period.</li> </ul>	PSM Act section 127(4)
<b>The officer does not return to work within the 2-week period specified in the notice and does not provide any explanation for their absence.</b>	The officer is taken to have retired from the ACTPS on the day immediately following the expiry of the 2-week period specified in the notice.	PSM Act section 127(3) section 127(5)

## What are the procedural fairness requirements?

20. It is essential that the officer be afforded procedural fairness before any forfeiture of office decision is implemented. This is particularly important given the serious consequences of forfeiture of office.
21. The general rules around procedural fairness involve the following:
  - a. informing a person to whom an adverse decision may be made of any allegation against them, in as much detail as possible;
  - b. providing the person with an opportunity to plead their case, and to hear the case against them, whether verbally or otherwise;

- c. where a decision is to be made between competing interests, all parties to the matter being given an opportunity to be heard and to have their position considered; and
  - d. decision-makers acting fairly and without bias and not being directly involved in the matter.
- 22. In particular with regard to forfeiture of office, procedural fairness requires the following actions:
  - a. taking all reasonable steps to contact the officer before issuing a notice of forfeiture of office, including where necessary contacting the officer's next of kin.
  - b. the notice of forfeiture of office be accompanied by a letter explaining the effect of the notice, including:
    - i. the background to the decision to give notice of possible forfeiture of office;
    - ii. how the forfeiture of office process works;
    - iii. how officers may explain their absence;
    - iv. the options available to the Head of Service (or delegate) after considering any explanations by the officer; and
    - v. the date by which the officer's explanation must be received in order to remain valid.
  - c. where the officer's explanation for their absence is accepted and leave is authorised, the officer should be notified in writing of the reasons for the acceptance and that any further absence without permission following the approved leave may be unauthorised.
  - d. where the officer's explanation is rejected, the officer must be notified in writing of the reasons for the rejection.

## **What happens if the officer requests an internal review of a decision not to grant leave?**

- 23. If an officer applies for an internal review of a decision of the Head of Service (or delegate) not to grant leave, they are to return to work while the review is being conducted.
- 24. However, where the officer remains absent from work pending the determination of this internal review, forfeiture of office proceedings should not commence until the review is finalised.
- 25. Following completion of the internal review, where the officer is not granted leave but continues to be absent from work, forfeiture of office action should be commenced.

## **Can a former officer be reappointed to the ACTPS following a forfeiture of office process?**

- 26. A former officer who is taken to have retired from the ACTPS through forfeiture of office processes, may, pursuant to section 135(1) of the PSM Act, apply in writing to the Head of Service (or delegate) for reappointment to the ACTPS.
- 27. Upon receipt of an application for reappointment the Head of Service (or delegate) must determine if they are satisfied, in all the circumstances, that the former officer had reasonable grounds for the former officer's absence from duty that resulted in their forfeiture of office. The Head of Service (or delegate) must determine if there were reasonable grounds for the former officer's absence from duty, and not whether there are reasonable grounds for reappointment.
- 28. Where the Head of Service (or delegate) is satisfied there were reasonable grounds for the former officer's absence from duty, the Head of Service (or delegate) must reappoint the former officer under section 135(2) of the PSM Act, either to:

- a. the office occupied by the former officer immediately before they were taken to have retired from the ACTPS; or
  - b. if the former office is not available, an equivalent office or an office as similar as possible to the office previously occupied by the former officer immediately before the former officer was taken to have retired from the ACTPS; or
  - c. with the written consent of the former officer, another office.
- 29. Where the former officer was unattached at the time they were retired from the ACTPS, their reappointment should be to an office having duties and classification equivalent, or as close as possible, to those applicable to the former officer immediately before they were taken to have retired from the ACTPS.
- 30. Where a former officer is reappointed to the ACTPS pursuant to section 135 of the PSM Act they are taken to have continued in the ACTPS, and their prior service will be recognised in accordance with the Public Sector Management Standards 2016 (PSM Standards 2016), as prescribed in section 135(5) of the PSM Act.
- 31. With regard to recognition of the reappointed officer's prior service, section 89(1) of the PSM Standards 2016 prescribes that a public servant's entitlement is calculated:
  - a. in accordance with the period of the public servant's eligible employment less any non-accrual period; and
  - b. in accordance with the accrual method; and
  - c. from the public servant's entitlement day.
- 32. In the above instance:
  - a. **non-accrual period** includes a period of unapproved absence;
  - b. **entitlement day**, where the public servant has an ineligible break period, is the day after the public servant's last ineligible break period; and
  - c. **ineligible break period**, where a public servant re-enters the ACTPS under part 7 of the PSM Act, is the period between the day the public servant's employment was ended, and the day the public servant was re-employed.
- 33. This means that the reappointed officer would not have accrued any entitlements, such as any paid leave or redundancy payments, for the period between the day the officer was taken to have retired from the ACTPS and the day of their reappointment to the ACTPS.
- 34. In addition, in accordance with section 88 of the PSM Standards 2016, the reappointed officer may ask the Head of Service (or delegate) for a statement in writing that the officer's prior employment, that is their employment before the non-accrual period, be counted as eligible employment for one or more of the entitlements stated in the table at section 87 of the PSM Standards 2016.

