

**REVIEW OF THE PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT SUBORDINATE LEGISLATION**

<b>Parts</b>	<b>OCPE Recommendations</b>	<b>Comments</b>
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<b>PSEM Regulations</b>	<b>The Regulations will require amending to contain procedural matters removed from the Act.</b>	<b>The Regulations will require amending to contain procedural matters removed from the Act.</b>
<b>Part 1 - Preliminary</b>		
s1. Citation	<ul style="list-style-type: none"> <li>No change required</li> </ul>	
<b>Part 2 - General</b>		
s2. Principles of public administration and management	<ul style="list-style-type: none"> <li>Move to PSEMA otherwise no requirement for change. Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	<ul style="list-style-type: none"> <li>Other jurisdictions have similar principles which are contained in their Acts.</li> </ul>
s3. Principles of human resource management	<ul style="list-style-type: none"> <li>Move to PSEMA otherwise no requirement for change. Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	<ul style="list-style-type: none"> <li>Other jurisdictions have similar principles which are contained in their Acts.</li> </ul>
s4. Principles of conduct	<ul style="list-style-type: none"> <li>Move to PSEMA otherwise no requirement for change. Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	<ul style="list-style-type: none"> <li>Other jurisdictions have similar principles which are contained in their Acts.</li> </ul>
s5. Persons excluded from Act	<ul style="list-style-type: none"> <li>No requirement for change. Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s6. Prescribed particulars of employees	<ul style="list-style-type: none"> <li>Consequential amendments may be required following introduction of the <i>Fair Work Act</i>.</li> </ul>	
s7. Resignations	<ul style="list-style-type: none"> <li>No requirement for change. Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s8. Prescribed employee organisations		
<b>Part 3 - Appeal Boards</b>		
<b>Division 1 - Promotion Appeal Boards</b>	<ul style="list-style-type: none"> <li>Retain in Regs, but may require amendment if relevant sections in the PSEMA are amended.</li> </ul>	<ul style="list-style-type: none"> <li>If changes are made in PSEMA relating to appeals – promotion, inability and discipline then consequential amendments may be required.</li> </ul>
s9. Repealed	<ul style="list-style-type: none"> <li>Remove provision if efficacious. Seek legal advice.</li> </ul>	
s10. Procedure on appeal	<ul style="list-style-type: none"> <li>May require consequential amendments if PSEMA provisions are updated.</li> </ul>	<ul style="list-style-type: none"> <li>Should be contained in Regs, but may require amendment if relevant sections in the PSEMA are amended otherwise no requirement for change. Fair Work legislation will allow shorter notice periods.</li> </ul>
s11. Constitution of Appeal Boards	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s12. conduct of inquiries	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	

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<b>Division 2 - Inability and Disciplinary Appeal Boards</b>	<ul style="list-style-type: none"> <li>Should be contained in Regs, but may require amendment if relevant sections in the PSEMA are amended.</li> </ul>	<ul style="list-style-type: none"> <li>Consider limiting the range of penalties dealt with by Appeal Boards under Discipline to those listed under 51(10)(a)(v)-(vii) and 51(10(a)(i)-(iv) being dealt with as a review of grievance only.</li> </ul>
s13. Procedure on lodging an appeal	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s14. Witnesses	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s15. Evidence taken outside hearing	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s16. Copy documents to be furnished or inspected	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s17. Appellant's expenses	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s18. Witnesses expenses	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
<b>Division 3 - Miscellaneous</b>		
s19. Majority decisions	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s20. Protection of Chairperson and members	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
<b>Part 4 - Public Sector Consultative Council</b>		
s21. Definition	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s22. Public Sector Consultative Council	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s23. Deputy Chairperson	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s24. Powers of Deputy Chairperson	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s25. Meetings	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s26. Standing committees	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s27. Functions of Consultative Council	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing NTPS needs, current and future.</li> </ul>	
s28. Procedure	<ul style="list-style-type: none"> <li>Current provisions considered contemporary and meeting ongoing</li> </ul>	

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	NTPS needs, current and future.	
<b>Notes</b>	<ul style="list-style-type: none"> <li>No change required.</li> </ul>	
<b>Table of Amendments</b>	<ul style="list-style-type: none"> <li>No change required.</li> </ul>	
<b>Public Sector Employment and Management (Exemption) Regulations</b>	Seek legal advice as to continuing need for the existence of these Regulations.	May be able to be repealed.
<b>Public Sector Employment (Interim Arrangements) Act</b>	Seek legal advice as to continuing need for the existence of this Act.	May be required if provisions of the PSEMA are amended.
<b>Public Sector and Management (Transition and Savings) Act</b>	Seek legal advice as to continuing need for the existence of this Act.	May be required if PSEMA is updated to include Executive Contracts.

