

Submission in response to the review of the *Public Sector Employment and Management Act*

March 2009

Introduction

The Department of Business and Employment (DBE) welcomes the opportunity to provide input into the review of the Public Sector Employment and Management Act. This response is from both an Agency and a shared services provider perspective.

In preparation for this submission, DBE provided a range of mechanisms for staff from all regions to provide feedback. This included attendance at workshops, email, and telephone or in person meeting with a People and Development representative. In addition, a paper was submitted to Executive Management Board seeking input at a senior level.

An underlying objective of the review should be simplification and standardisation as the multitudes of different entitlements and conditions is costly to administer and there is an increased risk of errors due to increase manual calculations and incorrectly applied entitlements. The result is that a critical Government process (paying its staff) is very costly, error prone and not timely, which in term leads to significant dissatisfaction for recipients and DBE staff alike. The administration of employment conditions continues to grow in complexity. There are over 100 classifications at present and with every new Agreement and change to conditions of employment requiring costly or often cost prohibitive changes to the payroll system (PIPS) resulting in loss of automation. This leads to additional workload in an already stretched HR Services Branch. The additional workload translates into staff having to increase their breadth of knowledge, increases in manual calculations and higher workloads resulting in lower job satisfaction and additional staff turnover. It take an average of 12 months for a payroll officer to be proficient in standard processing and currently over 25% of payroll officers have less than 12 months service.

Five consistent areas of interest emerged throughout the review process:

- Support for the current structure of the Act and subordinate legislation;
- Attraction and retention;
- Use of Entitlements
- Recruitment and Selection; and
- Managing performance

Each area is expanded on within this response. The Agency is enthusiastic about this review and the Reform and Revitalisation Project and looks forward to having ongoing involvement in the review and eventual implementation of outcomes.

1. Legislative Framework

DBE strongly supports the 'one employer' concept and sees great potential for the NTPS to capitalise on this model. Areas to consider are the standardisation and simplification of entitlements, improved management of redeployment and workers compensation cases and mobility across the sector.

As a legislative basis for public administration in the Northern Territory, DBE finds the current structure of PSEMA and its subordinate legislation effective.

There would be substantial benefit in updating By-Laws in line with union collective agreements to ensure information is consistent and accurate. By-Laws are the most accessed part of the legislation by managers and payroll officers as they provide a quick reference to conditions of service, are written in plain English and require little interpretation.

The Employment Instructions are a mechanism for OCPE to outline minimum standards in key processes. They are used extensively by line managers across agencies as working documents. If line managers had to reference directly to the Act they would be more inclined to seek advice directly with Human Resource Units rather than wade through legislation. It would be beneficial for Employment Instructions to be updated in line with changes to process to ensure consistent practices across agencies. While the reluctance to provide more 'rules' for agencies is understood, the recent change in interpretation of the Merit Selection Guide is a good example of where an updated Employment Instruction would assist in gaining broad acceptance of process improvements and consistent application across Agencies. Instead managers and staff are confused about the requirements and only through indirect feedback during an appeal process are agencies receiving formal advice on the new requirements.

2. Shared Services Perspective

The Department of Business and Employment is the shared services provider for the Northern Territory Public Sector (NTPS) and as such is responsible for administering employee entitlements. In this capacity the Agency is the system owner of the whole of government Personal Information Payroll System (PIPS).

The complexity of the administration of entitlements, and this as a cost to government cannot be underestimated. Within the review there should be consideration of where efficiencies can be gained by simplifying entitlements and the administration of these entitlements. This can be attractive to the recipients as well as the administrators as they find the application of existing 'rules' and time taken to process entitlements frustrating. All parties are adversely affected by the currently over complex arrangements. This is not a matter of 'putting the cart before the horse' but rather an expression of a genuine need to consider the full cost to Government in payroll matters. In addition to the high extra processing costs associated with the plethora of allowances and conditions across the NTPS; this situation effectively precludes the Government replacing PIPS and adds considerable additional costs to maintaining and improving this system.

A specific area of concern relates to the allowances received by staff in remote localities, including Fares Out of Isolated Localities, freight, rental and electricity subsidies. These are costly and time consuming to administer and are inconsistent between classifications resulting in two NTPS employees working in the same locality receiving different levels of support e.g. Nurses and Police Officers. A more equitable and cost saving (administration) option is to attribute an annual/fortnightly payment according to each remote category, which is inclusive of the previous entitlements.

Within the area of Workers Compensation and Rehabilitation there are some challenges around the application of current rules including:

- Clarity around the provision of "not being able to be on two types of leave at once" - workers participating in a return to work program are not usually permitted to go on annual recreation or long service leave. In some circumstances employees may be on a graded return to work or placement for months, or even years, and should be entitled to access leave.
- Teachers on a return to work program in a non-teaching position still take stand down. This practice should be ceased as it often interrupts their return to work process therefore extending the period of the return to work program, which impacts negatively on the overall claim costs and employee's well being.

