

## /// Chief Minister's Department Governance Division

### MACHINERY OF GOVERNMENT AND MANAGEMENT INITIATED CHANGES

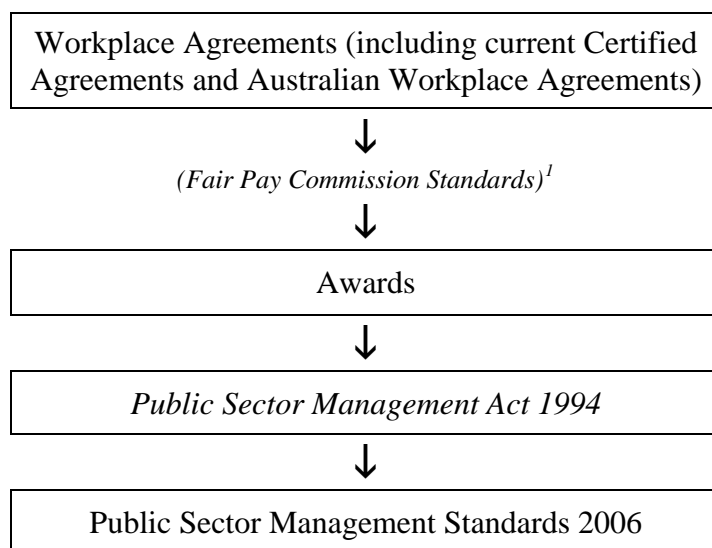
- **HR Directors / Managers**

#### **Purpose**

1. To provide Agencies with general information regarding Machinery of Government administrative arrangements and management initiated changes. **Note:** This Information Note should be read in conjunction with the legislative employment framework.

#### **ACT Public Service Employment Framework**

2. The main elements of the ACTPS legislative framework are detailed below. Background knowledge of this framework is useful for all employment related issues.
  - [Public Sector Management Act 1994](#) and [Management Standards 2006](#) (PDF file);
  - Agency Certified Agreements; and
    - Template Agreement comprising Part 1: Common Core Conditions and Part 2: Agency specific conditions;
    - Non Template Agreements (occupational specific agreements);
  - Awards.
3. The following diagram represents a basic view of the employment framework.



<sup>1</sup> Until the first Fair Pay Commission determination, expected in Spring 2006, the full effect of the Fair Pay Commission Standards in relation to the legislative employment framework is unknown.

4. The [PSM Act](#) and [Management Standards](#) (PDF file) are subordinate to Workplace Agreements and Awards. This is because Workplace Agreements and Awards are made under provisions of Commonwealth laws, which override inconsistent ACT laws. However, Awards are limited to minimum entitlements on a small number of allowable matters. If a condition is listed in the Award but more generous entitlements are available under the PSM Act or Standards, the more generous provisions in the PSM Act apply. Awards are not intended to reduce more beneficial entitlements.
5. See [Recruitment in the ACT Public Service](#) for further information on the legislative employment framework.

### **Application**

6. This note applies to the movement of staff<sup>2</sup> between administrative units under the PSM Act and the Template Agreement. This note does not deal with arrangements under occupational specific agreements, or Part 2 Agency agreements.

### **ADMINISTRATIVE ARRANGEMENTS**

7. The Chief Minister, under the PSM Act, has the power to make administrative arrangements orders (AAOs) which:
  - establish administrative units and place Chief Executives in charge of those units; and
  - allocate a Minister to be in charge of an administrative unit.
8. The areas of government to which administrative arrangements currently apply are listed in column 2, '*matters*', of the [Administrative Arrangements](#). The *matters* that are governed by administrative arrangements are overarching category areas, for example Public Sector Management, Energy and Water Policy, Fair Trading, or Corrective Services, which reflect the operations of the Public Service. The AAOs provide for ministerial and departmental responsibility for those matters. The Chief Minister's Department cabinet office is responsible for AAOs (for further information regarding AAOs, contact the Cabinet Office contact officer for AAOs, Kas Paul, on 6205 0543).

