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Northern Territory Government

DEPARTMENT OF REGIONAL DEVELOPMENT,
PRIMARY INDUSTRY, FISHERIES AND RESOURCES

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Our file ref:

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Mr Ken Simpson
Commissioner for Public Employment
GPO Box 4371
Darwin NT 0801

Dear Mr Simpson

RE: REVIEW OF THE PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT

Thank you for the opportunity to contribute to the review of the above Act. Attached you will find our submission which has been compiled from input received from across the agency with the support and guidance of our Human Resources Team.

I would like to acknowledge and thank you for the assistance provided by officers from your Employee Relations team who attended a workshop of our people and provided valuable background and interpretive advice.

Should the committee wish, officers of my Department are available to participate further in this review.

Yours sincerely

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REVIEW OF PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT

Introduction

Any new public sector management legislation needs to provide the operational framework – the toolbox – to support contemporary management practice in the development and implementation of good public policy, service delivery, regulatory functions, stewardship, the sound management of public resources and guaranteeing the rule of law and democratic governance. The NT public service moving forward needs to be flexible, adaptable and diverse to meet growing complexities and business needs.

There are increasing demands on government and public servants to exercise judgement and apply resources in an increasingly complex setting. It can be expected that improved responsiveness, understanding and balancing competing interests, increasingly demanding, knowledgeable and educated clients and stakeholders does and will characterise the working environment. New forms of delivery such as electronic and twenty four hour service provision will also be in greater demand.

It can be expected that sustainability issues will continue to receive attention and be one of the basic criteria for judging the quality of advice, policy and decision making. Issues such as global warming are generally accepted as requiring the attention of governments worldwide and to be a major risk and challenge.

This review needs to build on the flexibilities provided in the current Act, placing less emphasis and prescription on process and structures, thus allowing a greater degree of discretion. Legislation which has overly prescriptive policies and procedures or that needs to be supported by extensive policies and guidelines (eg Employment Instructions) may undermine the employer or employee ability to respond, adapt, think and apply sound judgement.

Recognising there are limits to process reduction in a context that requires transparency; and that a litigious environment exists, the review needs to achieve a realistic minimum level of regulation and mandated process, while establishing the framework and mechanisms that encourage self regulation.

Legislative changes that relax mandated processes are typically accompanied by programs that inform and educate employees about governance arrangements and behavioural expectations and boundaries. While the principles around the separation of powers are well established in this jurisdiction, it is evident that many of the issues regarding the current Act arise as a result of its operation and consequent practices.

It is also evident the concepts such as those contained in the Office of the Commissioner for Public Employment publication *Governance Arrangements, Employment, and Management Legislation* require ongoing promotion and education.

An ongoing program suitable for all NTPS decision makers that explains the governance arrangements and operation of a revised public sector employment act will be essential in bringing the intentions of a revised act into operation.

Separation of Powers

The future will require continuing improvements in public sector governance, and maintain and support the concepts of the separation of powers. Maintaining an apolitical public sector free from nepotism, patronage and the like remains essential and fundamental. There are ready examples of states and jurisdictions that have failed to adopt or maintain these fundamental principles. The results include corruption and failed public governance and policy.

Commissioner deemed to be Employer

For the reasons outlined in the *DISCUSSION PAPER ON THE NORTHERN TERRITORY PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT LEGISLATION* maintaining the Commissioner as the employer continues to be appropriate.

To assist with responsiveness and reduce process it now seems appropriate that Chief Executives be provided with additional powers and particular instances are suggested later in this submission.

The role of Ministerial Advisers

The duties, functions and powers of Ministers, the Commissioner for Public Employment and Chief Executives are defined in the current Act and serve to support the principles of good governance.

Ministerial Advisers provide an important function within the governmental framework. These important roles need to be similarly defined.

In addition, clarification would support the understanding of various roles within the public sector as well as among clients and stakeholders.

