

**CPSU (PSU Group) Submission:**

**Northern Territory Public Sector**

**Review of the Public Sector  
Employment and Management  
Act (PSEMA)**

**March 2009**

## ***The CPSU (PSU Group) Submission to:***

# **Northern Territory Public Sector – PSEMA Review**

The Community and Public Sector Union (CPSU) is an active and progressive union committed to the promotion of a modern efficient and responsive public sector that delivers quality services and quality jobs. We represent around 60,000 members in the Australian Public Service (APS), ACT Public Service, NT Public Service, ABC and the CSIRO. We also have members in Telstra, commercial television and the telecommunications industry.

### **Introduction**

The Community and Public Sector Union (CPSU) is a major union representing employees engaged under the *Public Sector Employment and Management Act (PSEMA)*.

The CPSU welcomes this Review and in preparing this submission asked members for their views on the PSEMA. Their opinions, concerns and suggestions are included in this submission which focuses on the terms of reference of direct relevance to them.

### **Key Issues**

#### **1. Preliminary**

The CPSU welcomes recent changes to the merit principle to include ‘diversity that a person from an EEO target group brings to the workplace’ in an attempt to make consideration to target groups standard practice.

#### **2. Administration**

The current PSEMA provides an opportunity for the Minister to have limited control over the direction of the public sector whilst maintaining a hands-off approach to the management of employees. The exceptions to the direction from the Minister do not allow Ministers to have influence in crucial decisions. This model of public sector governance should remain given the importance for Ministers not to have direct influence in the appointment, promotion, terms and conditions, designation, duties, inability, medical incapacity or disciplinary action of any public sector employee.

#### **3. Commissioner for Public Employment**

The powers that can be delegated to any person by the Commissioner are provided by section 11. These are currently too broad to ensure transparency. Whilst it has not been common that the CPE delegates functions other than those which allow prompt and efficient management of issues such as discipline or redeployment, it does allow for the Commissioner to delegate powers that may not be appropriate to delegate in certain circumstances. For example, in disciplinary matters, there is no appeal mechanism for the appointment of investigators. Whilst the CPSU has confidence in the CPE appointing qualified people, members have often commented on the appointed investigator. If the member feels that there may be bias shown in an investigation or that confidentiality may be compromised, there is no mechanism for the member or the Union to formally raise concerns about the appointment.

A question also arises regarding the CPE's ability to delegate the function of employer to a third party (ie not necessarily an NTPS employee). For example a recruitment agency may be engaged to employ staff who effectively undertake public sector work. These employees may not be paid at the rate that public sector employees are paid and also may not be subject to any of provisions of the Act that require certain things of directly employed public sector staff.

The CPSU is alarmed at suggestions the NT public service should be divided up into its composite agencies and be fractured into competing agencies. The discredited and ideological approach of the Howard Government in fracturing the Commonwealth public service into 125 different competing agencies has resulted vastly different pay outcomes in different agencies. Pay equity has been the biggest loser, not to mention the waste of government resources in each agency having to bargain with its individual employees for an enterprise agreement.

The CPSU's *Far from Equal Report* contained an analysis of APS agencies that fell within the bottom ten of all agencies in terms of pay. The proportion of women employed in these lowest paying agencies was also considered (Table 1).

**Table 1: Agencies in the Bottom Ten (any grade)**

Agencies in the Bottom Ten (any grade)	Proportion of Employees who are Women	Total Employees
Australian Centre for International Agricultural Research (ACIAR)	79%	52
Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)	66%	114
Australian Institute of Family Studies	80%	59
Australian Public Service Commission	72%	250
Australian War Memorial	52%	293
Defence Housing Australia	74%	699
Department of Education, Science and Training	63%	2470
Geoscience Australia	28%	682
Human Rights and Equal Opportunity Commission	72%	116
Torres Strait Regional Authority	68%	76
Royal Australian Mint	39%	181
Australian Film Commission – Including Screensound	57%	244
Agriculture, Fisheries and Forestry	43%	4951
National Library of Australia	71%	521
Department of Families, Housing, Community Services and Indigenous Affairs (FACSIA)	67%	3099

