

NT Branch
Level 1
38 Woods Street
Darwin NT 0800
GPO Box 32
Darwin NT 0801

Martine Tulloch
Branch President

Matthew Gardiner
Branch Secretary

Telephone: (08) 8924 4700
Facsimile: (08) 8981 1060
E-mail: nt@lhmu.org.au

ABN: 45 554 619 631



31 March 2009

Ken Simpson
Commissioner for Public Employment

Dear Ken

Re: REVIEW OF THE PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT (PSEMA).

The PSEMA has been the underpinning factor in the NTPS for many years but the time has come to change and adapt this ponderous Act and increase the direct responsibilities of Government Departments in line with other jurisdictions.

The use of the Office of the Commissioner of Public Employment as a negotiator on behalf of Departments when they are also the “employer” has served as a frustration when attempting to improve the quality of service provision to the public.

This frustration, whether by accident or design, has led to confusion within Departments over whom the responsibility falls to conditions of employment. This has led to high levels of employee dissatisfaction, disappointment and anger on the lack of responsibility, enthusiasm or accountability shown by Departments and the OCPE to legitimate employee concerns. There has been many times when issues have been raised by employees, or their representatives, directly to the Departments concerned only to be referred to the OCPE through the NT PSCC only to have the matter directed back to the Department concerned ad infinitum. It is hardly a wonder that NTPS employees feel frustrated at the lack of resolution of issues.

While other jurisdictions allow for much greater autonomy in the negotiations of agreements the current thought that a single employer model that is in current use in the NT has become cumbersome, not allowing for the flexibility required in an increasingly volatile employment market. There have been some movements in this area but the streamlining of the process would greatly improve the efficiency of the system and the ability to accurately and quickly respond to workplace needs and issues.

An example of this was recently highlighted by the recent acceptance of “market rate” for radiographers. A situation was recognized and highlighted to the then DHCS who acknowledged that there was an international shortage of radiographers and that if nothing was done that this would directly impact on the provision of services to the NT public.

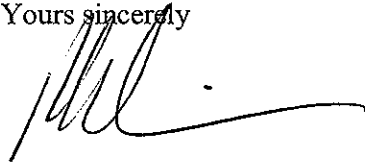
This issue was dismissed by the OCPE and DHCS during negotiations in 2006. The warning was again raised in 2007 as the turnover of Radiographers continued to be an issue and negotiations dragged on. The warning grew even greater in 2008 after the agreement was

signed off and foreseen staff shortages would dramatically affect the service, particularly at RDH.

By the mid of 2008 the 24 hour Radiological service could no longer be provided. It was at this time there was finally acknowledgement that there would be a requirement to apply a "market rate". This rate was finally enacted on the 15th January 2009. Three years after the initial were raised that if nothing was done that there would be problems with recruiting and retaining staff. It is examples like this that highlight the ponderous way that is the current response to difficult workforce issues.

We hope that this review process can address some of these issues and will form the long term basis of good Industrial Relations policy and Human Resource Management throughout the NT Government.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Gardiner', with a long horizontal flourish extending to the right.

Matthew Gardiner
Branch Secretary.



Overview of the Public Sector Employment and Management Act

Part 1 – Preliminary

Section 3 – Interpretation

The Union supports the proposed amendment to include ‘the diversity that a person from an EEO target group brings to the workplace’. This amendment will provide a standard practice within the NTPS, rather than being considered a special treatment of recognised EEO target groups.

Part 2 – Administration

Section 6 – Duties of the Minister

The Union is seeking Section 22 of the Act to read directly after this clause to provide clarity.

Part 3 – Commissioner for Public Employment

Section 11 – Delegation by Commissioner

Section 12 – Commissioner Deemed to be Employer

The Union supports the CPE to retain the responsibility for developing the NTPS employment relations policy framework.

Section 14 – Powers of the Commissioner

Sections 15 to 18

The Union supports the review of the 13 Employment Instructions in operation within the NTPS providing the Instructions continue to be clear and simple, ensuring that the major policies and principles are being observed.

Part 4 – Chief Executive Officers

Section 22 – Directions by Appropriate Minister

Section 28 – Reports by Chief Executive Officers

The Union seeks to review the reporting and auditing mechanisms to ensure Departmental accuracy.

Section 30 – Procedure for Filling Vacancies

The Union is seeking more information in relation to the commentary provided in the discussion paper. The Union is concerned if the current legislated requirement is removed it will place additional pressure on the Promotions Appeal Board and provide the right for certain agencies to appoint a person not suitable for the position based on personal bias. The Union strongly believes this will occur within the Correctional Services and the Northern Territory Fire and Rescue Service, where procedural fairness is regularly disregarded. The Union acknowledges the procedures for filling vacancies needs to be reviewed not removed.

Sections 31 to 34

The Union supports the continued inclusion of these clauses as to prevent Agencies from undermining the principles of employment in the Public Sector by use contracts that ultimately undermine existing wages and conditions.

Part 6 – Secondment and Redeployment

Division 1 – Secondment

Sections 39-40

The Union agrees these provisions are seldom used and may warrant their removal from the Act. The Union supports the redundancy of these provisions as members are not subject to a review/appeal under section 59 of the Act.

Division 2 – Redeployment and Redundancy

Sections 41- Declaration of Permanent Employees to be Potentially Surplus to Requirements.

