

**REVIEW OF THE PUBLIC SECTOR
EMPLOYMENT AND MANAGEMENT ACT**

POWER AND WATER CORPORATION

SUBMISSIONS

A. EXECUTIVE SUMMARY

1. Due to the application of the *Public Sector Employment and Management Act* (PSEMA), a large proportion of Power and Water Corporation's (PWC's) employment arrangements and human resource policies and practices reflect public service values and practices that are process driven as opposed to outcomes focussed. This imposes more onerous and compliance-oriented processes than other Government owned corporations (GOCs) operating in the utilities industry and is undermining PWC's ability to achieve corporate strategic objectives, most notably the legislative requirement for it to operate at least as efficiently as any comparable business.
2. PWC is finding that the current employment regime is not only resulting in sub-optimal outcomes for the PWC but also for its employees resulting in a level of employee dissatisfaction due to the prescriptive, lengthy and overly bureaucratic processes embedded within it.
3. PWC acknowledges the appropriateness of many fundamental principles underpinning PSEMA, including those of accountability, transparency and natural justice. However, it submits that many processes established under PSEMA (for example, disciplinary, inability, recruitment and merit appeals and reviews) are unwieldy, difficult to apply and time inefficient. Significantly streamlined and more efficient processes could achieve far better outcomes whilst still ensuring the abovementioned fundamental principles are adhered to.
4. Similarly, PWC acknowledges the importance of having checks and balances in place to ensure that the remuneration and other conditions of its personnel remain at an appropriate level. However, it submits that this can be achieved through existing accountability and public disclosure requirements set out under the *Government Owned Corporations Act*, rather than through continuing adherence to the NTPS Wages Policy, which fails to adequately recognise and respond to matters specifically effecting PWC as a result of its operating environment and current market trends.
5. These submissions contain various arguments and examples pointing to possible improvements that could be made to PSEMA. In essence, it is asserted that this can be achieved by replacing the current prescriptive and 'compliance-oriented' approach, with a more streamlined, facilitative, and outcomes focused approach, under which the PWC board and the Managing Director (MD) have greater levels of delegation, and are therefore better able to influence strategic and operational outcomes within the organisation that they are accountable for.

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

B. BACKGROUND

6. PWC was established in 2002 as the Northern Territory's first GOC.
7. Its governance arrangements are set out in the *Government Owned Corporations Act 2001* (GOC Act). Of relevance:
 - (a) Section 2 (Objectives) states that “*the objective of the Act is to provide a basis for improved performance by Government owned businesses...by providing a framework of greater autonomy combined with appropriate accountability of government businesses*”;
 - (b) Section 4 (Objectives of Government owned Corporation) states that:
 - (a) *to operate at least as efficiently as any comparable business; and*
 - (b) *to maximise the sustainable return to the Territory on its investment in the corporation*”;
 - (c) Section 13 (Directors of Government owned corporations) requires that PWC have a board of directors, while section 15 (Accountability of directors of Government owned corporation) states that the board is responsible for the operation of PWC and is accountable to the Shareholding Minister for PWC's financial performance;
 - (d) Section 16 (Chief Executive Officer) requires PWC to have a CEO who is, subject to the directions of the board, responsible for PWC's day to day management;
 - (e) Section 39 (Statement of corporate intent – timetable and procedure) requires that the board, in consultation with the shareholding Minister, prepare and submit an annual Statement of Corporate Intent to the shareholding Minister and portfolio Minister, which is then tabled in the Legislative Assembly; and
 - (f) Section 41 (Statement of corporate intent – reporting) requires that at the end of each financial year PWC report to the shareholding Minister on its performance against the Statement of Corporate Intent.
8. PWCs functions and powers are set out in the *Power and Water Corporation Act 2002* (PWC Act). In short, PWC's various functions and powers as provided under the PWC Act facilitate the requirement for PWC to deliver power, water and sewerage services throughout the Northern Territory in a commercial manner.
9. In accordance with the above legislative background, PWC's mission is “*to deliver power, water and sewerage services to the people of the Northern Territory in a competitive, efficient and reliable manner, and to meet its mandated environmental obligations*”.