Public Sector Employment and Management Regulations

The Regulations are not well known to employees and are not easily brought into formal processes. The intent and function of this legislation could be brought into a revised single public sector employment act and an associated revised code of conduct.

Code of Conduct and decision making

Sections 6, 7 and 17 of the current code provide some guidance to the public sector in regard to decision making.

A revised, updated section that provides guidance rather than prescription, and focuses solely on decision making, needs to be included. Our current and future operating environment demands that decisions need to meet greater transparency requirements and need to be explained in various forums. Statements of reasons are increasingly expected. It is the case that decision makers often need to balance a greater range of considerations than those specified in the current code.

For example, environmental considerations have become a very important issue for decision makers in all sectors of the community. In particular it is now practice that issues relating to global warming are considered in policy and business decisions. Given current environmental threats, community interest and expectations are increasing in this area. Public sector decision makers must now consider sustainability issues and ensure policy and decision making does not compromise the needs of future generations.

The extent to which the current code applies to Chief Executives, Executive Contract Officers and employees generally is well defined in the current legislation. The extent to which a revised code of conduct might apply to Ministerial Advisers requires consideration.

Allowances and Employment Contracts

While maintaining the Commissioner as employer, there is scope to provide Chief Executives with the delegation to approve contract arrangements and allowances to loadings for strategically and operationally critical positions.

Given particular skills shortages there are risks to government because agencies have difficulty recruiting and retaining specialist staff. While agencies can apply to the Commissioner for allowances, the process is lengthy and time consuming. It is suggested

Chief Executives have the capacity to approve allowances within limits set by the Commissioner. Possible constraints might include:

- Approvals must be evidence based
- The allowance not exceed a set percentage of salary
- Be for a specified time
- Attached to a position rather than individual
- Reported to the Commissioner regularly as well as in annual agency reports.

A further option is to consider introducing contract packages for positions other than executive roles. Positions which are funded for particular projects and periods will be more attractive to the market if they could be offered as contract packages. In a way similar to the calculation of current Executive Contract Officer Packages, remuneration would include a premium in consideration of the contract provisions.

An ability to offer contract packages at the P2 to P4 levels, and in the AO6 to AO8 designations would provide flexibility and facilitate the movement of people into the public sector. The decision to offer contract packages would be at Chief Executive discretion. Additional allowances as described above would also be available to these employees. As above regular reporting to the Commissioner could occur.

Merit Selection

The intent and concept of merit selection needs to be maintained and strengthened. The reasons for this are well set out in the *DISCUSSION PAPER ON THE NORTHERN TERRITORY PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT LEGISLATION* commentary regarding the merit principle.

Thorough and rigorous processes of selection are essential for any organisation. The benefits of a good selection and the detriment of a poor decision are well understood.

Successful companies usually have very well planned rigorous and thorough selection processes. The public sector has additional requirements of transparency of process that maintains an apolitical service and avoids nepotism. There are many examples of jurisdictions in the global context where merit and transparency has not been applied and public governance has suffered immensely.

The *DISCUSSION PAPER ON THE NORTHERN TERRITORY PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT LEGISLATION* mentions that the legislated requirement to advertise vacancies is cited as a barrier to efficient and responsive process. Maintaining only the requirement to publish selections and appointment would only partially meet transparency and accountability requirements. The question as to how applications would be gathered immediately arises. Such a measure may well increase the risks of nepotism and the maintenance of an apolitical sector. Increased perceptions of patronage may impact the quality and diversity of candidates.

It should be noted that networks are already widely used in attracting existing employees to temporary vacancies, or in offering temporary contracts to external candidates. In a large percentage of these instances people in these roles gain the skills knowledge and experience to win the job on an ongoing basis. A benefit in succession planning and sector wide data analysis in regard to these practices would provide useful information.