## What if the former officer is not reappointed?

- 35. Where the Head of Service (or delegate) is not satisfied in all the circumstances that there were reasonable grounds for the former officer's absence from duty, in accordance with section 135(3) of the PSM Act, the Head of Service (or delegate) must refuse the former officer's application for reappointment.



36. Where the Head of Service (or delegate) refuses an application from a former officer for reappointment, the Head of Service (or delegate) must, in accordance with section 135(4) of the PSM Act:
- a. notify the former officer in writing of their decision; and
  - b. provide the former officer with their reasons for the refusal.

## **What other options are available?**

37. Should the Head of Service (or delegate) not wish to pursue forfeiture of office procedures, or if they commenced forfeiture of office procedures but stop the process because they consider that the officer's absence is justified, the Head of Service (or delegate) may pursue another course of action if they choose to do so, in accordance with misconduct and discipline processes under section H of the relevant enterprise agreement.

## **Counselling**

38. If the officer does not provide a satisfactory explanation of their absence, the officer may be invited to attend a counselling session with their manager, or another agreed person, to discuss possible causes and remedies for identified workplace problems. The officer will also be invited to have a support person present at the counselling and will be allowed reasonable opportunity for this to be arranged.

## **Misconduct**

39. The misconduct and discipline provisions under clause H6 of the common terms of the relevant enterprise agreement, or equivalent clauses, further specifies that disciplinary sanctions can be taken where an officer has been absent from work without permission and does not offer a satisfactory explanation for their absence upon their return to work.
40. However, sanctions can only be imposed after further investigation has been conducted by the Public Sector Standards Commissioner ('the Commissioner') on this matter. This is in accordance with clause H10.4.1 and H11.1 of the common terms of the relevant enterprise agreement, or equivalent clauses.
41. Where the relevant delegate receives a determination from the Commissioner that the officer's absence from work had amounted to misconduct, or an admission from the officer that their actions amounted to misconduct, the officer may be subject to disciplinary sanctions. These sanctions may include:
- a. a written reprimand;
  - b. a financial penalty;
  - c. any other disciplinary sanctions in accordance with section H of the common terms of the relevant ACTPS enterprise agreement, or equivalent clauses.
42. Any sanctions imposed must be proportionate to the degree of misconduct by the officer.

## **Probation**

43. Where an officer is on probation, the probation process may provide an avenue to deal with unauthorised absences. Where a probationer's appointment has been ended, in accordance

with section 138(3) of the PSM Act, former officers are unable to be re-appointed to the service within 12 months of the date on which their employment ended.

## Responsibilities

### Officer

44. The officer is responsible for:
- where directed by the Head of Service (or delegate), returning to work within a specified period of at least 2 weeks from the date of the notice to do so, and/or applying to the Head of Service (or delegate) for further approved leave;
  - explaining their absence from work without permission; or
  - where they do not provide any satisfactory explanation for their absence upon their return to work, abiding by any sanctions issued to them.
45. The officer may:
- apply for an internal review of a decision not to grant further leave.
  - if they have been retired from the ACTPS through forfeiture of office processes, apply in writing to the Head of Service (or delegate) for reappointment to the ACTPS.
  - if their re-appointment application is successful, request the Head of Service (or delegate) deem their prior employment to be eligible employment for the recognition of certain entitlements.

