



Institute of Public
Administration Australia
Northern Territory Division

**Submission by the Committee of the Northern Territory
Division of the Institute of Public Administration Australia
(IPAA NT) to the Steering Group responsible for reviewing
the Northern Territory *Public Sector Employment and
Management Act***

Introduction

This submission on the *Public Sector Employment and Management Act* is made in the spirit of the IPAA NT's commitment to the promotion of good governance and excellence in public administration in and beyond the Northern Territory.

The submission addresses the role of the Act, as well as the roles which are delineated and allocated under it. These are important matters on which the Steering Group might want to reflect and make recommendations to the Government.

Members of the IPAA NT Committee would be happy to meet with the Steering Group to discuss these matters in more detail than that provided in this submission.

Role of the Act

The stated role of the Act is to provide “for the regulation of the Public Service of the Northern Territory and the human resource administration and management of other agencies established for government or public purposes, and for related purposes.”

This statement presents the Act quite clearly as a people-focused, regulatory instrument – as apposed to an instrument concerning financial resources or the functionally-oriented policy systems, processes and procedures adopted by individual agencies within government. The emphasis is firmly on ensuring that the human resources of the public sector are appropriately administered and managed.

This emphasis is legitimate and remains significant, but is incomplete. While human resources need to be administered and managed, their value also needs to be acknowledged, facilitated and enhanced. This requires that professionalism, capacity

and integrity be recognised and fostered, with the people who make up the public sector being explicitly appreciated as key contributors to its life, vitality and efficacy.

Accordingly, the role of the Act could valuably be recast along the following lines:

“An Act to govern the administration and management of human resources in the Public Service of the Northern Territory and other agencies established for government or public purposes, based on policies and practices that foster professionalism, commitment, integrity, diversity, accountability, and legitimacy.”

Roles Delineated and Allocated under the Act

The Act presently focuses on top officeholders to whom various delineated roles are allocated. The officeholders include the Minister responsible for the administration of the Act, the Commissioner for Public Employment, and the Chief Executive Officers of individual agencies. These officeholders are each allocated an array of roles, with some of the roles being specific only to one of them, and others being shared by two or more of them.

This approach to role delineation and allocation is based on the idea that officeholders have first to be identified, and only thereafter can roles be assigned clearly and systematically. The advantage of this approach is that in each case there is a direct link between officeholder and role, such that the responsibility for each role is immediately apparent. The drawback of the approach, however, is that the specific features and associated requirements of the roles tend to be obscured. They essentially get lost in the verbiage of the lists for each officeholder.

An alternative approach is to delineate the roles in turn, with each being allocated to the officeholder(s) by whom they are most appropriately performed. This approach similarly ensures the immediate identification of responsibility. But it has the added advantage of also overcoming the drawback mentioned above. Thus, by concentrating on the roles first, it is possible to define and distinguish them from one another and, in the process, to highlight their specific features and to indicate the required bases of their performance. Overall, there is merit in making the delineation of roles and their allocation more focused and potentially better suited to the strategic needs and demands of public sector governance and leadership.

The present roles, as addressed in the Act, can be clustered under four broad headings:

- People employment and advancement
- Structural determination
- Policy advice, development and planning
- Management, policy application and review

These headings and the roles under them are set out in the Annex below. Details are provided from the Act on who performs the roles and what the roles entail. Also included are pertinent comments on the specific features of the roles and the bases of their performance.

If this approach to role delineation and allocation were to be adopted, it would be possible to streamline the Act quite considerably without reducing its significance as an instrument under which responsibility is defined and assigned to ensure appropriate degrees of control, accountability and independence. The roles would be highlighted in broad terms, with responsibility for each of them being clearly allocated to the Minister, Commissioner and/or CEO. It would not be necessary to include the kind of detail which is presently provided in the Act. Any necessary supporting detail could be set out in regulations made under the Act.

Consistent with this approach, any adjustment to the Act should ideally include a recasting and extension of the CEO's responsibility to the minister(s) responsible for an agency. The present provision is that "A Chief Executive Officer is responsible to the appropriate minister for the performance of the Chief Executive Officer's functions under this Act in relation to his or her Agency and for its proper, efficient and economic administration" (section 23(1)). This provision could benefit from the inclusion of explicit reference to strategic governance and leadership, coupled with the professionalism, integrity and other aspects of the above-suggested rewording of the role of the Act.