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<b>Subordinate Legislation</b>	<b>General Comments</b>	
<b>By-laws</b>	<ul style="list-style-type: none"> <li>• By-laws should be cross referenced with union collective agreements with the objective of updating those by-laws whose provisions are covered in all agreements.</li> <li>• By-laws should be reviewed to ensure clarity of administration.</li> <li>• The capacity to create by-laws should be retained and some matters are more appropriate in by-laws rather than agreements.</li> <li>• Some, but not necessarily all by-laws will continue to apply.</li> <li>• By-laws should be reviewed to ensure consistency with provisions of the <i>Workplace Relations Act</i> and its successor legislation, and in particular the National Employment Standards.</li> <li>• Retaining the conditions in the By-laws will remove the need for negotiations of workplace agreements having to contain matters already contained elsewhere.</li> </ul>	
<b>Determinations</b>	<ul style="list-style-type: none"> <li>• The Commissioner's power to issue determinations should be retained.</li> </ul>	
<b>Employment Instructions</b>	<b>Recommendation</b>	<b>Comments</b>
<b>Employment Instruction 1 Advertising, Selection, Appointment, Transfer and Promotion</b>	<ul style="list-style-type: none"> <li>• Review and amend EI to ensure consistency with changes resulting from issuing of PSIs and consequential changes which may arise from the Act, eg. types of employment, renewal of temporary employment.</li> <li>• Remove requirement to consult with unions over temporary employment.</li> <li>• Include information on casual employment</li> <li>• Include 'cross stream' advertising.</li> <li>• Amend to include advice about the level of salary on appointment, the level of salary on the re-negotiation of a contract and when salary is to be paid from on promotion, particularly if release is delayed.</li> <li>• Review and amend eligibility requirements to correspond with requirements from <i>Information Act</i>, <i>Workplace Relations Act (Fair</i></li> </ul>	

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	<p><i>Work Act)</i></p> <ul style="list-style-type: none"> <li>• Update references and reference materials.</li> <li>• Promotion Appeal Board provisions may require amendment if PSEMA is varied.</li> </ul>	
<p><b>Employment Instruction 2</b> <b>Probation</b></p>	<ul style="list-style-type: none"> <li>• Consequential amendments may be required as a result of any changes to the Act.</li> <li>• Inclusion of information relating to changes in employment circumstances which may arise during period of probation.</li> </ul>	<ul style="list-style-type: none"> <li>• Consider efficacy following changes to Act; and whether residue matters could be included in a 'guideline' like the Merit Selection Guide if no instructional matters remain for the EI.</li> </ul>
<p><b>Employment Instruction 3</b> <b>Natural Justice</b></p>	<ul style="list-style-type: none"> <li>• Review and amend if necessary.</li> </ul>	<ul style="list-style-type: none"> <li>• The currency of the wording in this employment instruction should be checked. Consider if more detail is required.</li> </ul>
<p><b>Employment Instruction 4</b> <b>Performance Management</b></p>	<ul style="list-style-type: none"> <li>• Amend to integrate the performance management process into other proceedings including inability, disciplinary and medical proceedings.</li> <li>• The distinction between this EI and other processes such as discipline and inability need to be made clearer.</li> <li>• Consider the use of performance management documentation for other processes given the EI clearly identifies the documentation as enabling feedback on individual performance against set objectives and is part of a totally integrated system of personnel management.</li> <li>• Amend reference materials to ensure contemporary.</li> </ul>	<ul style="list-style-type: none"> <li>• The current process is no longer contemporary or functional. Performance management is now well recognised and established as a tool to improve performance, assist employees in careers, and achieve agency outcomes. Performance management is also the cornerstone of identifying and addressing poor performance and as such, needs to be integrated with inability, disciplinary and medical proceedings.</li> </ul>
<p><b>Employment Instruction 5</b> <b>Medical Incapacity</b></p>	<ul style="list-style-type: none"> <li>• Consequential review and amendment will be required if changes are made to Act.</li> <li>• Amend to include provisions to deal with reduced capacity to perform duties as a result of medical incapacity, temporary or permanent.</li> <li>• Amend to clarify options available to the employer if the employer disagrees with a medical opinion.</li> <li>• Amend to clarify nexus with inability.</li> <li>• Amend and update references and reference materials as</li> </ul>	<ul style="list-style-type: none"> <li>• This employment instruction should be retained.</li> </ul>