Source: CPSU *Far from Equal Report*, July 2008

The *Far from Equal* analysis found that some agencies fell within the bottom ten for only one grade. For example, the Australian Public Service Commission, pays at or just below the average for most grades. At APS 3 level, where according to the APSSB 07 it has 8 employees, all of whom are women, it is the third lowest paying agency. Perhaps the agency which best demonstrates the propensity of the current bargaining arrangements to have less favourable outcomes for women in small agencies is the Defence Housing Authority. It employs around 699 employees of whom 68 per cent are women. The DHA was among the lowest paying agencies in four out of six grades in our study. This is in stark contrast to the Department of Defence proper, which has a relatively large number of female employees (8185) but they only make up 38.7 per cent of the 21,177 strong civilian Defence workforce. The Department is in the top quartile for most pay grades. Employees of DHA perform a range of functions for Defence Force personnel which would be similar to, or of equivalent work value to work performed in the Department, yet there is \$5,000 pay difference.

### Detailed analysis of APS pay rates

Building on the findings of the *Far from Equal Report*, a detailed analysis of agencies by classification level was undertaken to ascertain whether women employed at particular APS levels

were more or less likely to be paid below the average pay rate<sup>1</sup> at each level from APS 3 to APS 6<sup>2</sup>. The findings are summarised below.

### **APS 3**

The average rate of pay at APS 3 level is \$49, 631. Chart 1 shows that of the forty agencies that pay below the average at the APS 3 classification, just six have a workforce that is comprised of less than 50 per cent women. The remaining 34 agencies have a workforce that is more than 50 per cent women.

Of these 34 agencies, 7 have a workforce density of 50 per cent to 60 per cent women, 18 have a density of between 60 and 70 per cent women employees and the remaining 9 agencies have a workforce that is greater than 70 per cent women. In other words, 27 out of the 40 agencies that pay below average at APS 3 have a workforce that is 60 per cent or more women.