Professionalism, integrity and related values are firmly underpinned by the adoption and application of the merit principle which should never be compromised through use and adaptation over time. The CEO and Commissioner alike have a special responsibility to protect and promote merit, independently of the Government. In discharging this responsibility, they have an essential role in ensuring that job descriptions and related selection criteria genuinely capture what particular work entails and what qualities potential appointees should possess and be able to draw on in undertaking the work. This is a key matter of governance and leadership. It is clearly dependent on, but extends well beyond, a legislatively-prescribed definition of merit, supported by policies and procedures to guide and inform individual decisions. It requires, fundamentally, an astute understanding of how work can be conceived and portrayed, and of the array of competencies and capacities which serve its effective performance.

Concluding comment

This submission acknowledges the central importance of people and the recognition of their qualities and attributes as vital contributors to the management of public affairs. It appreciates that the Act to-date has served the Government and community well as a sound legal framework for human resource management in the public sector. At the same time, it sees considerable merit in the role of the Act being strengthened, as well as in the roles prescribed under it being recast to foster their strategic and effective performance in accordance with the demands of responsible governance.

Annex

1. People employment and advancement

There are five roles. The roles are interrelated in their focus on people, but there is sense in separating them from one another for the reasons indicated or implied below.

(a) Employer

The Commissioner “on behalf of the Territory or an Agency”, with responsibility “to determine the respective designations and other terms and conditions (including the remuneration) of employment for employees” (sections 12 & 13(a)).

The Government is the principal, and the Commissioner the agent. As agent, the Commissioner is bound by the Government’s employment policies and resources.

(b) Recruiter, appointer, promoter, transferrer

The CEO within the bounds of “practices and procedures” determined by the Commissioner (sections 29(1) & 13(c)).

The Commissioner is the principal, and the CEO effectively the agent with the authority to take individual decisions.

The Commissioner and CEO must act independently of the Minister and other members of the Government.

(c) Merit protector and promoter

The Commissioner has “to promote, uphold and ensure adherence to the merit principle in the selection of persons as, and the promotion and transfer of, employees” (section 13(b)).

The CEO has “to devise and implement programs to ensure that employees have equal opportunities in relation to their employment in accordance with the merit principle” (section 24(j)).

The CEO “shall not appoint a person as an employee, or promote or transfer an employee, except in accordance with the merit principle . . .” (section 29(2)).

Again, the Commissioner and CEO must act independently of the Minister and other members of the Government.

(d) Performance assessor

The CEO has “to evaluate the performance of employees in the Agency”, with assistance being provided by the Commissioner (sections 24(f) & 13(h)).

Once more, the Commissioner and CEO must act independently of the Minister and other members of the Government.

(f) Capacity enhancer

The Commissioner has “to co-ordinate training, education and development programs in conjunction with Chief Executive Officers” (section 13(j)).

The CEO has “to assist employees in the Agency to undertake relevant training, education and development programs” (section 24(g)).

The Commissioner and CEO must act cooperatively with one another, but not necessarily independently of the Minister and other members of the Government. Indeed, the Minister, as well as the ministers responsible for individual agencies, could well have a contribution to make. This is consistent with the Government being the principal on behalf of which the Commissioner acts as the public sector employer – as outlined in (a) above.

2. Structural determination

There are two roles:

(a) Advisor on structures, and

(b) Devisor of structures.

These roles are interrelated, with the former potentially informing or conditioning the latter.

The Minister has “to advise other ministers on structural changes that should, in the opinion of the Minister, be made in order to improve the efficiency and effectiveness of Public Sector operations” (section 6(b)).

The CEO has “to devise organisational structures and arrangements for the Agency” (section 24(c)).

While having authority to devise structures, the CEO essentially acts within the bounds of the Minister’s advice to the minister(s) responsible for an agency, and also within the bounds of any requirements set by the responsible minister(s).

3. Policy advice, development and planning

There are three roles:

(a) Advisor on policies, practices and procedures,

(b) Developer/devisor of programs and initiatives, and

(c) Future planner.

These roles are interrelated, with some contrasting performance implications as noted below immediately after their allocation has been addressed.

