



Northern Territory Police, Fire and Emergency Services Submission to Review of the *Public Sector Employment and Management Act 1993*

Background

The Northern Territory Police Fire and Emergency Services (NTPFES) submission to the Review of *Public Sector Employment and Management (PSEM) Act* Steering Group focuses on the central question “**What is the purpose the Act in the 21st Century?**”. When the *PSEM Act* was proclaimed on 1 July 1993 it was viewed, in Australia, as being “leading edge” in terms of public administration. The *PSEM Act* provided the capacity for CEOs and managers within NT agencies to effectively conduct their business in accordance with the key principles of then contemporary public sector administration: it was principles based, allowed for devolution to CEOs and managers (the common rhetorical phrase for this was “let the managers manage”), it contained far less detailed prescription, and thus there was less emphasis on rules and their enforcement.

The accompanying Regulations further enshrined this contemporary approach to public administration by setting out in:

- Regulation 2 Principles of public administration and management;
- Regulation 3 Principles of human resource management; and
- Regulation 4 Principles of conduct (for all employees).

For most public sector employees covered by the *PSEM Act* the principal purpose of the *PSEM Act* is to govern or regulate their employment contract with their employer. Most would be unaware that their employer is the Commissioner for Public Employment (CPE), not their agency head. Indeed many managers and supervisors would hold similar views. Certainly this is a key component of the *PSEM Act* schema but it is by no means the only one which warrants attention.

NTPFES public sector employees covered by the *PSEM Act* make up only about 19% of its staff, yet many of these employees are managed by police members who are employed under the *Police Administration Act (PA Act)*. This adds another dimension to the employment related provisions of the *PSEM Act* application within NTPFES which is different from other Northern Territory Government agencies.

It is also noteworthy that the effectiveness of NTPFES is enhanced by, and indeed is dependent upon the use of networks of Fire Auxiliaries, Fire Volunteers and Emergency Service Volunteers whose services are essential in emergency situations. Without the ongoing involvement of the various categories of volunteers, NTPFES would not be able to effectively meet, in emergency situations, its vision statement to create and maintain: A Safe and Secure Northern Territory.

These volunteers need to be expressly recognised under the *PSEM Act*. The *NT Workplace Health and Safety Act 2007* expressly covers volunteers. It should be noted that a number of NTPFES volunteers are also employees of other NT agencies.

Public Sector Employment and Management Act – Whose interests does the legislation serve?

This is not simply a rhetorical question. It is fundamental to any legislative schema adopted by the NT Government to underpin the operation of its public sector. It goes to the nub of the Review Steering Group's work. There are a range of key stakeholders whose interests are served by the *PSEM Act*. In recognising these stakeholders and their interests, the NT Government must also be mindful that the stakeholders' interests may not be aligned. In some instances, their respective interests may be in conflict, or create ambiguities. The legislation must be able to balance competing and/or conflicting interests and to cope with ambiguity and the complexity of the contemporary community expectations of its public sector.

Community – Citizens of Northern Territory

The citizens of the Northern Territory are the principal stakeholders for whom the *PSEM Act* is enacted. Its purpose is to create the enabling legislative framework within which the elected government of the day is able to provide the community with effective public administration.

The expectations of the community are not homogenous – different segments will hold differing views about the role of the public sector and most will be related to their own particular circumstances.

Most citizens will be the end users of public services in some capacity. Others will be both end users and public sector employees. While some citizens will believe in small government and greater service provision by non-public sector bodies, others will hold contrary views on the role of government in our society and therefore of the size and shape of the public sector.

Government

The government of the day will have expectations of the public service based on the Westminster system of parliamentary democracy. The shared and common understanding of this system was well expressed by the current Australian Public Service Commissioner Lynelle Briggs in a speech (*Dealing with Misconduct: Is education more effective than force?* Delivered at the Australian Government Solicitor Employment Law Forum 29 November 2005, Canberra, p1):

“An important feature of the British system of civil service that we inherited is the clear rejection of patronage and the promotion of enduring principles of public service. These included principles of merit, apolitical neutrality, the provision of frank and fearless advice to the government of the day, accountability, impartiality and a focus on acting in the public interest.