### Head of Service (or Delegate)

46. The responsibilities of Head of Service (or delegate) are summarised in the following table:

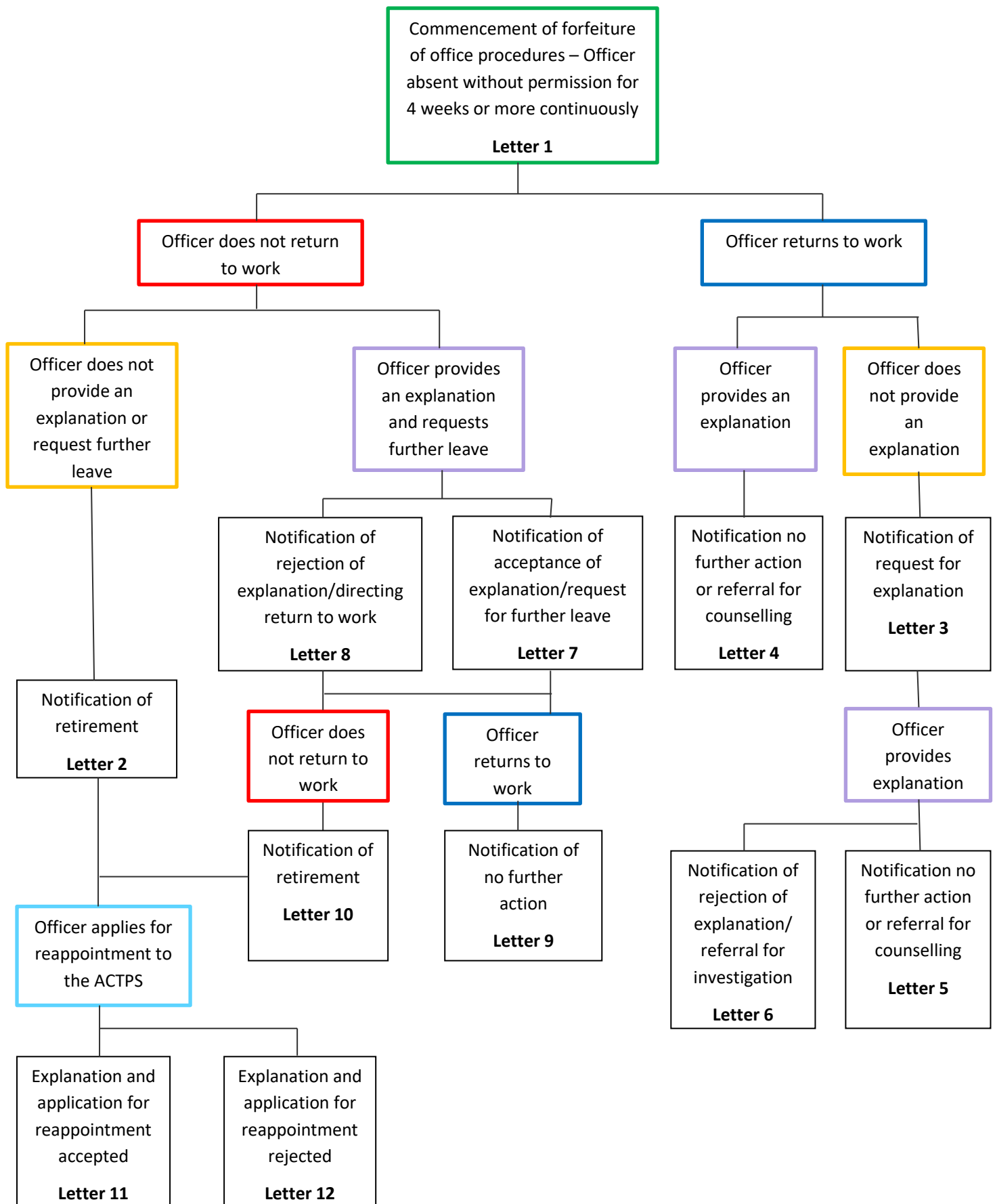
Officer's Response	Head of Service (or delegate) Responsibilities
<b>The officer has been absent from work without permission for a continuous period of 4 weeks or more and the Head of Service (or delegate) considers it is appropriate to commence forfeiture of office procedures.</b>	Sending the officer a written notice outlining the possible actions to be taken.  Letter 1 - Commencement of forfeiture of office procedures ( <b>Attachment A</b> ).
<b>The officer does not return to work or provide an explanation for their absence within 2 weeks of the date of the notice to commence forfeiture of office procedures.</b>	Sending the officer a written notice of their retirement.  Letter 2 - Notification of retirement where the officer does not return to work or provide an explanation for their absence ( <b>Attachment B</b> ).
<b>The officer returns to work within 2 weeks of the date of the notice to commence forfeiture of office procedures but does not provide an explanation for their absence.</b>	Sending the officer a written notice that no further action will be taken in relation to forfeiture of office proceedings and requesting an explanation for the absence.  Letter 3 - Request for explanation following the officer returning to work ( <b>Attachment C</b> ).