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

10. A review of the strategic directions and objectives of the PWC was completed in 2008, whereby PWC developed seven strategic goals that will be incorporated into the PWC Statement of Corporate Intent 2009 - 2010. As a result of these strategies by 2013 PWC aims to be financially sustainable, environmentally responsible, in good operational and asset health, trusted by government and the community, preferred as an employer, preferred as a utility provider and ready for new challenges.
11. In response to the above strategies PWC has developed a five year Human Resource strategy that provides a framework to ensure adequate people, capabilities and capacity exist to meet both current and future demands, through the successful retention and recruitment of skilled staff and the continuing training and development of staff. This is an important strategy to ensure that PWC has the human resources to meet corporate objectives and deliver the significantly increased capital works and repairs and maintenance program.
12. In relation to the legislative framework surrounding PWC's employment arrangements, section 6 of the PWC Act provides (among other things) that PWC is an Agency for the purposes of PSEMA. In summary, the effect of section 6 of the PWC Act, when read together with section 12 of PSEMA, is that notwithstanding its status as a GOC and the corresponding responsibility of the board for its operational and financial performance, the Commissioner for Public Employment (CPE) is the legal employer of all PWC employees, and PWC is bound by NTPS employment arrangements as set out under PSEMA.
13. The *Public Sector Employment and Management (Exemption) Regulations* provide that the PSEM By-Laws do not apply to PWC employees, except to the extent that they are specifically expressed to apply to those employees. However, it should be noted that over time, collective agreement negotiations have resulted in many PSEM By-laws applying, through their inclusion in federal collective agreements (or through incorporation by reference), which prevail over the provisions of PSEMA itself.
14. The current federal collective agreement binding PWC and its employees is the "2007 – 2010 Power and Water Union Collective Agreement – Working Together to Meet the Challenge" (UCA), which is read and interpreted in conjunction with PSEMA.
15. Negotiations for a new collective agreement are due to commence in early 2010. Collective agreement negotiations for PWC are led by the CPE, as the legal employer. While it is clear under the GOC Act that public sector policies do not, as a matter of course, apply to GOCs, NTPS employment related policies, including the Wages Policy, have historically been applied by the CPE when negotiating collective agreements.

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

C. OVERVIEW OF ISSUES ARISING

16. In the years since PWC's establishment, particularly recent years which have been characterised by strong economic growth and a very tight labour market, it has become increasingly evident that certain aspects of PSEMA do not "fit" well with, and in certain cases have actively hindered PWC in fulfilling its objectives under the GOC Act.
17. Generally speaking, in PWC's opinion, the current PSEMA regime is overly complex, prescriptive and inflexible. This has resulted in inefficiencies in the manner in which PSEMA itself is administered, along with consequent inefficiencies for PWC's operations and delivery to corporate objectives.
18. The following highlights some of the primary aspects of PSEMA that have proven to be problematic for PWC. It provides examples to illustrate that the manner in which PSEMA presently applies to PWC has the potential to lead to sub-optimal outcomes for PWC, as a GOC operating in a competitive utilities environment.
19. In the absence of any clear direction at this stage as to the extent of the PSEMA review, save for the inclusion of limited number of specific issues or examples to assist in presenting arguments, the general approach taken in the preparation of these submissions is to present a broad overview of key issues. Detailed analysis of all PSEMA provisions was considered premature and beyond the scope of these submissions. However, PWC is happy to provide more detailed comment on specific provisions, including errors in, and ambiguities resulting from current drafting, once a position in relation to the extent of the review has been established.

D. GOVERNANCE OF GENERAL TERMS AND CONDITIONS OF EMPLOYMENT

20. As noted in paragraph 12 above, the legislative regime applying to PWC has led to an untenable situation under which the PWC board is responsible for PWC's operations and is directly accountable in relation to its outcomes, yet has little influence over employee terms and conditions – a key factor in the achievement of its stated corporate objectives.
21. Since the early 1980's, like the Northern Territory, other State and Territory Governments have corporatised or privatised the ownership and operation of water and energy assets in response to competition policy reforms, in order to increase efficiencies. However, in other jurisdictions, in doing so, independent boards have been allocated greater levels of autonomy and flexibility in employing and determining employment conditions of both executive and non-executive employees.
22. PWC is one of the few GOCs that does not have the authority to employ staff on its own terms and to adopt its own policies and practices, with the result that the focus is more compliance oriented than PWC believes it should be.