But values and ethics, until 1999, had been implicit, not explicit. They were achieved through the application of specific rules, rather than through the understanding of concepts.

For just about all of the last century, centrally prescribed rules and controls – force – were considered sufficient to achieve high standards of conduct by Australian Public Service employees. But detailed rules, while they may provide a foundation for good process, do not necessarily ensure efficiency or compliance. Indeed detailed rules may provide the road map by which cunning players manipulate and step around those rules. Complicated central service-wide rules can also impose a transaction cost on the activities of government, at a time when our citizens expect us to work efficiently.”

The government of the day is custodian of this tradition. In enacting legislation to shape and run the public sector it will be mindful not to lose the essence of this tradition, but minded also, of the changed nature of its own expectations of the public sector and its employees. With this vision the government will also have its eye attuned to the needs of future governments.

How then should the *PSEM Act* be reshaped to make it contemporary and structured to fit its current and future purposes in the 21st Century? The central issue here is, is it fit for its purposes now? If it is, then minimal change is needed. If not, then a more radical overhaul is needed.

The answers to these questions depend on which parts of the current legislative schema are being examined and by whom.

Rhetoric versus reality?

The reality of the application of the *PSEM Act* and the associated subordinate legislation depends on where you are sitting when you make this judgement.

From a whole of government perspective the NT Government is presently fettered by the Commonwealth *Northern Territory (Self Government) Act 1978* because the power to deal with the employment relationship between employers and employees was retained by the Commonwealth. The retention of this constitutional power has a significant impact on the NT Government.

It means that any employment legislation enacted in the NT is subject to whatever the Commonwealth legislation is, and Commonwealth law prevails to the extent of any inconsistency. This constrains the capacity of the Northern Territory to independently regulate its own employment relationship with its employees. The Northern Territory does have the capacity under the *Northern Territory (Self Government) Act 1978* to make laws in respect of public employment. This is the enabling provision which is the basis for the *PSEM Act*.

This places the Northern Territory in the position where it has to be “careful” to ensure consistency with the prevailing legislative arrangements made pursuant to the Commonwealth Constitution. Under the soon to be proclaimed, *Fair Work Bill* (final shape of which is not yet known) there are unknown implications for NT agencies. Of concern to NTPFES are what the union coverage arrangements will be. NTPFES is concerned about what multiple union coverage, within workplaces, may mean to future NT wide agreement-making and for the day to day management of employee relations at both whole of government and at the agency level, let alone at an operational manager’s level.

However, NTPFES does not agree that this leads to, of necessity, identical or similar terms and conditions of employment being established for all government agencies and businesses. It has been utilised to justify uniformity when such uniformity has been consciously exercised to limit specificity in relation to agency circumstances. It has been used to justify consistency as the only way to deal with a “whole of government” issue. This has led to a “one size fits all” approach to dealing with “whole of government” issues. Even a cursory reading of the present collective agreements pertaining to the NT Public Sector shows aspects which are in fact quite divergent and tailored to the work group/or employees covered. There is a need for a far more

flexible interpretation than currently prevails about what really are “whole of government” matters.

There are other implications of the coverage by Commonwealth industrial relations law, which are now lost in history of the previous schema of industrial relations laws. These are tied up in pre-union amalgamation parties to the underpinning awards of the present day consent agreements. Often these coverage rules are not readily available nor understood by practitioners in the Office of the Commissioner for Public Employment (OCPE) or agencies. The rules are often only retained in the minds of “old” industrial relations practitioners.