There are nevertheless solutions that would have the effect of recruiting the best based on merit while simplifying practices and reducing process effort. These include simplifying selection criteria, extending mandated selection process timeframes, and selecting pools of applicants for a level rather for a particular job. In particular:

- The true value and benefits of the entire employment package needs to be made known to applicants in advertising, even if only closely estimated. The current system only advises the salary component.
- Extending the current six month limit for selection processes to twelve months, thus allowing subsequent vacancies to draw on previous processes for a period longer than currently allowed (6 months).
- Allowing a person found suitable for a permanent position but not ranked first to be selected for a subsequent similar temporary vacancy.
- Provide Chief Executives the discretion to appoint a suitable person to a similar position at the same or even lower level within the timeframe of the process. Criteria to judge if another job is similar to the previously advertised role would be developed. Examples might be another customer service role, another regulatory role, another management role. This option supports the concept of appointing to a level rather than a specific job.
- Where it is judged no candidate fully meets all the criteria, provide Chief Executives the ability to select the most suitable candidate at a lower level, with the proviso that appropriate training will be provided, and that should the person meet the full job requirements within a specified time frame they be appointed at the advertised level. This would be particularly useful in hard to recruit, professional and technical roles.
 - Promoting the use of more generic job descriptions, as opposed to specific descriptions for each and every job. This would enable a pool of applicants to be available to fill future vacancies.
 - Provide less restriction and greater scope for multi level / multi stream advertising

Some of these ideas build on the concept that in a career service a person has a level rather than a particular job. It is recognised that some of these suggested practices are capable of implementation without altering the current PSEMA. However practices have arisen at least in part as a result of the operation of current legislation. Change can be strongly signalled through legislative amendment.

Merit Selection Guide

The Merit Selection Guide would benefit from revision. The dispelling of recruitment myths and changed expectations of the Promotions Appeal and Grievance Review processes could be outlined in the guide.

Additional advice on defining and assessing the elements of merit, in particular advice to panels on assessing and balancing the value of diversity will be needed when changes to merit are introduced.

In regard to Indigenous employment, some jurisdictions specifically provide for an extended family member to participate in the selection process and advocate for the applicant. A similar measure could be promoted through a revised guide.

Some advice and reference to behavioural interviewing would be appropriate, as this method has been shown to have the highest reliability of all interviewing methods, resulting in more reliable selections and increased satisfaction among unsuccessful applicants.

Transfer of employees:

The ability of Chief Executives to transfer employees between employment streams requires greater flexibility.

An actual example is a Technical 3 employee who completes a professional degree under study assistance provisions being required to undertake a merit selection process to move into a Professional 1 role, as the top of the salary range is marginally higher.

Clearly, flexibility to facilitate movement and succession planning will be of assistance and reduce process. Improved alignment of salary ranges between streams requires consideration.

Attachment to a position

The current system provides for people to win a job and become 'attached' to the position. This promotes a belief that there is guaranteed ongoing ownership and occupancy of a particular job. This is anomalous with the concept of responsiveness and the ability to rearrange staffing quickly according to priority need.

The belief that an employee 'owns' a job leads to inflexibility, resistance to change and difficulty in redeployment of resources.

This thinking must change so that people understand they are employed to do the work that needs to be done, enabling quicker responses to change. This needs to be explicitly stated and selection processes need to advise that ongoing employment means the work may be subject to considerable change.

Security of tenure is an important element in the provision of impartial advice and protection against politicisation. However the terminology of 'permanent employee' is no longer appropriate as it implies guaranteed occupancy in a particular position. An alternative, such as 'ongoing employee' is recommended.

Entry Level Recruitment

The ELR system has proven to be a beneficial innovation in reducing process. However its processes now require review. The current application method is perceived to have a bias toward people who have previous experience in a government environment. In practice, agencies are able to recruit people who are known through their existing networks.

Entry level is an employment channel of significant potential for Indigenous people however its processes are perceived to be oriented to people who understand and have contacts in bureaucracy.

At the time of writing this agency was advised only two people are registered with Entry Level in Katherine, so it may be that it's regional effectiveness may require some examination.