**Chart 1: APS 3 Below Average Agencies**

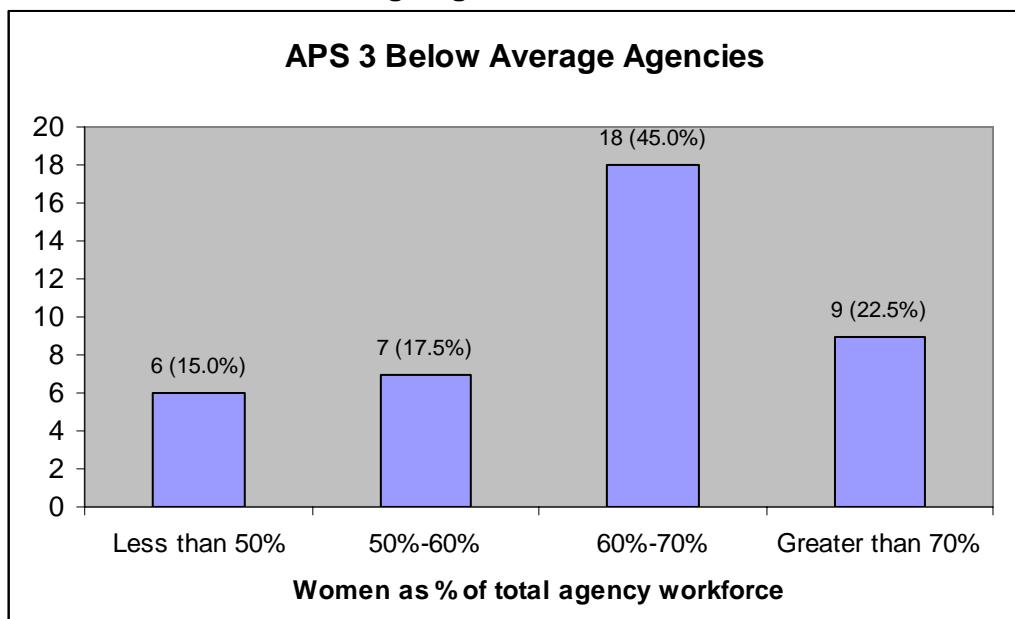


Table 2 lists the agencies that pay below the average at APS 3. While some agencies which pay below average have a high percentage of male employees, they generally employ very few people at the APS 3 level. The six agencies which pay below the average and have a workforce that is less than fifty per cent female are: Geoscience Australia, Agriculture, Fisheries and Forestry, Royal Australian Mint, National Capital Authority, Department of Transport & Regional Services and the Australian Crime Commission. However it must be noted that while Geoscience Australia has one of the lowest APS 3 pay rates, it does not employ anyone at that level. Further, the other six agencies did not employ many people at the APS 3 level. For example, the Royal Australian Mint employs two women out of the seven employed at that level; one of the three employed at Level 3 at the National Capital Authority is a woman; at Department of Transport & Regional Services, 16 of 29 employees at APS 3 are women and 46 of 62 employed at APS 3 at the Australian Crime Commission are women. The only exception was the Department of Agriculture, Fisheries and Forestry 258 of 832 people employed at APS 3 are women.

By way of contrast, Centrelink and Medicare employ a significant number of staff at the APS 3 level; the rate of pay for these staff is 3.1-3.5 per cent below the average for APS 3. Of the 2789 staff

<sup>1</sup> The average is calculated from the top increment at each APS level.

<sup>2</sup> Note that the data is current at 30 June 2008. The staffing figures are current at 30 June 2007 and were drawn from the APSC Statistical Bulletin.

employed by Centrelink at Level 3, 2101 or 75 per cent are women. Similarly of the 2238 Level 3 employees at Medicare, 2055 or 92 per cent are women.

**Table 2: APS 3 Level Agencies that pay below the average**

Agency Name	Deviation from Average %	% of the workforce that is female
Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)	-9.0%	70.0%
Geoscience Australia	-7.0%	28.1%
Australian War Memorial	-5.8%	51.0%
Australian Public Service Commission	-5.2%	72.9%
Defence Housing Australia	-5.2%	73.8%
Australian Centre for International Agricultural Research (ACIAR)	-4.9%	72.2%
Human Rights and Equal Opportunity Commission	-4.9%	67.5%
Torres Strait Regional Authority	-4.4%	60.5%
Department of Education, Science and Training	-4.4%	63.4%
Australian Institute of Family Studies	-4.1%	80.6%
Comcare	-4.0%	62.9%
Agriculture, Fisheries and Forestry	-4.0%	42.3%
Royal Australian Mint	-3.9%	40.3%
Australian Research Council	-3.6%	69.2%
Centrelink	-3.5%	69.0%
National Museum of Australia	-3.5%	65.7%
Medicare Australia	-3.1%	81.2%
National Capital Authority	-3.0%	46.1%
Family Court of Australia	-2.6%	66.3%
Department of Families, Housing, Community Services and Indigenous Affairs (FACSIA)	-2.5%	67.2%
National Library of Australia	-2.3%	71.9%
Department of Employment and Workplace Relations	-2.3%	56.5%
Office of the Federal Privacy Commissioner	-2.1%	56.3%
Australian National Maritime Museum	-2.1%	51.5%
Equal Opportunity for Women in the Workplace Agency	-2.0%	100.0%
Attorney-General's Department	-1.7%	62.6%
Department of the Prime Minister and Cabinet	-1.4%	64.5%
Department of Transport & Regional Services	-1.3%	44.5%
Australian Crime Commission	-1.3%	49.9%
Department of Communications, Information Technology and the Arts	-1.3%	60.1%
Administrative Appeals Tribunal	-1.3%	69.2%
Australian Film Commission - Including Soundsound	-1.0%	56.0%
Food Standards Australia New Zealand	-0.7%	67.3%
Federal Court of Australia	-0.7%	65.7%
Migration Review Tribunal & Refugee Review Tribunal	-0.7%	62.3%
Federal Magistrates Court	-0.6%	86.1%
Australian Securities and Investments Commission	-0.6%	58.2%
National Archives of Australia	-0.4%	58.6%
Australian Electoral Commission	-0.3%	60.2%
Office of the Commonwealth Ombudsman	-0.1%	62.1%

It is clear that significant pay inequity and the destruction of a career public service has resulted from the disintegration of a whole of service approach to bargaining in the APS. Currently the CPSU is negotiating with the Commonwealth to restore a central bargaining agreement which will go some way to remedy pay inequity and reinstate a public service where staff can easily move between agencies.