An example of the currency of old rules is one pertaining to union coverage of certain occupations and associated training requirements. Recently these arrangements prevented NTPFES and the Department of Business and Employment (NT Fleet) from implementing aspects of the Physical and Technical Review arising from the NTPS 2004 – 2007 enterprise bargaining. The old rules only came to light when it became apparent that the capacity to do certain things arising from the Physical and Technical Review undertaken under current NT Public Sector consent agreements was not possible. In this instance it was motor mechanics and NTPFES was not able to move them from the Physical to Technical stream. The reason why this was not able to be done was basically because of outdated union coverage rules applying to specific occupational groupings. The result being it was not possible to implement the outcomes of this review in NTPFES and the projected time to fix the problem by OCPE is two years. In the meantime NTPFES is expected to manage using interim arrangements in an area of occupational shortage which has had an impact on delivery of backroom support to frontline police and firefighters.

This illustrates the added complexity related to not having a NT-specific employment power and being tied to national arrangements under Commonwealth industrial relations arrangements. The Commonwealth’s industrial relations legislative regime is complex and often outdated because of successive changes. Awards have become less relevant as collective agreement making has become the key way in which employee terms and conditions are set. Awards have become mainly the reference point or benchmark against which collective agreements are tested to ensure they do not disadvantage employees. Union coverage rules pertaining to awards have also evolved over time and remain in need of modification to reflect current union structures.

Public Sector Employment and Management Act – Minister, CPE/OCPE, CEOs

The *PSEM Act* under Part 2 – Administration, sets out the role of the responsible Minister and the manner in which Administrative Arrangements Orders are made to Gazette the creation of NT Agencies. It appears that these provisions remain relevant and appropriate from a whole of government perspective.

The duty of the responsible Minister as set out under the *PSEM Act* (Clause 6) appears, on its face, sensible and appropriate. However in the application of the duty of the responsible Minister through his/her own motion to other Ministers directly, or via the Commissioner for Public Employment (CPE) or that office (OCPE), by way of advice, policies and procedures related to human resource management, planning, structural change or development of programs or initiatives for management improvements, there lies the potential for blurring with the specific roles of agency Ministers and consequently the roles of the CPE and CEOs of agencies. This could lead to competing or conflicting expectations by different Ministers of CEOs.

From the perspective of NTPFES, this is a key matter to which the Review Steering Group should turn its attention. The *PA Act* establishes the NT Police Force with the Police Minister as the responsible Minister but with the Commissioner of Police responsible for operation of the *PA Act*. The Commissioner of Police is the head of the Police Force. In the operation of the *PSEM Act* as it applies to CEOs, there is the potential for conflict between the role of the

Commissioner of Police under the *PA Act* and directions given to the Commissioner of Police as a CEO of a NT Public Sector agency under the *PSEM Act* by the Minister for Public Employment. The NT Government has dealt with this matter by interpreting the Minister under the *PA Act* for employment purposes to be the Minister for Public Employment not the Police Minister. It is arguable that this is the case and certainly the issue requires further consideration. The current NT Government Wages Policy recognises this ambiguity by the way in which it sets out a different role for NTPFES/Commissioner of Police in the negotiation of consent agreements related to police than the role specified for other agencies whose employees are employed under the *PSEM Act*. Note, Police members are employed under the *PA Act* not under the *PSEM Act*.

Role of the Commissioner for Public Employment

The heart of these issues really relates to the respective roles of the CPE set out under Part 3, Clauses 12 and 13 and the role of CEOs set out under Part 4. Much of the NTPFES submission relates to the operation of the *PSEM Act* and how this is experienced from within the agency.

Is the role specified for the CPE still relevant or should it be modified in light of current NT Public Sector experience? The appropriateness of the roles of the CPE and CEOs is based in part not simply on the actual provisions, *per se*, but in their current translation in practice.

The CPE, under Clause 12 and Clause 13 (a), (b), (c) and (g), is the employer and OCPE plays the role as the “central agency” by taking a “whole of government” perspective. The absolute nature of these provisions does require some modification to allow delegation to CEOs of some or all of those powers and/or with other aspects of these powers capable of being shared with CPE/OCPE and CEOs and their agencies.