Probation

The criteria against which probationary employees are assessed needs to be reviewed and modernised. Greater emphasis could be placed on more contemporary competencies such as ability to work in a team, learn, participation, adaptation to change, and working with technology.

The initial period of six months for assessing performance needs to be capable of extension based on periods of leave and other relevant factors, so that the probationer is in actual employment long enough to be properly assessed.

Confirmation of appointment needs to be contingent on a delegate's approval. In other words the current provision for automatic appointment after six months time served needs to be removed.

Abandonment of employment

The current abandonment of employment provisions allow, in effect, at least 28 days of absence without permission before an employee can be terminated.

In the event an employee has been absent without permission and returns to duty before the 28 days, abandonment provisions simply lapse, and should further action be justified, a new process such as under S51 Discipline must be commenced.

The current timeframes need to be revised and consideration given to automatic sanctions in proven cases of abandonment.

Appeals and Grievances

An independent avenue of review in relation to employment, such as currently resides with the OCPE, provides a fundamental check and balance for decisions significantly impacting employees.

It is suggested removing or reducing appeal provisions would have the effect of directing employees to external review bodies such as the Anti Discrimination Commission, the Human Rights and Equal Opportunity Commission, and the Australian Industrial Relations Commission, or certain court processes.

The effect of such a change would mean even greater investigation and preparatory costs for agencies, longer timeframes for final resolution, significantly increased legal costs where outsourced legal companies are used, and increased work load for advisory agencies such as the Department of Justice and the Office of the Commissioner for Public Employment.

Nevertheless improvements should be considered. For example

- A prima face case must be established
- That grievances lodged with Promotions Appeal and Grievance Reviews be, in many cases, mediated in the first instance, rather than reviewed almost exclusively by exchange and review of extensive documentation.
- A grievance thoroughly dealt with at an agency level, in particular via the use of an independent investigator, should not be capable of further review

Employment instructions

There are ongoing difficulties due to inconsistency with the Union Collective Agreement. A single source of authoritative advice which encourages and supports a self service culture is required

Part time employment

The restrictive requirements for a certain number of hours to be worked needs to be removed to promote and support real flexibility.

Performance management

The current separation of performance management information from formal performance counseling and inability processes needs to be removed. In reality one process follows the other and the information cannot be ignored.

Additionally the restrictions on access to performance management and planning information needs to be relaxed so management has the option of reviewing documentation for quality, accountability and planning purposes.

Secondments

The existing provisions of the Act appear to provide an adequate level of flexibility going forward, with some improvements suggested.

In particular further policy guidance on the operation of secondment including the application of merit would be of benefit. Advice received regarding a secondment to this agency on a reimbursement of costs basis was that the secondment documentation could be interpreted

as a contract for service and should be checked against procurement guidelines to determine if it should go through the procurement process. Clearly these confusions need to be clarified.

Discipline

The process would benefit from the removal of mandatory timeframes.

Inability

Again the process would benefit from the removal of mandatory timeframes. A provision for demotion should be included.

Suspension

The conditions of suspension need a specific section providing clarity.'

Redeployment and redundancy

The provisions need to allow for transfer to a different stream and level.

By Laws

Definitions and provisions are not in line with the current 2008-2010 UCA.

Relocation By-Law 28 - The limitation to permanent staff needs to be removed.

The multiplicity of special Determinations has created confusion and inconsistency of application and there is a strong need to clarify and re-establish the base line provisions.

Executive Contracts

Executive Contract employment provisions and published handbook requires immediate overhaul.

Funding for Maternity leave

It is proposed the central funding model for Long Service leave be extended to paid Maternity leave.

Conclusion

Overall the review needs to ensure maintenance of a career-based service capable of delivering outcomes, and enhance the effectiveness and cohesion of our democratic system of government. A reduction in a rules based approach and an increased understanding of governance and behavioural expectations will assist in achieving this aim.