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

23. To help demonstrate the need for change in relation to the manner in which terms and conditions of employment in PWC are currently determined, it is useful to list specific examples of problems experienced by PWC in recent years, which arguably stem in large part from its alignment with general NTPS conditions and policies, and the inability of the PWC board to set terms and conditions which depart from these where appropriate. Examples include:
- (a) Meeting the requirements of the business in terms of speed and quality of candidates through the current recruitment system;
 - (b) Developing a performance oriented culture across the organisation; and
 - (c) Enabling PWC to deal efficiently with issues such as discipline breaches, frivolous appeals, and/or underperformance.
24. While PWC acknowledges that PSEMA does allow for a departure from general NTPS terms and conditions in certain circumstances, such departure requires the issue of a special determination by the CPE, provided he or she is satisfied that the circumstances warrant the determination. PWC queries the appropriateness of this process moving forward, particularly in light of the following observations:
- (a) From a governance perspective, it is PWC's view that:
 - (i) the PWC board, rather than the CPE is best placed to understand the context in which PWC operates and to appreciate the specific requirements of the organisation in relation to employee terms and conditions, resulting from its operating environment (refer to discussion in paragraphs 20 to 22 above); and
 - (ii) appropriate checks and balances are currently in place under the GOC Act in terms of governance and reporting obligations, to ensure that the PWC Managing Director and board remain accountable, and that any decisions made in relation to employment conditions and other matters are appropriate (refer to discussion in paragraph 7); and
 - (b) From a practical perspective, in PWC's recent experience, the process for issuing determinations can take some time, with consequent operational inefficiencies and risks. While not the sole contributing factor, it is submitted that difficulties being experienced by personnel within the OCPE in fully appreciating and understanding PWC's operating environment and PWC specific conditions and practices (as contained in the UCA and CPE determinations), may be impacting on the time taken to consider PWC requests for determinations, along with outcomes relating to them.
25. Putting aside the PWC specific governance arrangements and issues surrounding the determination of PWC terms and conditions discussed above,

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

on a general level it is submitted the PSEMA review should include detailed consideration of the relevant advantages and disadvantages of the “single employer” model established under section 12 of PSEMA, and whether the fundamental concept of ‘let the managers manage’ upon which PSEMA is based, is in fact playing out in practice. While the single employer model may well have continuing relevance in terms of the setting of broad policy parameters and ensuring that agreement negotiations are conducted within those parameters, in light of recent and ongoing Federal industrial reform (discussed in further detail in paragraphs 27 to 31 below) and the consequent impact on resourcing within the Office of the Commissioner for Public Employment, it is submitted that this is a time to provide increased delegation of the CPE’s functions to agency CEOs.

26. One specific issue of potential concern in relation to the “single employer” model is that of its effect on probationary periods. The current PSEMA provisions surrounding probation have been interpreted and applied in a manner that only allows for a period of probation on an employee’s initial commencement in the NTPS. There is no ability for probationary periods to be imposed on successful internal applicants (ie: on promotion). This has the potential to pose particular problems in situations where an employee is promoted to a substantially different role to that formerly performed, and to which he or she may not prove to be suited. While it is acknowledged that termination (the usual outcome of a person failing their probationary period) may not be appropriate in this situation (as the employee may be well suited to and able to perform highly in other roles in the NTPS), it is submitted that the PSEMA review should include consideration of how situations of this kind might better be accommodated by the PSEMA regime, given the inappropriateness of the convoluted Inability provisions (discussed further in paragraphs 41 to 44 below) to situations of this kind.