This would permit a significant cultural shift within the NT Public Sector. It would lead to effective sharing of these powers and the accountability for them. As a consequence there would be a greater degree of effective devolution to CEOs than is presently the case. Many CEOs are seeking this improved level of devolution to allow them to more effectively manage their agency. It is admitted that such sharing of these powers would entail risks. Any changes would need to be carefully worded and may prove difficult to implement. However the results in terms of improved effectiveness and accountability would make such a change worth the effort.

The nature of such changes would still need to preserve the central employer role for the CPE given the size of the NT Public Sector and the efficiencies to be garnered from NT Public Sector-wide application of some consent agreements, for example the *Northern Territory Public Sector Agreement 2008 – 2010*. Although this may not hold true for other occupation based agreements, for example, the *Northern Territory Public Sector Fire and Rescue Service Partnership Agreement 2007 – 2010*. NTPFES does not have a firm view on the matter but is aware some larger agencies would like greater devolution in the consent agreement processes with the government, through the CPE and OCPE, setting broad parameters for enterprise level bargaining or negotiation of aspects of their agreements.

These parameters would be similar to the current NT Government Wages Policy but shift the responsibility to the agency for specific occupational or agency-specific work groups. A move to devolved bargaining (only oversighted by CPE/OCPE) would take a period of time to be fully implemented given the history of collective agreement-making in the NT Public Sector. Also it will take time while agencies build their industrial relations capability. There is a lack of agency level capability presently as a result of the highly centralised responsibility for industrial negotiations which has rested historically with the CPE and OCPE.

What NTPFES is arguing for is amendment to the *PSEM Act* which allows for progressive, iterative devolution of authority to CEOs for employer and employment related functions which

presently rests with the CPE. This would enable a shift in the role of CPE/OCPE from rule maker and enforcer to facilitator and enabler.

The present arrangements of the *PSEM Act* and its associated subordinate legislation (excluding consents agreements which of necessity will need to sit outside the overarching legislation) urgently need to be consolidated, modernised and streamlined.

The present provisions envisage such an approach in respect of human resource management and application of employment policies and practices and providing advice to government in Clauses 13 (d), (e) and (f) and in Regulations 2, 3, and 4. It is the view of NTPFES that the *PSEM Act*, Regulations, and Employment Instructions should be integrated in one single piece of legislation. This piece of legislation should simply articulate the principles of good public sector management and contemporary people management.

The legislation should, through positive statements, spell out the core NT Public Sector values and provide clear descriptions of expected behaviours similar to the present Code of Conduct. Again these statements should, as far as practicable, be framed positively. This would enable greater understanding by government, the community and most importantly public sector employees of what is expected of them. This approach would contribute to creating an engaged public sector workforce capable of delivering improved performance and results. It would provide the impetus to and complement other reform and revitalisation initiatives of the NT Government.

For these reasons NTPFES sees no reason to retain Clause 16 – Employment Instructions, and also no need for a separate Code of Conduct as stipulated under this clause.

NTPFES notes that Clause 17 – Commissioner to Keep Record of Employees, predates the *Information Act 2003* and is now not relevant and neither is the current Employment Instruction 10 – Employee Records, which has not been aligned with the provisions of *the Information Act*, nor has it been repealed. NTPFES notes that Clause 13 (m) has been superseded by the *Workplace Health and Safety Act 2007* and also OCPE now views it as the role of NT WorkSafe to provide advice to CEOs on OH&S matters and the application of the new legislation by agencies. This power would therefore appear redundant. NT WorkSafe should be resourced to undertake this advisory role across the NT Public Sector.