<p><b>The officer returns to work within 2 weeks of the date of the notice to commence forfeiture of office procedures and provides an explanation for their absence.</b></p>	<p>Considering the explanation provided and sending the officer a written notice either:</p> <ul style="list-style-type: none"> <li>○ stating that no further action will be taken in relation to forfeiture of office proceedings; or</li> <li>○ referring the officer for counselling.</li> </ul> <p>Letter 4 - Notice of no further action or referral for counselling (<b>Attachment D</b>).</p>
<p><b>The officer, who has returned to work without providing an explanation for their absence, subsequently provides an explanation upon request.</b></p>	<p>Considering the explanation provided and sending the officer a written notice either:</p> <ul style="list-style-type: none"> <li>○ stating that no further action will be taken in relation to forfeiture of office proceedings; or</li> <li>○ referring the officer for counselling.</li> </ul> <p>Letter 5 - Notice of no further action following provision of an explanation on request or referral for counselling (<b>Attachment E</b>).</p>
<p><b>The officer, who has returned to work without providing an explanation for their absence subsequently provides an explanation upon request which after consideration is rejected.</b></p>	<p>Considering the explanation provided and sending the officer a written notice of referral for investigation.</p> <p>Letter 6 - Notice of rejection of explanation provided on request and referral for investigation (<b>Attachment F</b>).</p>
<p><b>The officer, who has not returned to work provides an explanation for their absence within 2 weeks of the date of the notice to commence forfeiture of office procedures and requests approval for further leave which after consideration is accepted.</b></p>	<p>Considering the explanation provided and request for further leave and sending the officer a written notice of acceptance of explanation for absence and granting of further leave.</p> <p>Letter 7 - Notice of acceptance of explanation and approval for further leave (<b>Attachment G</b>)</p>
<p><b>The officer, who has not returned to work provides an explanation for their absence within 2 weeks of the date of the notice to commence forfeiture of office procedures which after consideration is rejected.</b></p>	<p>Sending the officer a written notice of non-acceptance of their explanation for absence and directing them to return to work by a specified date.</p> <p>Letter 8 - Notice of rejection of explanation and direction to return to work (<b>Attachment H</b>)</p>
<p><b>The officer, whose request for further leave was approved, or who was directed to return to work, subsequently returns to work.</b></p>	<p>Sending the officer a written notice that no further action will be taken in relation to forfeiture of office proceedings.</p> <p>Letter 9 - Notice of no further action following return to work (<b>Attachment I</b>)</p>
<p><b>The officer, whose explanation of absence and request for further leave was rejected, does not return to work as directed.</b></p>	<p>Sending the officer a written notice of their retirement.</p> <p>Letter 10 - Notification of retirement where the officer does not return to work as directed after their</p>

	<p>explanation for their absence was rejected <b>(Attachment J)</b></p>
<p><b>The officer, who has been retired from the ACTPS through forfeiture of office processes, applies for reappointment to the ACTPS which after consideration is accepted.</b></p>	<p>Considering the officer's application and if satisfied there are reasonable grounds for the officer's absence from work without permission:</p> <ul style="list-style-type: none"> <li>○ reappointing the officer; and</li> <li>○ notifying the officer in writing of this decision in writing.</li> </ul> <p>Letter 11 - Notice of reappointment to the ACTPS following acceptance of the officer's application <b>(Attachment K).</b></p>
<p><b>The officer, who has been retired from the ACTPS through forfeiture of office processes, applies for reappointment to the ACTPS which after consideration is rejected.</b></p>	<p>Considering the officer's application and if not satisfied there were reasonable grounds for the officer's absence from work without permission:</p> <ul style="list-style-type: none"> <li>○ refusing the officer's application for reappointment; and</li> <li>○ notifying the officer in writing of this decision.</li> </ul> <p>Letter 12 - Notice rejecting the officer's application for reappointment to the ACTPS <b>(Attachment L)</b></p>

47. The template letters are provided as **Attachments A – L** of this policy.

48. The process and responsibilities are summarised in the following diagram:



## Consultation

49. This policy was developed in consultation with the ACTPS People Forum, unions and the Workforce Capability and Governance Division, Chief Ministers, Treasury and Economic Development Directorate.

## References

50. The relevant legislation, policy and employment arrangements underlying this operational guidance are:
- [\*Public Sector Management Act 1994\*](#)
  - [\*Public Sector Management Standards 2016\*](#)
  - [\*ACTPS Enterprise Agreements\*](#)
  - [\*Legislation Act 2001\*](#)

## Further Information

51. For further information please contact the Senior Director, Whole of Government Industrial Relations and Public Sector Employment Group, Workforce Capability & Governance Division at the Chief Minister, Treasury and Economic Development Directorate.

## Review

52. This policy is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the policy.

Document name: ACTPS Forfeiture of Office Policy	Prepared by: Assistant Director, Industrial Relations and Public Sector Employment, Workforce Capability & Governance, CMTEDD
Policy Number: 29/2021	Feedback to: <a href="mailto:eba@act.gov.au">eba@act.gov.au</a>
Issue Date: March 2022	Review Date: March 2025

## Approval Authority

Dr Damian West  
Deputy Director-General  
Workforce Capability and Governance Division  
Chief Minister, Treasury and Economic Development Directorate  
On behalf of the Head of Service  
March 2022

# Attachment A - Template Letter 1

## Commencing forfeiture of office procedures



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing to you as you have been absent from work without permission for a continuous period of 4 weeks (or more).

The purpose of this letter is to notify you that a forfeiture of office process is being commenced in accordance with section 127 of the *Public Sector Management Act 1994* (PSM Act) due to this unexplained absence.

You will be taken to be retired from the ACT Public Service (ACTPS) unless, pursuant to section 127(2) of the PSM Act, within 2 weeks from the date of this notice by [day] [month] [year], you do one of the following:

- return to work; or
- provide an explanation of your absence in writing and seek permission for any further period of absence if necessary.

If you have not taken either of the above actions by the abovementioned date you will, pursuant to section 127(3) of the PSM Act, be issued a notice that you are taken to have retired from the ACTPS on [day] [month] [year].

You have a right under section 135 of the PSM Act to apply for re-appointment to the ACTPS. Such an application must be in writing and addressed to the head of service (or delegate) in accordance with section 135(1) of the PSM Act setting out all the circumstances giving rise to your absence from work and supported by any relevant evidence.

