

NORTHERN TERRITORY OF AUSTRALIA

PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT REGULATIONS

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Subordinate Legislation No. 54 of 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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Subordinate Legislation No. 54 of 2011\*

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## ***Public Sector Employment and Management Regulations***

I, Sally Gordon Thomas, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Public Sector Employment and Management Act*.

Dated 19 December 2011

S. G. THOMAS  
Administrator

By Her Honour's Command

K. VATSKALIS  
Minister for Health  
acting for  
Minister for Public Employment

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\* Notified in the *Northern Territory Government Gazette* on 20 December 2011.

## **Part 1 Preliminary matters**

### **1 Citation**

These Regulations may be cited as the *Public Sector Employment and Management Regulations*.

### **2 Commencement**

These Regulations commence on the commencement of the *Public Sector Employment and Management Amendment Act 2011*.

### **3 Definitions**

In these Regulations:

**NTPOA** means the Northern Territory Prison Officers Association.

**NTSPOA** means the Northern Territory Senior Prison Officers Association.

**prison officer** means an officer as defined in section 5 of the *Prisons (Correctional Services) Act*.

**registered organisation** means an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

### **4 Exemptions**

For section 4(2) of the Act, the provisions listed in Schedule 1 do not apply in relation to the persons or Agencies for whom those provisions are listed.

## **Part 2 Employment matters generally**

### **5 Employment records**

- (1) For section 17(2)(a) of the Act, the employment record for an employee must include the information listed in Schedule 2.
- (2) However, the employment record is to include the information mentioned in Schedule 2, Part 1, items 7, 8 and 9 only if the employee consents to that information being recorded.

### **6 Resignation**

- (1) For section 37(2) of the Act, an employee must give 14 days notice of his or her resignation.

- (2) However, a Chief Executive Officer may accept a resignation of which a shorter period of notice is given.

## **7 Employee surplus to requirements – employee organisation**

For section 41(2) of the Act, the following are prescribed as employee organisations:

- (a) for an employee who is a prison officer and a member of the NTSPOA – the NTSPOA;
- (b) for an employee who is a prison officer and a member of the NTPOA – the NTPOA;
- (c) for any other employee – a registered organisation of which the employee is a member nominated by the employee.

*Note for regulation 7*

*If none of paragraphs (a), (b) or (c) apply to an employee, there is no prescribed organisation for that employee for section 41(2) of the Act.*

## **Part 3 Appeals**

### **8 Notice of appeal**

A notice of appeal under section 59A(3) or 59B(3) of the Act:

- (a) must be in writing; and
- (b) must set out the following:
  - (i) the name of the appellant;
  - (ii) details of the decision appealed against;
  - (iii) the grounds of the appeal.

### **9 Selection of members of appeal board**

- (1) For section 59C(3) of the Act, an appointor must select a person to be a member of the appeal board within 10 days of being requested by the Commissioner to do so.
- (2) A selection must be made in writing and given to the Commissioner.
- (3) As soon as practicable after the 3 members of the appeal board have been selected, the Commissioner must give written notice of the selections to the appellant and the relevant Chief Executive Officer.

(4) In this regulation:

**appointor** means:

- (a) the relevant Chief Executive Officer mentioned in section 59C(2)(b) of the Act; or
- (b) the employee organisation mentioned in section 59C(2)(c) of the Act.

**10 Employee organisation for appeals about inability, performance and disciplinary decisions**

(1) This regulation prescribes employee organisations for section 59C(2)(c) of the Act for an appeal under section 59A of the Act.

(2) The employee organisation for the appellant is as follows:

- (a) if at the relevant time the appellant was eligible to be a member of the NTSPPOA – the NTSPPOA;
- (b) if at the relevant time the appellant was eligible to be a member of the NTPOA – the NTPOA;
- (c) otherwise – the registered organisation with the greatest number of members who are employees with the designation that the appellant had at the relevant time.

*Note for subregulation (2)*

*Paragraph (a) or (b) applies:*

- (a) *whether or not the employee was a member of that organisation; and*
- (b) *even if the employee is or was a member of a registered organisation.*

*Paragraph (c) applies:*

- (a) *whether or not the employee was, or was eligible to be, a member of that organisation; and*
- (b) *even if the employee is or was a member of another registered organisation.*

(3) Any dispute as to which employee organisation is prescribed for an appellant is to be determined by the Commissioner.