- Under the “one employer” concept, there is the opportunity take a more holistic approach to managing return to work obligations under the Workplace Rehabilitation and Compensation Act. Recent court decisions have stressed the expectation that employers find suitable employment for employees injured during the course of their employment. Better outcomes could be achieved if injured workers with accepted claims could be classed as redeployees to assist them in gaining ownership of a position utilising Section 35 transfers prior to positions being advertised.
- Section 31 states that a person cannot be appointed, transferred or promoted unless they meet “such other requirements (including health and fitness) as are determined by the Commissioner as being required for the performance of the duties”. Applying a health test prior to appointment in certain circumstances would realise a reduction in claims. The Workplace Injury Solutions branch sees claims come about because the employee wasn’t either physically or mentally fit to perform the duties of the position in the first instance.

3. Agency Perspective

Attraction and Retention

It is consistently difficult to attract and retain suitably qualified staff to NTPS positions across all classifications. The current global financial crisis may alleviate the skills shortage with more job seekers in the market; however current indicators are this will be a relatively short term phenomenon. As baby boomers exit the workforce data indicates that there is not the required influx of new workers entering the employment market. It is recognised that the cost of living in the Northern Territory is higher than other states (for example Australian Property Monitors listed the medium rental rates for a house in Darwin at \$480 per week compare to \$450 in Sydney, \$350 in Melbourne and Brisbane and \$300 in Adelaide). Within the past 12 months we are aware of three instances where employees declined employment with DBE based on the cost of living in the Northern Territory. Additionally once an employee has reached the top of their increment level there is no mechanism to remunerate them for the depth of knowledge and skills they bring to the position without going to the Commissioner seeking a special skills allowance, which in most cases is not applicable.

There is a new generation of IT savvy job seekers in the market and our recruitment campaigns and approach need to reflect this.

The following changes are proposed for further consideration:

- Devolve delegation to Chief Executives for a range of incentive entitlements. This may be inclusive of car parking, market allowance, mobile telephone, gym membership, rental allowance and other entitlements attracting fringe benefit tax.
- Remove the requirement to advertise all positions within the NT News (\$200 per block advertisement) and increase Internet exposure.
- Provide an option to Agencies to appoint existing NTPS employees to higher increment levels on permanent and temporary promotions and for the delegation to reside with Chief Executives.
- Allow the extension of all temporary contracts and the length of each contract to be at the discretion of the Chief Executive. With increased mobility, temporary contract officers are filling more short-term NTPS positions. The current restrictions of Chief Executives only being able to approved a limited number of extension prior to having to seek the Commissioner's approval is time consuming and does not provide the required flexibility to manage an increasingly mobile workforce.

- A review of the study assistance scheme, in particular the criteria for level of support and linking this scheme to identified skilled shortages within the Northern Territory could add value to the availability of skilled workers.

There is an issue around NTPS remuneration rates not being competitive with private sector in certain areas e.g. Information Technology, Town Planners, Engineers. Alternatively there is an issue around NTPS remunerations for certain roles, in particular base grade administration roles being in excess of the wages that private sector organisations are able to pay, in particular small to medium enterprises. It would be beneficial if the Job Evaluation System process was reviewed and consideration given to current market rates as part of that process.

There is still inequity in the classification of like roles across agencies and potential classification creep. Again this particularly occurs within the administrative support area. It would be worth investigating like positions across agencies and develop a consistent/generic approach to the evaluation of duties. This approach could be used to expand on the current Entry Level Recruitment model and include the recruitment of a pool of suitable qualified applicants at other levels for Agencies to tap into. This approach is used in other jurisdictions and is supportive of the shift towards more generic job descriptions.

Secondment conditions should support greater exchange between the public and private sectors. Of particular benefit would be the secondment of NTPS employees to Indigenous organisations as part of their development and easy secondments of Indigenous organisation employees into the NTPS.

Use of Entitlements

In the current economic environment there is and will continue to be additional stress on resources requiring managers and staff to do more with less. An objective of the review should also include additional flexibility in the use of entitlements and make the process as easy as possible to administer. Workloads are already substantial and every additional process adds pressure on employee's ability to meet agency objectives. The following should be considered:

- Extend the use of personal leave credits for family care purposes;
- Once Long Service Leave credits are accrued no restriction to be placed on the periods in which employees can utilise the credit.
- By Law 16 Special Leave Without Pay should make reference to flexible work practices e.g. career breaks, carer responsibilities. An additional requirement needs to be added enabling Agencies to approve periods of leave without pay in excess of 12 months with the provision that the employee is unattached from their position to enable permanent filling.