E. PRESCRIPTIVE NATURE OF PSEMA LEGISLATIVE REGIME

27. While the Act itself is light on prescription, it is submitted that the surrounding regime, which includes regulations, by-laws, employment instructions, public sector instruments and innumerable CPE determinations (both general and specific), has resulted in a framework which is extremely difficult (if not impossible) to effectively administer, navigate and interpret. This is so for workplace relations and human resource practitioners who work with PSEMA on a daily basis, let alone managers working in operational areas of PWC, who are expected to understand and comply with its provisions.
28. This situation is complicated further by the application of the *Workplace Relations Act 1996 (Cth)* (WRA) to all Northern Territory employees (including public servants), and the uncertainty and ongoing industrial reform that has characterised Australian industrial relations in recent years. Federal industrial reform has had a significant impact on the currency of the PSEM by-laws in particular, with many of its leave provisions rendered redundant by WorkChoices. While it is acknowledged that WorkChoices compliant provisions have been drafted and implemented by way of workplace agreements or CPE determination, the continuing presence of outdated

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

provisions in the PSEM by-laws (in the absence of any reference in the by-laws themselves that many of the provisions have been superseded and should no longer be applied) has the potential to lead to confusion and non-compliance with the WRA. This situation lends support for the submission that the already outdated by-laws, have become further outdated and in many cases obsolete, and are in need a major overhaul.

29. In relation to the above comments, it is submitted that consideration could be given to the removal of the provision for by-laws under PSEMA, particularly in light of the ability for the CPE to issue determinations in relation to employment conditions, as and when he or she sees fit. Such determinations can be implemented and amended with far greater ease than by-laws, which require the involvement of Parliamentary Counsel to draft and amend. It is submitted that removing the by-law layer of the existing PSEMA regime, and relying on determinations to cover matters historically provided under the by-laws, would increase flexibility in creating and amending terms and conditions, and go some way to resolving issues of currency flagged in paragraph 28 above.
30. A further issue no doubt stemming largely from the factors referred to in paragraphs 27 and 28 above, along with the fact that the UCA contains certain PWC specific conditions which depart from general NTPS conditions, recent experience demonstrates that personnel within the Department of Business and Employment (DBE) (formerly the Department of Corporate and Information Services) are experiencing significant difficulty in applying PWC employment terms and conditions.
31. In summary, the above comments highlight the problems faced in trying to ensure the ongoing currency and usability of public sector employment conditions under the existing PSEMA framework, where both Federal and Territory provisions necessarily apply (but are not necessarily consistent), in the context of an ever changing workplace relations environment at the Federal level. Further, they point to the likelihood that the PSEMA framework may not be facilitating the most effective and efficient management of public sector employees. As such, it is submitted that change in structural arrangements surrounding public sector terms and conditions is required as part of the PSEMA review, rather than simply updating PSEMA's existing provisions. That is, PWC submits that consideration should be given to a simpler and more flexible framework, which is easier to administer and better able to cope with and respond to, external impacting factors, such as Federal industrial reform.

F. PSEMA RECRUITMENT PROCESSES

32. It is becoming increasingly evident that PWC's recruitment system, which is based on the procedures set out under PSEMA, is inadequate and unresponsive to prevailing market conditions and is struggling to meet PWC's requirements in terms of speed and candidate quantity and quality.

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

33. A review undertaken on the PSEMA based recruitment processes applying to PWC found that:

- (a) the quickest a standard vacancy can be filled within the current NTPS system is 6 weeks;
- (b) a “one size fits all” approach is taken to vacancies whether temporary or permanent, easy to fill or hard to fill, urgent or non-critical;
- (c) even in the case of temporary vacancies, in most cases the full quotient of recruitment resources is invested into a process where the preferred candidate is already known to the organisation;
- (d) the compulsory advertising required is costly, yet is perceived as lacking creativity and failing to attract the quality of candidates required; and
- (e) co-branding of PWC with government departments appeared inconsistent with its strategic direction and created confusion in some candidates as to which organisation they were actually applying to work for.

34. It is further noted that in the environment in which PWC operates, its recruitment model needs to be fast and user-friendly to avoid good candidates being lost to other organisations, and that the legislative based recruitment framework provided by PSEMA hinders PWC’s ability to be flexible, responsive and compete in the candidate market. Specific examples of this include restrictions surrounding the 2 week time frame for leaving roles open, and the inability to take any action until all applications are received (which slows down PWC’s ability to respond quickly and engage strong candidates).