Clause 13 (g) gives the CPE power to determine the system for evaluating work value of positions in the public sector. NTPFES welcomes the recent streamlining of the Job Evaluation System (JES) but notes one of the major barriers with the application of the JES relates to the lack of broad banding of Administrative Officer, Physical and Technical streams. The lack of flexibility gained via broad banding positions has significant implications for agencies. It requires more recruitment action as staff increase their skill sets and are locked in level by level promotions to gain recognition for these skills; it creates parallel work associated with any appeals and grievances; it contributes higher levels of churn in agencies and more generally across the NT Public Sector; it permits poaching by other agencies; and the level creep which it is designed to avoid is not avoided in practice. This is a prime example of creating unnecessary work. It is simply outdated and inefficient in its application in the NT Public Sector today. This one simple change could have huge efficiency gains across the NT Public Sector and is long overdue.

Consideration should be given to devolving CPE's power under Clause 15 to CEOs in the conduct of preliminary investigations. Presently, this clause does not have application to preliminary investigations. It would enable agencies to provide information to other agencies and provide a power to enable this to be handled between agencies, noting it provides the CEO with protection from breaching the privacy provisions of the *Information Act*. Noting that the discussion paper states this CPE power need not only be used to deal with serious matters (8).

In relation to the other provisions in Part 3, Clauses 8, 9, 10, 14 and 18 appear necessary and should be retained.

Part 4 – Chief Executive Officers

Since the *PSEM Act* came into force in 1993 other laws have been enacted which impact on CEOs of agencies and require their compliance in addition to the *PSEM Act* and the *Financial Management Act*. This has created a myriad of other compliance and governance arrangements for CEOs to consider to ensure accountability for the effective management of their agency. Provisions of some of these Acts overlap or supersede the current provisions of the *PSEM Act*.

Listed below are examples of legislation that CEOs and their HRM managers, and other managers, have to be aware of and take account of in the management of their people. This is most particularly relevant in the management of complex cases such as grievance, disciplinary, medical inability and incapacity cases:

- *Public Sector Employment and Management Act*
- *Fair Work Bill* and various *Workplace Relations Acts (Commonwealth)*
- *Information Act*
- *Public Interest Disclosure Act*
- *Anti-Discrimination Act* and related Commonwealth legislation, eg: HREOC, *Racial Discrimination Act* etc.
- *Workplace Health and Safety Act*
- *Workers Rehabilitation and Compensation Act*
- *Mobility Act*
- *Care and Protection of Children Act*.

One of difficulties facing agencies and employees alike is to know whether what one is reading is current in terms of applicability of provisions or arrangements governing the management of people. It is difficult to navigate around all of the materials available, to be confident of their currency and to apply contradictory or ambiguous provisions from various sources to ensure correct and useful advice is available to CEOs and managers. HR specialists have to be careful to ensure that advice is comprehensive and presently there is no consolidated source of advice. OCPE's website is in drastic need of an overhaul and needs to be made much more accessible and all old or outdated materials removed. OCPE and its information materials need to be easily accessible and authoritative. OCPE should be properly resourced to ensure it is able to undertake this key function.

The *PSEM Act* and associated subordinate legislation needs to be systematically examined in light of many other laws which add complexity to the governance arrangements for which CEOs are accountable and which interact with their responsibilities under the *PSEM Act*.

Consideration should be given to consequential and/or transitional amendments being made to the *PSEM Act* and its successor, and to other Acts, to ensure that it becomes and remains the sole authority as far as practicable for the management of people employed under it and for the smooth running of the NT Public Sector. With this principle in mind, it is important that subordinate legislation under the *PSEM Act* is kept to a minimum and that advisory or guidance materials are issued by CPE to assist CEOs to run their agencies. This advisory guidance material can more easily be kept up to date than regulations and other subordinate legislation.

The present provisions relating to CEOs as set out under Part 4 are basically sound bearing in mind the reservations outlined above.

What is it like on the ground for Agencies?

Agencies expend a disproportionate amount of energy, effort, time and resources in dealing with the application of principles or rules to the management of individual, often complex cases. It would be far preferable that these scarce, specialised resources and time be used to focus on strategic human resource management designed to improve leadership and management capability across the NT Public Sector. This would lead to increased organisational and employee wellbeing. Such a strategic focus, with the resultant improvements in public administration, would contribute also to the improvement in outcomes for NT Government and the citizens of the NT.