Copies of sections 127 and 135 of the PSM Act are enclosed.

I encourage you to contact your manager or relevant HR area about the reasons for your absence and your leave arrangements and entitlements.

Should you require any further information in relation to the forfeiture of office or reappointment processes under the PSM Act, please contact, [Name], [Position] on [Phone] or [Email].

Yours sincerely,

[name]

[position title]

[date]

## Attachment B - Template Letter 2

### Notification of retirement of officer having not provided an explanation for their absence and not having returned to work



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing to you further to my letter dated **[date]** in relation to the forfeiture of office process under section 127 of the *Public Sector Management Act 1994* (PSM Act), in which I advised you that if you did not return to work or provide a satisfactory explanation for your absence from work without permission by no later than **[date]**, you would be taken to have retired from the ACT Public Service (ACTPS).

I understand you have not returned to work or provided an explanation for your absence from work as outlined in section 127(2) of the PSM Act.

In the circumstances, pursuant to section 127(3) of the PSM Act this letter constitutes notice that you are taken to be retired from the ACTPS on **[date]**. Shared Services Payroll will be advised of this decision to prepare payment of your final entitlements. You will be required to return any ACTPS property in your possession as soon as possible, otherwise final entitlements may be withheld.

You have a right under section 135(1) of the PSM Act to apply for reappointment to the ACTPS. Your application must be in writing and should be addressed to the head of service or [delegate] and will need to set out in full the circumstances for your absence and supported by any relevant evidence.

If, upon reviewing your application for reappointment, the head of service or [delegate] is satisfied that you had, in all the circumstances, reasonable grounds for being absent from work, you will be reappointed to the ACTPS in accordance with section 135(2) of the PSM Act.

Should you require any further information in relation to the forfeiture of office or reappointment processes under the PSM Act, please contact **[Name]**, **[Position]** on **[Phone]** or **[Email]**.

Yours sincerely,

**[name]**

**[position title]**

**[date]**



## Attachment C - Template Letter 3

### Request for explanation following the officer returning to work within 2 weeks



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

Further to my previous letter dated [date] which provided notice that if you had not returned to work within 2 weeks of the date of the notice, or provided a satisfactory explanation for your absence from work without permission, you would have been taken to have retired from the ACT Public Service (ACTPS) under section 127(3) of the *Public Sector Management Act 1994* (PSM Act).

As you have now returned to work within the 2-week notice period, I am writing to advise no further action will be taken in relation to the forfeiture of office proceedings as per section 127(3)(a) of the PSM Act.

However, where an employee does not offer a satisfactory reason for a period of absence from work without permission on return to work, this may constitute misconduct under clause H6.5.3 of the [relevant ACTPS Enterprise Agreement common terms]. It is unclear whether your absence from work constitutes misconduct as insufficient information (if any) to explain the absence has been provided to date.

Please provide a written explanation for your absence from work supported by any relevant evidence no later than [date - two weeks] so that I may determine whether further action is required in relation to this absence.

Should you not provide a satisfactory explanation, or should you fail to provide an explanation, you may be required to attend counselling under clause H3 of the Enterprise Agreement common terms. You may also be subject to an investigation to determine whether you engaged in misconduct pursuant to clause H9 of the [relevant ACTPS Enterprise Agreement common terms].

Should you have any further questions about the information or processes contained in this letter, please contact [Name], [Position] on [Phone] or [Email].

Yours sincerely,

[name]

[position title]

[date]

## Attachment D - Template Letter 4

### Notice of no further action following the officer returning to work within 2 weeks, or referral for counselling



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

Further to the forfeiture of office notice dated [date], I have been advised that you have returned to work within the 2-week notice period.

I am writing to advise no further action will be taken in relation to the forfeiture of office proceedings under section 127(3) of the *Public Sector Management Act 1994* (the PSM Act).

As you have now returned to work within the 2-week notice period, no further action will be taken in relation to the forfeiture of office proceedings under section 127(3)(a) of the PSM Act.

I note that your explanation for your absence from work is that .... [insert details]

[Option 1: Having considered the circumstances, I have decided that it is appropriate for you to attend counselling under clause H3 of the [relevant ACTPS Enterprise Agreement common terms]. In accordance with clause H3.2 of the enterprise agreement common terms, you are entitled to have a support person present at the counselling, who may be a union or other employee representative, and to have a reasonable opportunity for this to be arranged.

[insert reasons for decision and details of counselling]

You may also wish to seek assistance from an independent, confidential and professional counselling service under the Employee Assistance Program, details of which are available on the ACT Public Service Employment Portal under Health, Safety and Injury Management.

**OR**

[Option 2: Having considered the circumstances, no further action will be undertaken under the [relevant ACTPS Enterprise Agreement common terms] at this time.]