35. Further, the following examples demonstrate that even where PWC has sought CPE approval to recruit outside of established guidelines, inflexibilities and inefficiencies have continued to exist due to current practices within DBE, particularly a reluctance on the part of DBE personnel to facilitate non-standard recruitment processes:

- (a) PWC has recently adopted the practice of engaging external consultants to fill a range of ‘hard to fill’ roles. This practice offers several potential benefits including thoughtful advertising campaigns, access to market and industry intelligence, professional and seamless administration of applicants, and generally high levels of candidate care. However, what would normally be a simple transaction between a service provider and its client, instead becomes unnecessarily complex due to the restrictive nature of the legislation and the associated procedures. In particular, the requirement to advertise in the NT News and place vacancies on the NTG Job Vacancy site is problematic, in that applicants regularly become confused in relation to the application process and the appropriate point of contact. This results in some applicants applying through the external consultant, others through the

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

NTG Job Vacancy site, and some applying through both avenues resulting in a double application process. With applications having become dispersed between the external consultant and DBE for a period of approximately 3 weeks, PWC's ability to be proactive and responsive to all applicants is compromised, and is unable to ensure the highest levels of candidate care. Further issues related to legislation and processes may be encountered, specifically in relation to notification to unsuccessful applicants and advice on appeals rights.

- (b) PWC has obtained CPE approval to package remuneration and provide a salary range when advertising. However, PWC has experienced artificial barriers as a result of DBE's performance of the advertising function on behalf of PWC, including inflexible systems and slow response times in processing PWC requests to advertise in this manner.
- (c) In PWC's experience DBE personnel have been slow to become properly acquainted with PWC specific processes, as approved by the CPE, arguably in part due to high levels of staff turn-around and apparent inefficiencies in handovers or knowledge sharing. By contrast, similar services offered by external consultants have been highly responsive to PWC's needs and expectations.

36. At a general level it is submitted that the following improvements could be made to the current PSEMA recruitment procedures to enable them to operate more effectively across the board:

- (a) Removal of an absolute requirement to advertise all vacancies exceeding 6 months duration. (In relation to this comment, PWC agrees with the reference in the OCPE Discussion Paper that the requirement to advertise all vacancies exceeding 6 months duration creates inefficiencies, and that transparency and accountability can still be achieved in the absence of an absolute requirement to advertise).
- (b) Discretion for CEOs to advertise through means other than the NT News or the NTG Job Vacancy site, which may be more effective in light of the particular position or relevant market.
- (c) Removal of the requirement for CPE approval for multi-designation advertising. In PWC, not all roles are subject to JES and greater flexibility is required in the manner in which jobs are framed to ensure best results in terms of applicant pool. By way of example, it may be appropriate to advertise a position as Service Coordinator / Technical Specialist, given the often overlapping skill base required to perform these roles. Multi-designation allows PWC to better gauge the applicant pool and how their skills and experience can best be applied.
- (d) Ability for the MD and/or PWC board to set executive salaries without the requirement for CPE approval thus ensuring that good candidates are not lost due to the time to seek approval to negotiate above the base level.

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

G. PSEMA DISCIPLINARY PROCESSES

37. The OCPE Discussion Paper prepared to assist agencies in preparing submissions in relation to the PSEMA review states that *“processes for dealing with discipline matters in the NTPS are generally more complex and time consuming to accomplish than in most other workplaces”*. PWC agrees with this statement, having found the practices associated with discipline and appeals to be lengthy, complex, cumbersome, inefficient, resource-intensive and expensive, even for relatively minor matters.
38. While serious disciplinary cases under the PSEMA framework may take many months to resolve, similar cases in most other GOCs rarely take more than a month or two to resolve due to more streamlined processes.
39. This highlights that the time and resources taken by PWC in handling disciplinary cases under the PSEMA framework places it at a distinct competitive disadvantage when compared against other organisations in the utilities industry, and inhibits its efforts to achieve its strategic corporate objectives surrounding greater efficiencies and competitiveness.
40. At a general level it is submitted that the following improvements could be made to the current PSEMA disciplinary procedures to enable them to operate more effectively across the board:
 - (a) The removal of existing mandatory timeframes for employee responses (in most cases of 14 days), which fail to take into account the complexity or otherwise of a particular matter. Rather, it is submitted that CEO’s should have the opportunity to exercise their discretion as to what period of time is reasonable for the provision of a response, depending on the particular circumstances;
 - (b) Simplify the current requirements of clause 7.6 of Employment Instruction 7 (Discipline) by allowing CEOs to advise of their decision and proposed sanction based on the investigation report, at the time of providing the investigation report finding and reasons to the employee, along with an invitation to the employee to respond to all information provided (As opposed to the two staged approach currently in place which requires that the findings and reasons be provided to the employee, followed by employee submissions, followed by the CEO’s decision and proposed sanction, followed by further employee submissions). This proposed simplification would cut the time taken to complete these steps of the disciplinary procedure by half. Yet it would still ensure natural justice by giving the employee the opportunity to respond to any material adverse to his or her cause, and the CEO to take any such response into consideration in issuing his or her final determination.