The principal issues involved in these cases relate to:

- Application of the Merit Principle
- Inability
- Incapacity
- Grievances
- Appeals
- Tenure
- Termination.

The cases relating to issues outlined above are often the subject of multiple “actions” by employees often simultaneously in a multiple fora. It is not unusual in particularly difficult cases for the individual employee to be utilising the *Information Act*, the *Workplace Health and Safety Act*, the *Workers Rehabilitation and Compensation Act*, the *Anti-Discrimination Act*, and the *PSEM Act* provisions. This makes it virtually impossible for line managers to deal with matters without expert HRM advice and often legal advice is also required. The various Acts require different information and responses from agencies. In addition they require a sophisticated understanding of the obligations on agencies arising from their provisions, and their management is resource-intensive and time-consuming.

The key question is: What can be done about this reality? This reality is one which confronts CEOs, HRM specialists and managers daily. In this daily work, OCPE is seen as the rule enforcer and not as an enabler or partner. OCPE is perceived to lack a service or client focus and capability, to be punitive and backward looking in terms of modern public sector administration and people management.

This translates into a perception that OCPE sees agencies as only being interested in getting around the “rules” and that only OCPE is able to recognise and maintain the “principles of public sector administration and human resource management” enshrined in the *PSEM Act* and its subordinate legislation. This is not the case, as agencies are fully aware of the implications of some of their requests to OCPE from a “whole of government” perspective and do not make requests lightly.

This attitude is coupled with a “one size fits all” conception of a “whole of government” perspective discussed above which results in the notion of “uniformity” being the only answer.

Thus it is the perception of NTPFES, and other agencies and their senior managers, in relation to OCPE’s handling of employment matters and grievances cases, that OCPE is not balanced. The view is that OCPE’s approach is skewed in favour of a “whole of government” perspective at the expense of agencies’ operational requirements; or in the handling of cases of individual grievances or appeals (of various types) skewed in favour of the individual or group of employees rather than balancing the interest of employees with that of the agency. That is, playing its legislated role as the “independent” umpire. NTPFES shares this view that OCPE’s approach is harking back to the days of centrally prescribed rules focussed on procedures and processes, not focussed on results to assist CEOs to effectively run their agencies. There appears to be the absence of an appropriate focus or balance on reciprocal rights and responsibilities of both the employer and the employee(s). This has led to a loss of credibility by

OCPE in recent years. If the balance were correct then there would be better outcomes. Outcomes which would be beneficial not just to agencies but just as importantly to affected individual employees and often their fellow workers.

While this loss in credibility is regrettable, it is primarily attitudinal, not just based in the provisions of the *PSEM Act* relating to these matters.

In relation to the specific provisions of the *PSEM Act*, NTPFES would offer the following comments.

Part 5 – Appointment, Promotion, Transfer and Resignation, relates to a number of key features of public sector employment. The issue of what is a public sector employee's tenure of employment warrants attention. It is the view of NTPFES that use of the term "permanent" to describe the nature of ongoing employment should be removed and new definitions, which describe the tenure or type of employment contract that an employee is employed under, should be incorporated into the *PSEM Act*. The word "permanent" is used to mean that employees have jobs for "life" – the concept is outmoded. It also contributes to perceptions by employees and managers alike that public 'servants' cannot lose their positions or be sacked. What tenure should cover is ongoing and non-going contracts of employment. Employment contracts could be defined as, for example, fixed term, temporary or ongoing.

In relation to appointment, it should be made far clearer to prospective employees that their appointment can be terminated either through not meeting requirements during their probation period or by lack of performance thereafter or for medical reasons. Indeed the term "appointment" ought not to be used but the term "employment" should be, with various categories being defined as discussed above.