(4) In this regulation:

**relevant time** means the time when the decision the subject of the appeal was made.

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## 11 Employee organisation for promotion appeal

- (1) This regulation prescribes employee organisations for section 59C(2)(c) of the Act for an appeal under section 59B of the Act.
- (2) The employee organisation for the appellant is as follows:
  - (a) if the promoted employee will, when so promoted, be eligible to be a member of the NTSPPOA – the NTSPPOA;
  - (b) if the promoted employee will, when so promoted, be eligible to be a member of the NTPOA – the NTPOA;
  - (c) otherwise – the registered organisation with the greatest number of members who are employees with the designation that the promoted employee will have when so promoted.

*Note for subregulation (2)*

*Paragraph (a), (b) or (c) applies:*

- (a) *whether or not the employee is a member of that organisation; and*
  - (b) *even if the employee is or was a member of another registered organisation.*
- (3) Any dispute as to which employee organisation is prescribed for an appellant is to be determined by the Commissioner.
  - (4) In this regulation:

***promoted employee*** means whichever employee is promoted to perform the duties mentioned in section 59B(1)(a) of the Act.

## 12 Majority decision

Questions arising before an appeal board are to be determined by a majority vote of the board members.

## 13 Failure of person to attend etc.

A failure by a person to comply with a requirement under section 59F(5) of the Act does not affect the appeal board's ability to deal with and determine the appeal.

## 14 Status of persons appearing or giving information

A person who appears before, or gives information or documents to, an appeal board has the same protection, and is subject to the same liabilities, as a witness in the Supreme Court.

**15 Reimbursement of expenses**

- (1) An appeal board may recommend that the Commissioner reimburse some or all of the reasonable expenses incurred:
  - (a) by the appellant in relation to the appeal; or
  - (b) by a person who appears before, or gives information or documents to, the appeal board.
- (2) Without limiting subregulation (1)(b), the reasonable expenses of a person who appears before the board may include the following:
  - (a) actual expenses reasonably incurred by the witness for:
    - (i) travel to and from the place of the hearing; or
    - (ii) accommodation and sustenance during the hearing;
  - (b) loss of salary, wages or other remuneration caused by the person's attendance at the hearing;
  - (c) any other necessary expense incurred by the person because of the attendance.
- (3) The Commissioner may, but is not required to, comply with the recommendation.
- (4) The Commissioner may recover any amount paid under subregulation (3) from the Agency in which the appellant was employed at the time the decision the subject of the appeal was made.

**Part 4 Public Sector Consultative Council****16 Definitions**

In this Part:

***Council*** means the Public Sector Consultative Council under regulation 17.

***member*** means a person holding or occupying the office of a member of the Council under regulation 18.



**17 Public Sector Consultative Council**

- (1) There is a Public Sector Consultative Council.
- (2) The functions of the Council are:
  - (a) to consider matters of general interest in relation to the Public Sector referred to it by the Commissioner; and
  - (b) to report on, and make recommendations about, those matters to the Commissioner.
- (3) The Commissioner must refer to the Council any matter of general interest in relation to the Public Sector:
  - (a) the Commissioner considers it appropriate to refer; or
  - (b) submitted to the Commissioner for referral to the Council by any of the following:
    - (i) a Chief Executive Officer;
    - (ii) an employee;
    - (iii) an organisation representing employees or Agencies.

**18 Membership of Council**

- (1) The Council consists of 16 members as follows:
  - (a) the Commissioner;
  - (b) a person appointed by the Commissioner;
  - (c) 6 persons appointed by the Commissioner from persons nominated by Chief Executive Officers;
  - (d) 8 persons appointed by the Commissioner from persons nominated by Unions NT.
- (3) A person cannot be appointed under subregulation (1)(d) unless he or she is a member of a registered organisation.
- (4) A member other than the Commissioner:
  - (a) holds office for the period specified in the appointment and may be reappointed; and
  - (b) may resign by giving written notice to the Commissioner.

- (5) A member appointed under subregulation (1)(d) ceases to be a member if he or she ceases to be a member of a registered organisation.
- (6) A nomination under subregulation (1)(c) or (d) must be made in writing and given to the Commissioner as and when requested by the Commissioner.

## **19 Chairperson and deputy chairperson**

- (1) The Commissioner is the chairperson of the Council.
- (2) The members of the Council are to elect one of the members appointed under regulation 18(1)(d) as deputy chairperson.
- (3) The deputy chairperson may exercise the functions of the chairperson at any time when the Commissioner is unable to do so.