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

- (c) Remove current restrictions on the CEO in relation to imposing employee suspensions, including the existing requirement to seek approval from the CPE to vary the terms of existing suspensions.

H. PSEMA INABILITY PROCESSES

- 41. The OCPE Discussion Paper prepared to assist agencies in preparing submissions in relation to the PSEMA review states in relation to inability processes that *“anecdotal evidence suggests that this process is very rarely initiated by [agencies] primarily due to the very prescriptive and often lengthy delays associated with it. That is not to say that a process of some kind is not warranted”*.
- 42. PWC agrees with the above statement and submits that the current inability provisions provide for an overly lengthy process resulting in sub-optimal outcomes. It is submitted that the current inability regime provided under PSEMA is unnecessary and could be replaced by improved performance management provisions, which provide appropriate levels of natural justice and the opportunity for improvement, but which contain a clear statement to the effect that CEOs may transfer employees to perform alternative duties, or where considered necessary, terminate an employee, should attempts at performance management prove futile (outcomes reflecting those currently available under the existing section 46(1)). This approach would arguably have the dual effect of fostering a more performance-oriented culture within the NTPS, while at the same time allowing cases of poor performance to be dealt with more efficiently.
- 43. Notwithstanding the above, it is further submitted that the following improvements could be made to the current PSEMA inability procedures to enable them to operate more effectively:
 - (a) Removal of provisions relating to preliminary inability processes. Employment Instruction 6 (Inability to Discharge Duties) expressly states that the preliminary inability process contemplated under clause 7.1 *“would normally occur outside of any regular performance management procedures but may have resulted from a performance problem identified in the performance management process”*. While it is acknowledged that the Employment Instruction does not mandate the preliminary inability process, in light of the long-winded process required to achieve an outcome under the inability provisions, the threat of appeal, and what is arguably perceived as an over-emphasis on natural justice under PSEMA, the advice invariably received from OCPE or the Department of Justice on the issue, is that it would be prudent for agencies to follow the preliminary inability process set out in the Employment Instruction, as skipping this step may not auger well in the event of appeal. This position means that agencies often feel compelled to include a preliminary inability process, even where extensive performance management processes outside of the inability process have already proven unsuccessful in resolving underperformance. The effect that the preliminary inability process has

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

in prolonging a matter that invariably involves difficult and sensitive issues, is detrimental for both managers and employees involved.

- (b) Simplification of the current requirements of clause 8.5 of Employment Instruction 6 by allowing CEOs to advise of their decision and proposed action based on the investigation report, at the time of providing the investigation report finding and reasons to the employee, along with an invitation to the employee to respond to all information provided (As opposed to the two staged approach currently in place which requires that the findings and reasons be provided to the employee, followed by employee submissions, followed by the CEO's decision and proposed action, followed by further employee submissions). This proposed simplification would cut the time taken to complete these steps of the inability procedure by half. Yet it would still ensure natural justice by giving the employee the opportunity to respond to any material adverse to his or her cause, and the CEO to take any such response into consideration in issuing his or her final determination (nb: these comments directly reflect those proposed in relation to clause 7.6 of Employment Instruction 7 (Discipline) referred to in paragraph 40(b) above).
- (c) Review of the position in relation to clause 46(2), which prevents a CEO from actioning his/her decision on an inability matter until the employee has waived the right to appeal, or the specified timeframe for appeal has lapsed and no appeal has been lodged. This position further draws out an already lengthy process, is inconsistent with the concept of 'let the managers manage', and is distinguishable from the position under the PSEMA disciplinary procedures, which allows the CEO to immediately proceed with his or her proposed sanction, notwithstanding the employee right of appeal.