I would also encourage you to keep in regular contact with your manager about your leave arrangements. I would also like to remind you of the behaviours and conduct expected of you as a public servant under section 9 of the PSM Act. If an absence of this nature were to occur again, forfeiture of office proceedings may be commenced, or that absence may constitute misconduct.

If you would like additional support, the Employee Assistance Program (EAP) offers free, professional and confidential services to support you through both personal and work-related issues at any time, including

financial counselling, career assistance and vocational counselling. The ACT Government has contracted a primary provider as follows:

Service	Phone	Website
Converge International	1300 687 327	<a href="http://www.convergeinternational.com.au">www.convergeinternational.com.au</a>

Should you have any further questions about the information or processes contained in this letter, please contact **[Name]**, **[Position]** on **[Phone]** or **[Email]**.

Yours sincerely,

**[name]**

**[position title]**

**[date]**

## Attachment E - Template Letter 5

### Notice of no further action following the officer returning to work within 2 weeks and providing an explanation on request, or referral for counselling



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing in relation to my previous letter dated [date] which requested a written explanation of your absence from work without permission between [date] and [date] to allow me to determine whether or not your absence constitutes misconduct within the meaning of clause H6.5.3 of the [relevant ACTPS Enterprise Agreement common terms].

Clause H6.5.3 of the [relevant ACTPS Enterprise Agreement common terms] defines misconduct to include a period of unauthorised absence where the employee does not offer a satisfactory reason for the absence on return to work. Based on the information you have provided in this instance, your absence from work does not appear to have constituted misconduct.

[Option 1: Having considered the circumstances, I have decided that it is appropriate for you to attend counselling in accordance with clause H3 of the enterprise agreement common terms. In accordance with clause H3.2 of the enterprise agreement common terms, you are entitled to have a support person present at the counselling, who may be a union or other employee representative, and to have a reasonable opportunity for this to be arranged

[insert reasons for decision and details of counselling]

If you would like additional support, the Employee Assistance Program (EAP) offers free, professional and confidential services to support you through both personal and work-related issues, including financial counselling, career assistance and vocational counselling. The ACT Government has contracted a primary provider as follows:

Service	Phone	Website
Converge International	1300 687 327	<a href="http://www.convergeinternational.com.au">www.convergeinternational.com.au</a>

OR

[Option 2: Having considered the circumstances, no further action will be undertaken under the [relevant ACTPS Enterprise Agreement] at this time.]

I would encourage you to keep in regular contact with your manager about your leave arrangements. I would also like to remind you of the behaviours and conduct expected of you as a public servant under section 9 of the *Public Service Management Act 1994* (the PSM Act). If an absence of this nature was to

occur again, forfeiture of office proceedings may be commenced, or that absence may be referred for a misconduct investigation.

If you would like additional support, the Employee Assistance Program (EAP) offers free, professional and confidential services to support you through both personal and work-related issues at any time, including financial counselling, career assistance and vocational counselling. The ACT Government has contracted a primary provider as follows:

Service	Phone	Website
Converge International	1300 687 327	<a href="http://www.convergeinternational.com.au">www.convergeinternational.com.au</a>

Should you have any further questions about the information or processes contained in this letter, please contact **[Name]**, **[Position]** on **[Phone]** or **[Email]**.

Yours sincerely,

**[name]**

**[position title]**

**[date]**

## Attachment F - Template Letter 6

### Rejection of explanation provided on request following officer returning to work and referral for investigation



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing in relation to my previous letter dated [date] which requested a written explanation of your absence from work without permission between [date] and [date] to allow me to determine whether or not your absence constitutes misconduct under clause H6.5.3 of the [relevant ACTPS Enterprise Agreement common terms]. Clause H6.5.3 defines misconduct to include a period of unauthorised absence where the employee does not offer a satisfactory reason for the absence on return to work.

Based on the information that you have provided on this occasion, I am not satisfied with your explanation of absence from your work without permission from between [date] and [date]. Your absence from work may constitute misconduct and as a result, an investigation will be initiated under clause H9 of the [relevant ACTPS Enterprise Agreement common terms].

Under clause H9.1 of the [relevant ACTPS Enterprise Agreement common terms], an investigating officer will establish the facts of your absence from work and provide a written report to the Public Sector Standards Commissioner setting out the investigating officer's findings. Under clause H10 of the [relevant ACTPS Enterprise Agreement common terms], the Public Sector Standards Commissioner will then make a determination on the balance of probabilities as to whether misconduct has occurred. Depending on the outcome of that investigation and any findings of misconduct, you may be further subject to disciplinary sanctions in accordance with section H of the [relevant ACTPS Enterprise Agreement common terms].

You have an obligation to participate in the misconduct process in good faith. A summary of the misconduct investigation process is available on the ACT Public Service Employment Portal. Please see the [Managing Workplace Behaviour and Performance – Fast Facts](#) and the [Misconduct Guidelines](#) for more details. As part of this process you will be advised in writing of the outcome of the investigation and given an opportunity to respond, including to any proposed sanctions.