## **20 Alternate members**

- (1) The Commissioner may nominate a person to act in the place of the member appointed under regulation 18(1)(b) at any meeting of the Council that the member is unable to attend.
- (2) A nomination under subregulation (1) must be made in writing before the meeting.
- (3) A member appointed under regulation 18(1)(c) may nominate a person to act in the member's place at any meeting of the Council that the member is unable to attend.
- (4) Unions NT may nominate a person to act in the place of a member appointed under regulation 18(1)(d) at any meeting of the Council that the member is unable to attend.
- (5) A nomination under subregulation (3) or (4) must be made in writing given to the Commissioner before the meeting.

## **21 Meetings of Council**

- (1) The Council is to meet where and when the Commissioner considers appropriate.
- (2) At a meeting of the Council, a quorum is constituted by 7 members consisting of:
  - (a) the chairperson or deputy chairperson; and
  - (b) the person appointed under regulation 18(1)(b); and
  - (c) 2 members appointed under regulation 18(1)(c); and

- (d) 3 members appointed under regulation 18(1)(d), other than the deputy chairperson if he or she is counted under paragraph (a).
- (3) The chairperson is to preside at a meeting of the Council.
- (4) Subject to this regulation, the Council is to determine its own procedures.

## **22 Standing committees**

The Council may establish standing committees to consider the needs of particular occupational groups in the Public Sector.

## **Part 5 Repeals and transitional matters for Public Sector Employment and Management Regulations**

### **23 Definitions**

In this Part:

***commencement***, see section 67 of the Act.

***repealed Regulations*** means the *Public Sector Employment and Management Regulations* repealed by regulation 24.

***old***, see section 67 of the Act.

### **24 Repeals**

The regulations specified in Schedule 3 are repealed.

### **25 Continuation of repealed regulations for transitional matters**

If, under Part 11 of the Act, an old provision of the Act continues to apply in relation to a matter, the repealed Regulations also continue to apply in relation to that matter.

### **26 Public Sector Consultative Council**

- (1) The Council mentioned in regulation 17 is a continuation of the Consultative Council established under regulation 22 of the repealed Regulations.
- (2) A person who was a member of the Consultative Council immediately before the commencement, continues as a member as if appointed under regulation 18.

- (3) If a matter was being considered by the Consultative Council immediately before the commencement, the Council is to continue dealing with the matter as if it had been referred under regulation 17.

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## Schedule 1 Exemptions

regulation 4

	<b>Exempt persons or Agencies</b>	<b>Provisions</b>
1	Auditor-General Auditor-General's Office	section 28 of Act
2	Employees employed in Power and Water Corporation	All by-laws under section 60 of Act
3	Employees employed under Executive Contracts of Employment	Parts 7 and 8 and Part 9, Division 2 of Act
4	Fixed period employees not employed under Executive Contracts of Employment	Parts 7 and 8 and section 59A of Act
5	Casual employees	Parts 7 and 8 and section 59A of Act
6	Persons employed under section 24 of the <i>Parks and Wildlife Commission Act</i>	Whole Act
7	Persons employed under section 39 of the <i>Land Development Corporation Act</i>	Whole Act

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## **Schedule 2 Employment record**

regulation 5

### **Part 1 Personal details**

- 1 Full name and any previous names
- 2 Residential and postal addresses
- 3 Date of birth
- 4 Sex
- 5 Next of kin and emergency contact
- 6 Citizenship or Australian residency status
- 7 Whether the employee has any dependents and, if so, the following details for each of them:
  - (a) full name
  - (b) date of birth
  - (c) relationship to the employee
  - (d) residential address
  - (e) details of earnings (if any)
- 8 Any disabilities relevant to the employee's employment
- 9 Ethnicity or aboriginality

*Note for items 7 to 9*

*Under regulation 5(2), the information mentioned in items 7 to 9 is to be recorded only with the employee's consent.*

### **Part 2 Employment details**

- 1 Employee number
- 2 Designation, and any previous designations
- 3 Entitlements and the use of those entitlements
- 4 Qualifications
- 5 Medical reports provided for section 31 of the Act

## **Schedule 3 Repealed Regulations**

regulation 24

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<i>Public Sector Employment and Management Regulations</i>	Subordinate Legislation No. 16 of 1993
<i>Amendment of Public Sector Employment and Management Regulations</i>	Subordinate Legislation No. 35 of 1993
<i>Amendments of Public Sector Employment and Management Regulations</i>	Subordinate Legislation No. 34 of 1998
<i>Public Sector Employment and Management (Exemption) Regulations</i>	Subordinate Legislation No. 14 of 1993
<i>Amendment of Public Sector Employment and Management (Exemption) Regulations</i>	Subordinate Legislation No. 36 of 1993
<i>Amendment of Public Sector Employment and Management (Exemption) Regulations</i>	Subordinate Legislation No. 25 of 1995

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