**Recommendation:** The Commissioner for Public Employment should remain the statutory employer for all workers in the NTPS.

Policies and procedures are not currently sector wide in the NTPS and CEOs argue that operational issues do not allow them to sign up for sector wide policies on things such as flexible working arrangements. As suggested in the PSEMA discussion paper, a constructive partnership between CEOs and the CPE is a necessity to develop sector wide approaches to common entitlements and any negotiations must include key stakeholders, including unions.

**Recommendation:** Consultation between the CPE and NTPS Unions is required before the delegation is issued. With the exception of Investigation Officers, no third party should be afforded powers under the Act.

The Commissioner for Public Employment must remain the statutory employer.

The Public Sector Consultative Council must be expanded to include CEOs, have a formal strategic plan and a basic reporting framework that provides all parties with an understanding of matters that relate to the broader public sector.

#### **4. Chief Executive Officers**

The Act adequately ensures a separation of powers between the CPE, CEOs and Ministers, whilst allowing CEOs to manage the day to day running of their agency. This must be maintained in any future iteration of the legislation.

#### **5. Appointment, Promotion, Transfer and Resignation**

The CPSU supports the existing structure and content of Part 5 of the Act. However, there have been concerns raised by CPSU members regarding the use of temporary employment contracts for a period of six months before the position is advertised as a permanent position. This gives little employment or financial security to the employee. The CPSU recommends that where a permanent position falls vacant and there is no redundancy or change in that position it must be filled following the procedure outlined in section 30 and not through a temporary or fixed term employment.

**Recommendation:** The use of temporary contracts be limited to those vacancies that are not actually vacant.

#### **6. Secondment and Redeployment**

There are sufficient provisions in the Act to ensure to that there is no abuse of power in regards to redeployment.

#### **7. Inability of employees to discharge duties**

Whilst it is uncommon for a CEO to use this power, the framework in the current legislation is such that if it were used, sufficient safeguards are in place to ensure employees are afforded natural justice.

## **8. Discipline**

The current disciplinary process outlined in sections 51 of the Act broadly achieve the aim of procedural fairness for dealing with suspected misconduct and breaches of discipline and should not be changed in any substantive fashion. However, it is poorly structured and difficult to follow for employees involved who may not be legally represented. Further, the CPSU has reservations about the discretion afforded to CEOs in deciding whether a formal investigation is required and the appropriate disciplinary action to be taken. There is no clear guidance to CEOs as to the appropriate disciplinary action that should punish different types of misconduct. In some circumstances this has led to inconsistency in the disciplinary action taken to various kinds of misconduct.

**Recommendation:** The disciplinary process outlined in sections 51 of the Act should be retained as part of the Act, and if changes be deemed necessary, they should be minor.

To improve the accessibility and readability of sections 51 of the Act, the CPSU recommends that section be re-ordered to clearly and plainly state the process to be followed. That re-ordering should not change the substantive provision as it now stands, but be a logical progression from the grounds for discipline based upon a CEO's reasonable suspicion through advice to employee and initial response, the circumstances when investigations do and do not need to be conducted then follow the existing framework through to what disciplinary actions can be taken.

**Recommendation:** Section 51 be re-ordered to make the disciplinary process followed in investigation clearer and more logical without changing any of the substantive provisions.