You have a right, under clause H13 of the relevant enterprise agreement, to appeal any finding of misconduct, or any decision to take disciplinary action, or to apply a sanction.

If you would like additional support, the Employee Assistance Program (EAP) offers free, professional and confidential services to support you through both personal and work-related issues, including financial counselling, career assistance and vocational counselling. The ACT Government has contracted a primary provider as follows:

Service	Phone	Website
Converge International	1300 687 327	<a href="http://www.convergeinternational.com.au">www.convergeinternational.com.au</a>

Should you require any further information in relation to the process under clause H6.5.3, H9 or H10 of the [relevant ACTPS Enterprise Agreement common terms], please contact **[Name]**, **[Position]** on **[Phone]** or **[Email]**.

Yours sincerely,

**[name]**

**[position title]**

**[date]**

## Attachment G - Template Letter 7

### Accepting explanation and authorising further leave



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing in relation to your letter/email dated [date] which provided an explanation for your absence from work without permission from [date] to [date] and sought approval for a further period of leave in accordance with section 127(2)(b) of the *Public Sector Management Act 1994* (PSM Act).

I note that your explanation was provided within the stipulated 2-week period specified in my initial letter.

Upon my review of your explanation of absence from work and request for further leave, I am satisfied with your explanation that this absence has been necessary. [Include any additional information]

I am further granting you with an additional [period length] of leave in accordance with your request. You are required to meet additional conditions upon taking this leave in accordance with section 127(4)(b)(i) of the PSM Act. This includes [detail conditions - **delete if not applicable**].

If you would like additional support, the Employee Assistance Program (EAP) offers free, professional and confidential services to support you through both personal and work-related issues, including financial counselling, career assistance and vocational counselling. The ACT Government has contracted a primary provider as follows:

Service	Phone	Website
Converge International	1300 687 327	<a href="http://www.convergeinternational.com.au">www.convergeinternational.com.au</a>

Should you require any further information in relation to this matter, please contact, [Name], [Position] on [Phone] or [Email].

Yours sincerely,

[name]

[position title]

[date]



## Attachment H - Template Letter 8

### Rejecting explanation for absence and leave and directing return to work



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing in relation to your letter/email dated **[date]** which provided an explanation for your absence from work without permission from **[date]** to **[date]** and [sought approval for a further period of leave - **delete if not applicable**] in accordance with section 127(2)(b) of the *Public Sector Management Act 1994* (PSM Act).

I note that your explanation was provided within the stipulated 2-week period specified in my initial letter.

Upon my review of your explanation of absence from work without permission [and request for further leave - **delete if not applicable**], I am not satisfied with your explanation that this absence from work has been necessary and that you had reasonable grounds for being absent from work from **[date]** to **[date]**.

[Outline reasons for refusal (as required by the principles of procedural fairness)].

Accordingly, you are required to return to your place of work by **[stated period - at least 2 weeks]**. If you do not return to work within this period, you will be taken to have retired from the ACT Public Service (ACTPS) on the day following the end of that period, namely on **[date]** in accordance with section 127(5) of the PSM Act.

You have a right to apply for an internal review, in accordance with the process set out in section I of [the relevant enterprise agreement], of the decision not to grant your application for further leave.

If following your retirement from the ACTPS, you wish to seek reappointment to the ACTPS, you must submit a written application to the head of service (or delegate) in accordance with section 135(1) of the PSM Act.

Copies of sections 127 and 135 of the PSM Act are enclosed.

Should you require any further information in relation to the internal review process, or the forfeiture of office or reappointment processes under the PSM Act, please contact **[Name]**, **[Position]** on **[Phone]** or **[Email]**.

Yours sincerely,

**[name]**

**[position title]**

**[date]**

## Attachment I - Template Letter 9

### Notice of no further action following the officer's return to work



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing in relation to my letter dated [date] accepting the explanation for your absence from work from [date] to [date] and granting you an additional [period length] of leave as you have requested.

[Option 1 if leave was **accepted**]: I note that you have returned to work on [date] and fulfilled the conditions of the additional leave that was required of you in my letter.] [delete if not applicable].

**OR**

I am writing in relation to my letter dated [date] where I advised you of my decision not to accept the explanation for your absence from work without permission from [date] to [date] and directing you to return to your place of work by [date].

[Option 2 if leave was **rejected**]: I note that you have returned to work on [date], which is within the required period outlined in my letter. [delete if not applicable].

In these circumstances, no further action will be taken under the [relevant ACTPS Enterprise Agreement] or the *Public Sector Management Act 1994* (PSM Act) at this time.

If an absence from work of this nature were to occur again, forfeiture of office proceedings may be commenced, or the absence may be considered as alleged misconduct and dealt with in accordance with section H of the [relevant ACTPS Enterprise Agreement common terms]. I would encourage you to keep in regular contact with your manager about your leave arrangements in the future.

Should you require any further information in relation to the forfeiture of office processes under the PSM Act, please contact [Name], [Position] on [Phone] or [Email].