The Minister has to:

- “advise other ministers on policies, practices and procedures that should be applied to any aspect of human resource management in the Public Sector generally or in Agencies for which they have ministerial responsibility” (section 6(a)),
- “cause to be carried out planning for the future management of the Public Sector” (section 6(c)), and
- “cause to be devised programs and initiatives for management improvement in the Public Sector and recommend their implementation to other ministers” (section 6(e)).

The Commissioner has to:

- “consult with and advise Chief Executive Officers in relation to the development and application of appropriate human resource practices and procedures in their Agencies” (section 13(d)),
- “advise the Minister on . . . public employment policies” (section 13(f)),
- “develop uniform systems, standards and procedures for the determination of designations and the allocation of designations to employees in their Agencies . . . ” (section 13(g)), and
- “consult with Chief Executive Officers on the development of appropriate standards and programs of occupational health and safety” (section 13(m)).

The CEO has to:

- “devise . . . financial and management plans for his or her Agency . . . ” (section 24(h)),
- “devise . . . programs to ensure that employees have equal opportunities in relation to their employment in accordance with the merit principle” (section 24(j)).

Most of the above matters depend on the Minister, the Commissioner and the CEO acting cooperatively with one another, as well as with the responsible minister(s). The significant exceptions are those matters which concern the recruitment, appointment, promotion, transferring, and performance of individuals. These are matters to which the merit principle applies and in respect of which the Commissioner and the CEO must act independently of the Minister and other members of the Government – as recorded in 1(b), (c) & (d) above.

4. Management, policy application and review

Again, there are three roles:

- (a) People and agency manager,**
- (b) Policy and program implementer, and**
- (c) Policy and practice reviewer (including monitor and investigator).**

These roles, too, are interrelated, again with some contrasting performance implications as noted below immediately after their allocation has been addressed.

The Minister has “to cause to be reviewed, on the Minister's own motion or at the request of another minister, the efficiency and effectiveness of any aspect of Public Sector operations” (section 6(d)).

The Commissioner has to:

- “consult with Chief Executive Officers in relation to the application of public employment policies in their Agencies” (section 13(e)),
- “monitor the implementation of . . . public employment policies” (section 13(f)),
- “assist Chief Executive Officers in the application of . . . systems, standards and procedures” (section 13(g)),
- “conduct or cause to be conducted inquiries and investigations into, and reviews of, the management practices of Agencies” (section 13(k)), and
- “assist as appropriate Chief Executive Officers in the performance of their functions relating to the management of their Agencies” (section 13(n)).

The CEO has to:

- “direct the employees employed by or in the Chief Executive Officer's Agency” (section 24(a)),
- “ensure the attainment by the Agency of any objectives set by the appropriate minister” (section 24(b)),
- “assign designations to employees in the Agency and to vary such designations in accordance with – (i) award requirements; and (ii) designation systems, standards and procedures determined by the Commissioner or, where no such systems, standards or procedures have been determined, with the approval of the Commissioner within the limits of the amount that has been allocated or is otherwise available for the remuneration of employees in the Agency” (section 24(d)),

- “assign duties to be performed by each employee in the Agency” (section 24(e)),
- “implement financial and management plans for his or her Agency and monitor the Agency's financial and administrative performance” (section 24(h)),
- “implement programs to ensure that employees have equal opportunities in relation to their employment in accordance with the merit principle” (section 24(j)),
- “ensure the application in his or her Agency of appropriate health and safety standards and programs” (section 24(k)).

The CEO “may divide the duties to be performed by employees in his or her Agency between such number of employees as the Chief Executive Officer considers necessary for the efficient operation of the Agency, but so that the total payable as remuneration of the Chief Executive Officer and employees employed or who could be employed in the Agency will not at any time exceed the limits of the amount available for that purpose” (section 26).

Again, most of the above matters depend on the Minister, the Commissioner and the CEO acting cooperatively with one another, as well as with the responsible minister(s). The significant exceptions are those matters which concern the recruitment, appointment, promotion, transferring of individuals. These are matters to which the merit principle applies and in respect of which the Commissioner and the CEO must act independently of the Minister and other members of the Government – as recorded in 1(b), (c) & (d) above.