Agencies need to pay greater attention to use of the probation period and if managers are not happy with an employee's performance, the probation period should be extended. Agencies need to be more proactive in this aspect of their responsibilities. It is often at this time that managers first become aware that an employee is not the right "fit" for their position. It is for this reason that NTPFES believes Section 32 should allow for longer periods of time for probation of up to two years. NTPFES also believes the terms used should be "termination of employment" rather than "terminate appointment" during the probation period. Such terminations should not be the subject of Grievance Review under the *PSEM Act*. NTPFES believes all terminations should be handled as necessary under the *Fair Work Bill* and the Fair Work Commission as unfair dismissals rather than being subject of separate quasi judicial review under the *PSEM Act* or its successor.

It is noteworthy that while there is provision under temporary contract provisions (Clause 34) to terminate contracts, such actions are also subject to Grievance Review under (Clause 59). This should not be the case.

In addition, Clause 34 (5) needs to be aligned to the practicalities which confront agencies such as short term external funding or transfer between agencies on short term basis often involving higher duties which necessitate multiple short term contracts. This clause is now outdated and harks back to the notion of most, if not all public sector positions being "permanent".

NTPFES recognises that it is not always feasible to separate an employee employed under the *PSEM Act* readily and in a manner that enables both the employee and the agency to move forward when the employment arrangement is not tenable for either party. For instance, when longstanding employees are not able to be retrained to meet new requirements of their position, or when an employee is not "fit for purpose" or other reasons, there should be the capacity for CEOs to enter into a mutually satisfactory separation, including financial settlement, which facilitates a smooth, dignified and speedier exit from the agency or the public sector. This would often prove to be a much more effective way to deal with complex and difficulty cases. Often such cases are dealt with under discipline, inability or incapacity provisions with associated

other avenues of redress such as those sometimes employed by the more entrenched employees.

The Merit Principle and its application to recruitment and selection processes is crucial to the effective operation of a politically neutral public sector, free from patronage and nepotism. NTPFES welcomes the inclusion of diversity as an element of merit. This will assist in making the public sector better mirror the community it serves. Guidance on balancing the various elements encompassed by this broader definition of merit will enable effective application of merit in practice. NTPFES has therefore welcomed some of the recent work done by OCPD with agencies on refining selection processes and questioning some of the outdated practices which had been perpetuated and turned into “rigid” rules to be enforced rather than being perceived as aids to assist in “merit based” selections.

However NTPFES believes that the current appeals for promotion processes (Clause 55) are unwieldy and if appeals are to be retained, the appeal should only be in relation to the process, not the outcome. This would permit guidance to agencies on better practice. If the outcome is manifestly inadequate then a streamlined Section 59 Grievance Review could apply but would not change the result. A survey and evaluation of a sample of selection processes would be preferable to any formal appeal of the process and could be incorporated into CPE’s State of the Service Report. This would match the intention of the appeals provision which is to ensure the application of the merit principle in promotions processes.

Clause 31, which relates to conditions for both appointment and for promotion and transfer, should be delegated to CEOs and not rest with the CPE. This could be done within clear delegated parameters if necessary.

Similarly the arrangements relating to disciplinary action, medical inability and medical incapacity case management, warrant serious review and substantial revision. In practice the latter two provisions are not relevant to agency circumstances in 2009 and trying to fit them to specific cases is almost impossible to do either simply or effectively. The task of then managing those cases through the procedural hurdles involved and with an eye to procedural fairness or “natural justice” makes successful conclusion of these matters vexed. Streamlining or aligning the provisions better with other subsequent laws as described above is a matter that also requires urgent review.

The *PSEM Act* is in the end really about leadership of people and it is critical in any reframing that the Review Steering Group bears in mind *Peter F. Drucker’s* assessment: **“Of all the decisions an executive makes, none is as important as the decisions about people, because they determine the performance capacity of the organization”**. NTPFES is hopeful that an outcome of the Review Steering Group’s work will be an engaged, empowered, more productive and well led NT Public Sector.

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