Yours sincerely,

[name]

[position title]

[date]

## Attachment J - Template Letter 10

### Notification of retirement of officer following rejection of their explanation and further leave application and not having returned to work



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing in relation to your letter dated [date] providing an explanation for your absence from work without permission from [date] to [date] and seeking approval for a further leave of absence under section 127(4) of the *Public Sector Management Act 1994* (the PSM Act), and my letter dated [date] rejecting your explanation and requiring you to return to work by [date].

I understand that you have not returned to work within the time period specified in my letter.

In the circumstances, as of [date] you will be retired from the ACT Public Service (ACTPS) in accordance with section 127(5) of the PSM Act. Shared Services Payroll will be advised of this decision to prepare payment of your final entitlements. You will be required to return any ACTPS property in your possession as soon as possible, otherwise final entitlements may be withheld.

You also have a right, under section 135 of the PSM Act, to apply for reappointment to the ACTPS. Your application must be in writing and addressed to the head of service (or delegate) and must set out all the circumstances giving rise to your absence from work and supported by any relevant evidence.

If, upon reviewing your application, the head of service (or delegate) is satisfied that you had in all the circumstances reasonable grounds for being absent from work, you will be reappointed to the ACTPS in accordance with section 135(2) of the PSM Act.

Should you require any further information in relation to the forfeiture of office or processes under the PSM Act, please contact [Name], [Position] on [Phone] or [Email].

Yours sincerely,

[name]

[position title]

[date]

## Attachment K - Template Letter 11

### Accepting application for reappointment to the ACTPS



[title] [first name] [surname]  
[agency name]  
[postal address]  
Email:

Dear [title] [surname]

I am writing in relation to your application for reappointment to the ACT Public Service (ACTPS) under section 135 of the *Public Sector Management Act 1994* (the PSM Act) dated [date] following your deemed retirement from the ACTPS under section 127(3) of the PSM Act.

Having considered your application for reappointment, I am satisfied that you had reasonable grounds for being absent from work from [date] to [date].

[Outline reasons for decision; **select whichever applies**]

In these circumstances, in accordance with section 135(2)(a) of the PSM Act, you will be reappointed to the office occupied by you immediately before you were taken to have retired from the ACTPS ([**position title**], [**administrative unit**] [**position number**]).

**OR**

Unfortunately, the office you occupied immediately before you were taken to have retired from the ACTPS ([**position title**], [**administrative unit**] [**position number**]) is not available. However, in accordance with section 135(2)(b) of the PSM Act, [an equivalent suitable office at the same classification]

**OR** [an office as similar as possible to your former office] has been identified for your reappointment.

I have attached a position description for your review. The position description provides an overview of the position including a description of your role and responsibilities. For further information about this position, please contact [name] on [phone] or [email].

**OR**

Unfortunately, the office you occupied immediately before you were taken to have retired from the ACTPS ([**position title**], [**administrative unit**] [**position number**]) is not available and attempts made to identify an equivalent office or an office as similar as possible to your former office under section 135(2)(b) of the PSM Act have been unsuccessful. However, in accordance with section 135(2)(c) of the PSM Act, another office [at the same classification] **OR** [at a different classification] has been identified for your reappointment. The position is [**position title**], [**administrative unit**] [**position number**].

I have attached a position description for your consideration. The position description provides an overview of the position including a description of your role and responsibilities. For further information about this position, please contact [name] on [phone] or [email].

Please advise me in writing whether you consent to be reappointed into the position of [**position title**], [**business unit**] [**position number**] by no later than [date].

[Outline decision regarding whether that period, or any part of that period, is to form part of the former officer's period of service, and the purpose for which the period is to form part of the former officer's period of service as per sections 88-89 of the PSM Standards 2016].

Should you require any further information, please contact **[Name]**, **[Position]** on **[Phone]** or **[Email]**.

Yours sincerely,

**[name]**  
**[position title]**  
**[date]**

## Attachment L - Template Letter 12

### Refusing application for reappointment to the ACTPS



[title] [first name] [surname]

[agency name]

[postal address]

Email:

Dear [title] [surname]

I am writing in relation to your application for reappointment to the ACT Public Service (ACTPS) under section 135 of the *Public Sector Management Act 1994* (PSM Act) dated [date] following your retirement from the ACTPS under section 127(3) of the PSM Act.

Having considered your application for reappointment, I am not satisfied that you had reasonable grounds for being absent from work without permission from [date] to [date].

[Outline reasons for refusal (as required by section 135(4) of the PSM Act)]

In the circumstances, you will not be reappointed to the ACTPS and you remain retired from the ACTPS pursuant to section [127(3)/127(5) - **delete whichever is not applicable**] of the PSM Act.

You may have a right to seek a review by the Fair Work Commission of the decision to retire you from the ACTPS.

Should you require any further information, please contact [Name], [Position] on [Phone] or [Email].

Yours sincerely,

[name]

[position title]

[date]



WORKFORCE CAPABILITY AND GOVERNANCE,  
CMTEDD

March 2022