One concern of CPSU members was the perceived inconsistency in the disciplinary actions imposed upon different breaches of discipline. To achieve consistency in the disciplinary actions imposed upon employees adjudged to be guilty of misconduct, the Commission should promulgate an Employment Instruction and guideline regarding the appropriate disciplinary actions that should be imposed for particular examples of misconduct. Such guidelines should include the relevant consideration the CEO should weigh-up in imposing a disciplinary action, including having regard to the nature of the offence and any aggravating or mitigating factors to ensure consistency in the disciplinary action that is imposed.

**Recommendation:** The Commissioner issue an Employment Instruction to provide guidance as to the relevant considerations in a CEO imposing disciplinary action.

## **9. Appeals and Review**

The current system which allows people to appeal on selections is one that has improved over the last few years. The key complaint received by the CPSU is the inability to appeal against an outside appointment. An applicant currently has the right to appeal against another public servant, yet is not allowed to appeal against an outside appointment, even if the applicant feels that they were superior on merit.

**Recommendation:** In the interests of transparency, applicants are afforded the right to appeal any vacancy, regardless of the origin of the successful applicant.

The CPSU recommends no change to the process of promotion or discipline appeal boards. The existing arrangement strikes an appropriate balance between according an adequate review process to an aggrieved employee and the basic principles of an efficient public administration. A streamlining of promotion and discipline appeal boards with review of grievances could provide create accessibility and ease to employees. However, the significant difference between the Commissioner reviewing a decision of a CEO and a proper appeals process as provided for in ss56-57-58 of the Act. Further the maintenance of such internal review processes would prevent 'forum shopping' and external administrative review being the first choice among aggrieved persons.

**Recommendation:** No substantive change be made to Part 9 of the Act.

### **Inability or Disciplinary Appeals**

This process is formal and often framed in such a way that it discourages employees to take this avenue if they do not have representation. However a structured process still must exist outside of the grievance board.

### **By-Laws**

Each By-Law has been negotiated with the relevant Unions

## **10. Miscellaneous**

The Code of Conduct is important to all NT government employees. It is appropriate to modernise the Code and include it as a stand-alone section in the Act. That Code of Conduct should also have regard to prevention of harassment and misuse of government property or resources. The Review should consider the Code of Conduct outlined in the Commonwealth *Public Service Act* 1999 at section 13.

**Recommendation:** The Code of Conduct be updated and included as a section in the Act.

### **Conclusion:**

The CPSU supports this review of PSEMA and governance in the Northern Territory. The PSEMA has provided a solid basis for growth and diversity in the Northern Territory over recent years. The Act requires updating in some areas to become a more concise and comprehensive piece of legislation but does not require significant changes. Issues of discipline and appeals are adequately dealt with and the CPSU recommends minor changes to streamline the process. The CPSU supports changes to the merit principle and recommends the Code of Conduct be updated and incorporated within the Act.

## **Summary of Recommendations**

**Recommendation:** The Commissioner for Public Employment should remain the statutory employer for all workers in the NTPS.

**Recommendation:** Consultation between the CPE and NTPS Unions is required before the delegation is issued. With the exception of Investigation Officers, no third party should be afforded powers under the Act.

The Commissioner for Public Employment must remain the statutory employer.

The Public Sector Consultative Council must be expanded to include CEOs, have a formal strategic plan and a basic reporting framework that provides all parties with an understanding of matters that relate to the broader public sector.

**Recommendation:** The use of temporary contracts be limited to those vacancies that are not actually vacant.

**Recommendation:** The disciplinary process outlines in sections 51 of the Act should be retained as part of the Act, and if changes be deemed necessary, they should be minor.

**Recommendation:** Section 51 be re-ordered to make the disciplinary process followed in investigation clearer and more logical without changing any of the substantive provisions.

**Recommendation:** The Commissioner issue an Employment Instruction to provide guidance as to the relevant considerations in a CEO imposing disciplinary action.

**Recommendation:** In the interests of transparency, applicants are afforded the right to appeal any vacancy, regardless of the origin of the successful applicant.

**Recommendation:** No substantive change be made to Part 9 of the Act.

**Recommendation:** The Code of Conduct be updated and included as a section in the Act.