The Union supports the retaining of this provision as a means of ensuring that there is a continued open communication when redundancies occur so that Public Sector employees so that the processes of redeployment occur in an open and accountable way.

Sections 42-43

The Union supports that the ability of retraining employees when redundancies are not available.

Part 7 – Inability of Employees to discharge duties

Section 44 – Inability of Employee to Discharge Duties

Section 45

Section 46

Section 47

Section 48

The Union supports to review these provisions. The discussion paper stated only two Inability Appeals were lodged in 2008. The Union acknowledges the process needs to be revisited but does not support the process to be abolished.

Part 8 – Discipline

Section 49 – Breaches of Discipline

Section 50 – Summary Dismissal

The Union does not support the possible outcome to abolish the need for ‘in house’ disciplinary review mechanisms. The current disciplinary review mechanisms provides the opportunity for all employees to address aggrieved employment matters without pursuing matters within the Australian Industrial Relations Commission or the soon to be established Fair Work Australia. The Union is aware this the Australian Public Service and some State jurisdictions have abolished ‘in house’ disciplinary review mechanisms and rely solely on the relevant Federal or State Industrial Relations legislation. The Union is urging the CEP not to consider this line of action as every worker should be entitled to an internal disciplinary process as well as the avenue provided within the Federal legislation. The CEP should not consider restricting aggrieved employees from ‘forum shopping [sic]’ as stated in the discussion paper. If the process for dealing with discipline matters within the NTPS are abolished this will provide further anxiety and duress to members as they have to pursue the matter through Fair Work Australia. For non members of a Union this may place them at a financial disadvantage as they have to employ or seek legal advice in regards to representation. By allowing the abolishment of the disciplinary review mechanisms, further

strain will be placed on the OCPE or relevant IR agency. Lodging disputes and unfair dismissals through the AIRC or the soon to be established Fair Work Australia is also complex and time consuming – concerns the CEP contributes to the processes for dealing with discipline matters within the NTPS.

There is also concern if the NTPS disciplinary review mechanisms are abolished there is no other legislative or effective avenue for members to find recourse?

The discussion paper provided the following examples of s59 grievances for 2007 to 2008.

- Selection process
- Application of procedures and policies
- Bullying and harassment
- Application of conditions of service
- Management action or decision
- Personal conflicts within the workplace
- Termination of probationary employment

As you are aware the AIRC does have the powers or jurisdiction to hear some of the above matters:

- Selection process
- Bullying and harassment
- Personal conflicts within the workplace
- Termination of probationary employment – unless the matter is unlawful

Application of procedures and policies can only be heard by the AIRC if the matter is a breach of the Award or the related Workplace Agreement.

Bullying and harassment is a breach of the Workplace Health and Safety Act 2007 or the Anti Discrimination Act if based on an eligible attribute and due to inactions/ignorance of employers, insurers and NTWorkSafe to address this matter, the only avenue for a target of bullying and harassment within the workplace is the Work Health Court or the Anti Discrimination Commission. Both of these avenues provide substantial costs for an employee.

Though the Union is against the abolishment of the disciplinary review mechanisms, the Union would support a review of the current procedures.

Part 9 – Appeals and Review

Section 55-56 Promotion Appeals/Promotion Appeal Boards

The Union supports the possibility of integrating and streamlining the Promotions Appeal/Promotion Appeal Boards review process. The Union does not support the abolishment of this view process.

Section 57-58 Inability or Disciplinary Appeals/Procedure of Appeals

Though the numbers of Inability and Disciplinary Appeals was 5 for the 2007-2008 reporting period, the Union does not support the abolishment of appeals of this nature. In relation to inability appeals the Federal industrial tribunal does not have the appropriate jurisdiction to hear these matters as suggested by the discussion paper. Without the inability appeals process, members will not have an avenue afforded to them without seeking the assistance of the common law courts.

Section 59- Review of Grievances

Please see comments provided for Section 49 and 50

Part 10 – Miscellaneous

Section 60 – By-Laws

The Union supports the inclusion of the ability to amend by-laws as operational demands change. The process of how this is done should be revisited as on many occasions' demands on employees have changed and this has been highlighted through both the Department involved and the employees but the process to address these issues has taken an inordinate amount of time to address the issues.

Section 61 – Work Outside Employment

Section 62 – Work on Public Holidays

The provisions for Work Outside Employment are considered at times, very restrictive. The Union acknowledges the theory behind the application due to conflict of interest, but is seeking for the application process to be reviewed. As you are aware many members are in financial hardship and need to be provided the flexibility to work outside their primary employment to make ends meet.

Section 64 – Public Sector Consultative Council

The continued inclusion of the PSCC is essential to continued relationships between Public Sector Unions and the Employer. The relationship between Governments as the Employer, regardless of political persuasion, should remain close and the PSCC should remain as a tool in this relationship.

However the relationship of the CPE as the negotiator and the PSCC as a representative body should be more clearly defined. During Agreement negotiations issues are regularly referred onto the PSCC, who then claim that it is a matter for the Agency, who then refers it to the OCPE as a matter for inclusion into negotiations, and this cycle continues ad nauseum.

Code of Conduct

These guidelines should be reviewed to ensure that they are relevant and up to date with changing employment practices.