- The current arrangement for purchasing additional recreation leave is impractical. The Commonwealth model enables employees to select each year how many additional weeks they wish to purchase and this is deducted as a percentage of the total period from their pay each fortnight. Upfront payment is not possible for many employees and utilising all available leave credits is not practical for all circumstances eg parents wishing to access additional leave over school holidays.
- There are times it is not practical for employees to utilise all existing leave entitlements prior to proceeding on leave without pay e.g. for the purposes of secondments where there is a requirement for an immediate start date.
- Periods of paid and unpaid maternity leave to be retitled parental leave and allow the period of leave to be shared between parents where both are NTPS employees.

Recruitment and Selection

With the rate of annual staff turnover within DBE at February 2009 reaching 41% and Whole of Government turnover reaching 30%, consideration needs to be given as to where efficiencies can be gained in the recruitment process.

There would be benefit in considering the following:

- In many work units within DBE the key difference between classification levels is the depth of experience required and supervisory responsibilities. Succession occurs with existing staff being successful when applying for supervisory roles leaving their nominal position vacant, resulting in the need for another selection process. There have been several instances where unsuccessful applicants for the senior position would like to be considered for the now vacant position. DBE would like to have the ability to offer applicants the consequential vacancy where they have demonstrated the relevant skills, knowledge and experience. This would represent a saving in terms of manager's time and ensure that positions are not left vacant for extended periods while they are being filled. There is a benefit to applicants in that one application can lead to multiple opportunities and supports the notion of potential for future development.
- If the direction of the Promotion Appeals and Grievance Board is for a position to be re advertised there is no follow up process whereby the agency is required to submit the revised selection strategy/panel composition prior to recruitment proceeding. There is a risk that another flawed process could occur and would not be detected unless there was a subsequent appeal.
- Greater use of section 30 (1) (b) direct promotions without advertising for staff who have been on long term higher duties in a role.

There is considerable mobility within the Public Sector creating an environment where positions can be back filled for 12 months + while other employees are on long term leave or acting in other positions. The Mobility Act is promoting the increased use of these provisions therefore this situation will be ongoing. Where an Agency is satisfied with the performance of the person on long term higher duties who has been performing well in the role, it is costly and time consuming to advertise the position when it will be extremely difficult for other candidates to be competitive.

- Allowing access to the suitable pool of applicants across Agencies where the required skills, knowledge, experience and qualifications aligns with the requirements of other positions for temporary and permanent filling. This will reduce the time and cost of recruitment and increase the number of employees applying for positions as one application can lead to multiple opportunities within the wider sector.
- There should not be automatic confirmations of employees who have not undertaken probation reviews. This will motivate the employee and employers to ensure the process is followed and documented. Probation can only be confirmed by the agency that owns the nominal position.
- The current practices of employees acting in positions for extended periods of time without permanent filling causes a significant disruption to the workplace in terms of staff moral and the ability of the agency to provide services. There needs to be a mechanism to nominally vacate positions where the person has been out of the position for over 12 months. In these circumstances agencies need the ability to place employees in a supernumerary position (without their consent which is currently required) to enable permanent filling of their nominal position.

Performance Management/Discipline/Inability/Medical Incapacity

Performance Management

Agencies are required to make annual efficiencies in line with budget allocation and to find internal cost saving measures to fund essential projects. It is imperative that staff have the skills, knowledge and experience to perform their roles and that performance is at an acceptable standard.

There is a general consensus that many current rules favour the employee or are too ambiguous or in practice complex to apply effectively. There needs to be greater onus placed on the employee to be aware of what is acceptable behaviour/level of performance and have the consequences clearly outlined. This may mean the Code of Conduct becomes a lengthier document which would be appropriate.

DBE would like to see a clear process for 'case reviews' obtaining the benefit of an impartial, suitably qualified opinion of proposed action and if applicable

the suggestion of an alternative approach. This role may lie with OCPE or Department of Justice.

While the processes outlined in the Employment Instructions appears straight forward this appears to never be the case in practice. It would be useful to explore this particular area of the Act through workshopping case studies with agencies to map the process and identify where the blockages are and where process improvements can be made.

Consideration should also be given to the applicability of the new fair work Australian law and whether the NT needs a different set of rules. DBE would be happy to undertake further research in this area and be apart of future discussions.

Breaches of Discipline

In many cases the outcome of a significant breach of discipline is a formal caution which seems lenient. Management in this area is difficult as there are many interpretations of the degree of unsuitable behaviour and the appropriate penalty for breaches. DBE identifies in this section a range of breaches that if proven should lead to the termination of the employees employment.