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	<p>necessary.</p> <ul style="list-style-type: none"> <li>• Amend to include process for terminating employment following extended sick leave.</li> <li>• Consider whether this should be ‘framework based’. That is, state the broad requirements for the process and a fair hearing (including the right of reply, reasonable notice and impartial decision maker) and leave it to agencies to manage within this framework.</li> </ul>	
<p><b>Employment Instruction 6</b></p> <p><b>Inability to Discharge Duties</b></p>	<ul style="list-style-type: none"> <li>• Consequential review and amendment will be required if changes are made to Act.</li> <li>• Amend to integrate performance management into the inability process.</li> <li>• Clarify the link between this employment instruction and EI 5.</li> <li>• Consider whether this should be ‘framework based’. That is, state the broad requirements for the process and a fair hearing (including the right of reply, reasonable notice and impartial decision maker) and leave it to agencies to manage within this framework.</li> </ul>	
<p><b>Employment Instruction 7</b></p> <p><b>Discipline</b></p>	<ul style="list-style-type: none"> <li>• Consequential amendment will be required if changes to the Act occur.</li> <li>• Vary the period of suspension available to CEOs, from 3 months to 6 months.</li> <li>• Clarify the ability of the employee to access paid leave entitlements while on suspension and ability to work outside employment.</li> <li>• Amend to integrate performance management into the inability process.</li> <li>• Clarify the link between this employment instruction and EI 5.</li> <li>• Consider whether this should be ‘framework based’. That is, state the broad requirements for the process and a fair hearing (including the right of reply, reasonable notice and impartial decision maker) and leave it to agencies to manage within this framework.</li> </ul>	
<p><b>Employment Instruction 8</b></p>	<ul style="list-style-type: none"> <li>• Consequential amendment will be required if changes to the Act occur, particularly in relation to timeframes and matters that may be</li> </ul>	<ul style="list-style-type: none"> <li>• Amend clause 5 by deleting ‘an official instruction’ in the first bullet point and replacing it with ‘the instruction’. This should</li> </ul>

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<b>Management of Grievances</b>	<p>dealt with under grievance process rather than through the discipline appeal board [eg. s51(10)(a)(i)-(iv)].</p> <ul style="list-style-type: none"> <li>• References and reference material need to be updated.</li> <li>• Clarify informal dispute resolution mechanisms.</li> <li>• Amend clause 5 by deleting ‘an official instruction’ in the first bullet point and replacing it with ‘the instruction’.</li> <li>• Amend to include detail about informal methods of resolving grievances, such as dispute resolution or ‘solutions-focussed’ approaches.</li> </ul>	<p>clarify the point that the employee is required to obey the instruction that is the subject of the grievance, unless it is unlawful.</p>
<b>Employment Instruction 10 Employee Records</b>	<ul style="list-style-type: none"> <li>• Review and amend to ensure consistency with provisions from the <i>Information Act</i> and <i>Fair Work Act</i>.</li> <li>• References and reference materials need to be updated.</li> <li>• Define employee records.</li> </ul>	
<b>Employment Instruction 11 Equal Employment Opportunity Management Programs</b>	<ul style="list-style-type: none"> <li>• Rename “Equity and Diversity Programs”.</li> <li>• Review detail of information, may require changing.</li> <li>• Consequential amendments may be necessary.</li> </ul>	
<b>Employment Instruction 12 Occupational Health and Safety Programs</b>	<ul style="list-style-type: none"> <li>• Consequential amendments are being actioned as a result of <i>Workplace Health and Safety Act</i>.</li> </ul>	
<b>Employment Instruction 13 Code of Conduct</b>	<ul style="list-style-type: none"> <li>• Consequential amendment will be required if changes to the Act occur and also to take into account the <i>Information Act</i> and <i>Public Disclosure Act</i>.</li> <li>• Amend Disclosure of offences for consistency with <i>Anti-Discrimination Act</i>.</li> <li>• Amend to include rationale for advising of bankruptcy.</li> </ul>	<ul style="list-style-type: none"> <li>• With the introduction of new legislation this Employment Instruction might need to be amended.</li> </ul>

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<b>Employment Instruction 14</b> <b>Part-time Employment</b>	<ul style="list-style-type: none"> <li>Consider continued requirement for this EI as the provisions for part-time employment are now included in the various NT union collective agreements.</li> </ul>	
<b>Public Sector Instruments</b>	<ul style="list-style-type: none"> <li>The capacity for the Commissioner to issue Public Sector Instruments should be retained under the Act.</li> </ul>	