44. Finally, it is submitted that on the current drafting of PSEMA, it is unclear as to whether an inability process can result in demotion. Clause 46(1)(b) states that an employee can be transferred under section 35 to perform other duties on a lower remuneration. However, neither section 46 or 35 is clear as to whether this permits a demotion by way of transfer to a different classification level altogether, or simply a reduction in salary by directing that the employee be paid at a lower salary increment within their current classification level. Clause 8.5 of Employment Instruction 6 implies the former position, by referring to variation to 'designation or salary', however it would be preferable if the legislation itself clarified this position.

I. APPEAL AND REVIEW PROCESSES

45. There are a number of different review or appeal mechanisms within the current PSEMA framework, which allow employees to challenge the decision making processes and other actions of agencies. While the importance of fairness and natural justice in decisions relating to the employment relationship are acknowledged, at times it inhibits the ability of CEOs to effectively manage their operations. This comment is particularly relevant in

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

relation to section 59 of PSEMA, which essentially provides employees with open means to challenge any and all decisions relating to their employment.

46. The promotion appeal process is questioned in that it is recognised that the ability for the Promotion Appeal Board to determine if a candidate is more meritorious is challenging and considered inappropriate in the majority of instances. This coupled with the ability to also access section 59 to challenge process seems to provide no additional benefit or gain to the NTPS.
47. PWC notes the comments flagged in the OCPE Discussion Paper querying the ongoing need for 'in-house' disciplinary review and internal grievance review mechanisms, in light of the ability to rely on an increasing number of external review bodies in relation to such matters. PWC agrees that abolishing current PSEMA appeal and review provisions is desirable in the sense that it would prevent the practice of 'forum shopping', currently available to employees.
48. Further, in the context of section 59 grievances, removing the internal review mechanism currently provided, under which the CPE is himself required to review matters brought by his or her own aggrieved employees, will assist in removing any perception of bias in the grievance resolution process. That is, from a conflict of interest perspective, it would appear preferable that an independent, external body conduct such reviews.
49. The informal, conciliatory approach historically taken by many external bodies at first instance (eg: the Australian Industrial Relations Commission, the Anti-Discrimination Commission), which have very high success rates in swiftly resolving matters, may in many cases prove to be a more efficient way of handling issues arising from aggrieved employees, than the processes currently provided under the PSEMA appeal and review provisions.
50. It is noted that rather than relying on external bodies such as the Australian Industrial Relations Commission, some jurisdictions have created a single independent review body to handle all public sector matters arising under relevant legislation. One obvious benefit of this approach, particularly given the current complexity of PSEMA, is the greater likelihood of members of that body building up appropriate levels of knowledge and expertise in interpreting and applying the legislation, and greater efficiency and consistency of outcomes resulting.
51. Notwithstanding the above comments and potential outcomes relating to them, it is submitted that any review of PSEMA consider the current breadth of application of section 59 and the impact that this has on the ability of agencies to effectively deal with operational issues. For example, despite the current existence of appeal rights in relation to disciplinary and inability matters, in PWC's experience it is not uncommon for employees to lodge section 59 grievances throughout a disciplinary process, or to threaten to do so in an attempt to influence CEO decision making. This practice has the potential to impede disciplinary processes, both in terms of timeframes for completion and overall outcomes. It is submitted that any review of PSEMA give

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

consideration to necessary amendments to restrict the application of section 59, especially in circumstances where other internal review mechanisms exist.

52. Finally, while section 59(2)(b) creates an expectation that grievances brought under that section be reviewed within a 3 month timeframe, it is noted that no general timeframe guidelines for the completion of promotional, disciplinary or inability appeals are currently provided for under PSEMA. While it is acknowledged that the particular circumstances relating to a matter will ultimately determine the time taken to review it, it is submitted that imposing an outer limit timeframe for the completion of appeals in the absence of any factors rendering this unreasonable or impractical, may lead to greater efficiencies and swifter outcomes in relation to appeals.