The code of conduct needs to be revised to be more specific in terms of appropriate consequences for particular behaviour. DBE believes that there are a range of behaviours for which if proven, an appropriate outcome is termination of employment, they are as follows:

- Physically assaults another employee/s or client/s;
- Accesses and/or distributes pornographic or other inappropriate material;
- Uses their position to commit fraudulent activity;
- Continually disobeys lawful instructions;
- Continually misuses Government resources;
- Continually behaves in an inappropriate manner to another employee/client or contractor;
- Is found to have bullied/harassed another employee/s or client/s;
- Uses information to their own or others advantage;
- Refuses to seek appropriate medical treatment as recommended by an approved medical officer to enable them to perform their duties; and
- Has a pattern of inappropriate behaviour.

For the purpose of the above the terms 'continually' and 'pattern of behaviour' is demonstrated if this occurs two or more occasions throughout the course of their employment.

While this approach may seem severe, consideration needs to be given to the majority of employees in the workplace making a positive contribution and following Code of Conduct principles. The negative impact of seeing

employees committing the above offences cannot be under estimated. This would send a clear message that inappropriate behaviour is not tolerated and gives managers greater scope for effectively managing employee behaviour. It will raise the professionalism of the NTPS as there is a zero tolerance policy to poor performance, inability and discipline issues. This can also contribute to a culture change of increased productivity, improved client service, improved attraction and retention, reduction in other claims such as workers compensation and grievances.

Inability

There needs to be a clear delineation between processes e.g. Inability and Medical Incapacity. If medical Incapacity only applies to employees who are deemed 'totally and permanently incapacitated' e.g. unable to undertake any role within the NTPS ever again, this would apply in theory to very few cases. More guidance around managing employees with medical issues is required, there appears to be a gap in the process between Inability and Medical Incapacity. Where an employee refuses treatment options and the agency can demonstrate they have sought these options, with no improvement in performance, it needs to be more clearly stated that an employee can then be terminated despite the underlying medical condition due to non compliance with treatment.

The negative affect on their manager, supervisor and co-workers cannot be understated. While the focus is on the employee being managed under Natural Justice Provisions more consideration could be given to other employees within the work area and the detrimental effect on them.

Medical Incapacity

DBE is aware of several cases where employees have been terminally ill and the medical incapacity process has proven so lengthy that they have died during the process or the agency has sought additional remuneration through redundancy payments.

DBE accepts that much of the delay in this process is with the employee's superannuation scheme. However a method to fast track an employee to be referred for assessment by an AMO who through consultation with the employee's GP can concur that they person is suffering from a terminal illness and no further assessment by the NTPS is required would expedite this process.

Sharing Information

There needs to be a provision in the Act to cover disclosure of information about an employee between Agencies for the purposes of managing an employee. This would seem appropriate in the "one employer" model.

Abandonment of Employment

Changes to abandonment of employment provision to tighten timeframes are also sought. The current process involves the employee having to be absent from the workplace for a month before the agency can terminate employment. Why is the onus on the employer to try and make contact with an employee not attending the workplace when the responsibility should be with the employee? A recommended change is if an employee is absent from duty without permission for a period of 14 days, their employment in the Public Sector will be terminated. When an employee commences with the Public Sector the Code of Conduct will clearly outline what is required of employees.

Investigation Process

Timeframe

Currently there is a 14 day timeframe attached to an employee responding to a breach or claim of inability from the CE and a 14 day timeframe attached to when a CE is required to advise an employee of a decision at the conclusion of an investigation. DBE would like to see a timeframe attributed to the investigation process, as without one they can take several months. Considering an agency should always be keeping detailed records of such situations it is not reasonable that an investigation should take a considerable amount of time. This is often due to agency contracting an external consultant to undertake the process due to a lack of available skilled staff to undertake the investigation. The stress of an ongoing investigation on all parties is detrimental to the workplace, the employee's health and decreases chances of an appropriate outcome being reached. DBE would like to see a timeframe of one month allocated to the investigative process.

Skilled Investigation Officers

Consideration should be given to the development of a panel contract for consultants to undertake such investigations with timeframe provisions being included. Alternatively, efforts must be made to train existing staff to work across agencies as was previously the practice.

The use of external contractors would seem to be a preferable approach due to their impartiality and the lack of suitable skilled staff with available time. A third option could be a pool of employees whose role it is solely to undertake investigations.

Extended Sick Leave

By Law 7 Sick leave lacks direction in terms of "employees not being allowed to be on sick leave for longer than 52 weeks paid or 78 weeks unpaid", it does not outline the next course of action should the person still be sick.