

## **PROPOSAL TO REPLACE THE PROMOTIONS APPEAL BOARD WITH A 'MERIT SELECTION REVIEW BOARD' WITH JURISDICTION TO DETERMINE APPEALS OF ALL APPOINTMENTS, PROMOTIONS AND TRANSFERS WITHIN THE NTPS**

**(Submitted by Terry Lisson – Director Promotion Appeals & Grievance Reviews)**

The keystone of employment within the public sector is the merit principle which is consistently stated in PSEMA to apply to all appointments, promotions or transfers. (See relevant supporting legislation attached at the end of this submission)

The question arises then, as to why there is currently only an appeal right in the case of selections which are promotions, rather than for all selections within the NTPS?

It is submitted that there should be an appeal right for all selections within the NTPS (other than those for which specific exemptions are provided, for example, transfers pursuant to section 35). This submission proposes that such appeals would be made to a 'Merit Selection Review Board', which would take the place of the current Promotions Appeal Board. The only ground of appeal to the Merit Selection Review Board (MSRB) would be that the selection in question was inconsistent with the merit principle.

Under this proposal, **all** selections, including appointments, promotions and transfers, would be treated as provisional, subject to a 14 day appeal period, during which (except in the case of an employee already acting in a position on higher duties) the provisional applicant would not commence in the vacant position.

The MSRB would be constituted (as is the current Promotions Appeal Board) by a Chairperson appointed by the Commissioner, a person nominated by the CEO of the agency involved, and a person nominated by the prescribed employee organisation. (Agencies could perhaps consider nominating one person to be the 'standing' nominee to the MSRB, in order to achieve consistency and efficiency in process.)

The MSRB would have the power, upon receiving an appeal, to review the appointment, promotion or transfer, having regard to the definition of merit, and to then make one of the following determinations:

- disallow the appeal if the selection is consistent with the merit principle
- cancel the selection and direct the CEO concerned to either readvertise the vacancy or to continue assessment of the original applicants (either with the same selection panel or, by direction of the Board, with a new selection panel), in situations where the selection is not consistent with the merit principle
- **subject to the consent of the CEO**, direct the appointment, promotion or transfer of the appellant (or another of the original applicants) on the basis of superior merit

The Merit Selection Review Board would, as is the case now in relation to the Promotions Appeal Board, operate with "*as little formality and technicality, and with as much expedition, as the requirements of this Part and a proper consideration of the matter permit.*" In order to make the process work and to avoid unnecessary delays, the Board should be required under the provisions of the Act to finalise all appeals within 4 weeks of the date of receipt of the appeal. This would ensure that the maximum that any selection could be delayed would be 6 weeks (the 14 day appeal period plus 4 weeks if the MSRB required that long to review a matter). Ideally, using an informal and conciliatory process, the MSRB could often determine matters within the first week of receipt of the appeal

Selections are fundamental to the operation of the NTPS and underpin the workforce. However, currently there is dissatisfaction with selection processes and their outcomes, as evidenced by the fact that over 5% of promotions (which make up only a third of all selections), are appealed, and that the most common reason for s 59 grievances is complaints about selection. It is probably safe to assume that for every person who actually takes the step of appealing a promotion or lodging a grievance about a selection, there are many more who were dissatisfied with the result, but unwilling to take it further.

A recent survey of stakeholders involved with promotion appeal and grievance review processes showed a strong preference for retaining promotion appeals, and this view is supported by unions. Presumably a move to extend appeal rights to cover all selections in the NTPS, not just promotions, would be welcomed by employees and their unions. This must, of course, be balanced against agencies' need to fill positions in an efficient and timely manner. However, an appeal process that was required by statute to be completed within four weeks, would meet the needs of both groups, as well as being a clear and transparent demonstration of the fulfilling of the Commissioner's function as set out in s13(b) to "*promote, uphold and ensure adherence to the merit principle in the selection of persons as, and the promotion and transfer of, employees.*"

At present agencies and employees alike are frustrated by selection practices that have developed in the NTPS, and there is no question that selections processes are unreasonably onerous and time consuming. The view of recent Promotions Appeal Boards has been that in many cases the merit principle is compromised by inflexible selection processes that lose sight of the goal of finding the best person for the job by attempting to follow a rigid, formulistic approach to selection. A forward-thinking Merit Selection Review Board could do much by way of education and training to debunk the many recruitment myths that have led to this problem, and could, with the power of the Board behind it, ensure that merit selection processes were not only improved and strengthened, but also streamlined. A merit appeal board system statutorily required to complete its review function within four weeks could demonstrate very clearly, by concrete example, that fair, merit-based selection processes can be conducted within short time frames.

While creating an overall Merit Selection Review Board might create an initial leap in the number of merit selection appeals, the process, by providing education and transparent information about merit decisions, could lead in the longer term to a sharp reduction in the number of merit appeals, and a much higher level of satisfaction and understanding about selection processes amongst employees.

At present the only remedy available in relation to selections that are not promotions is section 59 review by the Commissioner. The Commissioner has unlimited powers in reviewing grievances, and could, in theory, upon completion of a review, order the cancellation of a selection and the appointment of the grievor. However, there are a number of reasons why this is unlikely to happen – the most important being that persons selected for positions that are not promotions are not told that their selection is provisional, or subject to overturning through a grievance process. Also, the fact is that it is simply not practical for the Commissioner alone, even with the help of grievance review managers, to investigate and then determine whether a selection was consistent with the merit principle.

The process suggested in this proposal – i.e. setting up a general Merit Selection Review Board to decide appeals lodged in relation to any appointments, promotion or transfers, and requiring such appeals to be determined within a maximum of four weeks – would ensure that the merit principle could be effectively enforced in relation to all selections, not just promotions as is now the case.

## Relevant Sections of the Merit Selection Guide, PSEMA and Regulations

- Introduction to the Merit Selection Guide:

*A fundamental tenet of human resource management, upon which service in the Northern Territory Public Sector is based, is the merit principle.*

*In its broadest sense, merit based selection is central to apolitical Public Sector accountability in that it ensures that employees providing services to the Territory Community have the appropriate knowledge, skills and levels of responsibility to do their jobs.*

*At any level within the workplace, the key to success is to have the person with the most appropriate knowledge and skills to do each job. If the selection is right it will have a positive impact across the whole unit, get it wrong and the overall performance of the unit, and agency, is at risk.*

- The Interpretation Section of PSEMA provides in subsection (2) that:

*A reference in this Act to the merit principle is a reference to the principle that **an appointment, promotion, or transfer** under this Act should be on the basis of, and only on the basis of, the capacity of the person to perform particular duties, having regard to the person's knowledge, skills, qualifications and experience and the potential for future development of the person in employment in the Public Sector.*

- Pursuant to section 13(b) of the Act, one of the Commissioner's functions is to "promote, uphold and ensure adherence to the merit principle in the **selection of persons as, and the promotion and transfer of, employees.**"
- Section 29(2) of the Act provides that:

*Subject to this Act, a Chief Executive Officer shall not **appoint a person as an employee, or promote or transfer an employee,** except in accordance with the merit principle and this Act.*

- Regulation 3 to PSEMA provides that:

*The following principles of human resource management shall be observed in the Public Sector:*

*(a) subject to the Act, **the selection of persons to fill vacancies in the Public Sector** shall be on the basis of merit;*

*(b) human resource management actions shall be taken in such a manner as to ensure the exclusion of nepotism, patronage, favouritism and unlawful and unjustified discrimination on any ground **in respect of all employees and persons seeking employment in the Public Sector;***

*(Emphasis has been added in the above quotations from PSEMA and its Regulations.)*