J. REDEPLOYMENT AND REDUNDANCY PROCESS

53. Notwithstanding the relative simplicity of the provisions of PSEMA itself, the area of redeployment and redundancy is yet another example where procedures and processes made under PSEMA, or operating along side of it, are overly prescriptive and long-winded, and create difficulties for agencies to effectively manage their staff. It is submitted that the following improvements could be made to the NTPS Redeployment and Redundancy Provisions Award and Procedures (now incorporated in full into those collective agreements negotiated since the introduction of Work Choices, and referred to as the "R&R Provisions" for the purposes of these submissions), and to practices associated with their application, to enable them to operate more effectively across the board:

- (a) Review the current situation surrounding 'potentially surplus' status and notification of this by CEOs to the CPE. It is submitted that the changes resulting from the 2001 Redeployment Intervention Initiative to address the sector-wide issue of redeployment (namely, the tight restrictions imposed in relation to CPE acceptance of CEO notifications of potentially surplus employees in order to reduce the number of redeployees), in the absence of corresponding amendments to the R&R Provisions, have resulted in difficulties in interpretation and application. On one interpretation, it is arguable that CPE restrictions in accepting notifications under section 41, coupled with the stated position that such restrictions do not prevent notification under section 43 for the purpose of redundancy, mean that there is no longer a requirement for agencies to apply provisions relating to redeployment attempts following notification of potentially surplus status. Alternatively, the intended outcome of the 2001 changes may be that the CPE is no longer required to be involved in attempts at redeployment, but that this is still required of agencies. Whatever the intended outcome, the current position has the potential to lead to confusion and amendments to the R&R Provisions would help clarify this issue.

- (b) On a related issue, the position adopted following the 2001 Redeployment Intervention Initiative was that the criteria preceding

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

notification under section 41 was that a “significant number” of employees must have been affected by organisational, structural or technological change, and that the CPE would not accept notification for redeployment of employees who were the subject of a “minor review, organisational change or job redesign/evaluation”. It is submitted that a genuine redundancy situation may arise, even from minor organisational changes affecting as little as one employee, and as such it might be appropriate for any review of the R&R Provisions to revisit the position that has been adopted since 2001.

- (c) Consideration is given to reducing some of the timeframes specified in the R&R Provisions, on the basis that they lead to excessively drawn-out redeployment and redundancy processes, arguably to the detriment of both the agency and employee. Examples include the general requirement for 4 months for attempts at redeployment and retraining between notification under section 41 and the seeking of CPE assistance under section 43. The potential direction by the CPE for further attempts at redeployment over many months after this initial 4 month period and the requirement for 6 months formal notice that an employee is in fact surplus (or 12 months in specified cases).
- (d) Consideration be given to the appropriateness of a number of practices contained in the R&R Provisions, given the potential they have to create sub-optimal or inefficient outcomes in terms of agency operations. Examples include:
 - (i) the preference given to redeployees applying for positions even where they are not the most meritorious candidate;
 - (ii) the requirement that any recruitment processes involving a redeployee who is assessed as unsuitable be frozen until the CPE has assessed relevant documentation;
 - (iii) requirements surrounding attempts at retraining employees, prior to any offer of voluntary retrenchment; and
 - (iv) the requirement for agencies to meet the travel and incidental expenses necessary for a surplus employee to attend interviews where such costs are not met by the prospective employer.

54. While PWC acknowledges that redeployment and redundancy situations need to be carried out fairly and that reasonable attempts at redeployment should be made, it is submitted that the current provisions are balanced too far in favour of the employee. While in certain redundancy cases some of the above measures will be appropriate, in other cases it will be preferable from both an agency and employee perspective to fast track the redundancy process. It is submitted that any review of the R&R Provisions give consideration to greater flexibility to allow this to happen where appropriate.

REVIEW OF PUBLIC SECTOR EMPLOYMENT MANAGEMENT ACT

K. CONCLUSION

55. By design PWC's operating framework is one that requires PWC *to operate at least as efficiently as any comparable business*. This requires PWC to compete in an employment market against comparable businesses that have more appropriate employment frameworks that are suited to the market they operate within and provide a level of autonomy and flexibility that PWC is unable to achieve within the current framework.
56. As a result PWC is achieving suboptimal results in its operational and strategic outcomes, as it is unable to effectively attract and manage the people resources it requires to deliver to these results.