### **MACHINERY OF GOVERNMENT**

9. Machinery of Government (MOG) changes follow changes to administrative arrangements. Where responsibility for a matter is moved from one administrative unit to another administrative unit, or where an administrative unit is abolished, all positions related or incidental to that matter are transferred to the gaining administrative unit. MOG is used for this transfer. When an office is transferred through MOG, the person holding the transferred office is taken to have been transferred with their office. MOG is not limited to offices, and may also be used to move employees between administrative units.
10. The PSM Act provides MOG power to the Chief Minister and the Commissioner of Public Administration (the Commissioner). MOG powers are illustrated in the table below:

<u>Relevant terminology</u>
<ul style="list-style-type: none"> <li>• <i>matter</i> – matters are listed in column 2 of the <a href="#">Administrative Arrangements</a>.</li> <li>• <i>losing area</i> – the area from which a matter is transferred by an administrative arrangement.</li> <li>• <i>gaining area</i> – the area to which a matter is transferred by an administrative arrangement.</li> </ul>



<sup>2</sup> In this Information Note, the term 'staff' applies to both officers and employees, unless the contrary intention appears.

Administrative Arrangement	MOG power	Exercised by	Authority
An administrative unit is abolished.	<p><i>Officers:</i> An office in the abolished administrative unit may be transferred to another administrative unit.</p> <p>This does not affect the identity of the office nor anything done in relation to the office prior to transfer.</p> <p>This may be done prior to the abolition taking effect.</p>	Chief Minister or Commissioner	PSM Act sections 15(1), 15(3).
An administrative unit is abolished.	<p><i>Employees:</i> An administrative unit may be directed to employ a person who had been an employee with the abolished administrative unit. The person is to be employed in the same capacity as their employment with the abolished administrative unit.</p> <p>The term of employment cannot be extended through this process, nor can the conditions of employment be changed.</p> <p>This may be done prior to the abolition taking effect.</p>	Commissioner	PSM Act section 16.
A <i>matter</i> is transferred from one administrative unit (the <i>losing area</i> ) to another (the <i>gaining area</i> ).	<p><i>Officers:</i> An office in the losing area may be transferred to the gaining area if the duties of that office:</p> <ul style="list-style-type: none"> <li>• relate wholly or mainly to the matter; or</li> <li>• are certified by the Chief Minister to be ancillary to or attributable to the matter.</li> </ul> <p>This does not affect the identity of the office, nor anything done in relation to the office prior to transfer.</p>	Commissioner	PSM Act sections 15(2), 15 (3).
A <i>matter</i> is transferred from a <i>losing area</i> to a <i>gaining area</i> .	<p><i>Employees:</i> The gaining area may be directed to employ a person who had been an employee of the losing area.</p> <p>The term of employment cannot be extended through this process, nor can the conditions of employment be changed.</p>	Commissioner	PSM Act section 16.

11. Under the Template Agreement, the Delegate of a gaining area determines the salary of a staff member moved by MOG changes. If a staff members salary at the losing area is more than, or equal to, the salary their classification is paid in the gaining area they will continue to receive that salary. However, if the salary a staff member received at the losing area is less than the lowest increment of their classification in the gaining area, the staff member’s salary is to be increased to that lowest increment. This does not constitute a promotion for the purposes of the PSM Act. It is not the intention of the Template Agreement that a staff member who is moved through MOG would be given a new classification by the Delegate of the Gaining Agency.

**Part-time Offices**

12. When MOG is used to transfer an office, which immediately before the transfer was a part-time office, that office will continue to be a part-time office in the new administrative unit.

**Transfer of Entitlements**

13. Under the Template Agreement, when an officer or employee commences with their gaining area, all the entitlements they have accrued in the losing area must be recognised. A staff member may have come from an area that had an occupational specific agreement, or a Part 2 agreement, and they have accrued entitlements that are different from the gaining Agency agreement. If this is the case, the Delegate of the gaining Agency, in consultation with the staff member, must convert the entitlements to benefits consistent with the gaining Agency agreement. The conversion of entitlements must be done in such a way that the staff member maintains the same overall level of accrued entitlements.

**Transfer to a Newly Established Agency**

14. If a staff member is transferred to an Agency which is newly established, and that staff member had been covered by the Template Agreement prior to the transfer, they will continue to be covered by the terms of the Template Agreement for 12 months, or until an agreement for the new ACT Government Agency is lodged with the Office of the Employment Advocate (whichever occurs first).

**Transfer of Vacant Offices**

15. If an office is vacant immediately before it is transferred to an administrative unit, the gaining area may be required to complete the process of filling that office. The obligation placed upon a gaining area depends on how far the losing area had progressed with filling the vacancy.
16. The following table explains the requirement if a gaining agency gains a vacant position:

Progress of the Losing Area	Requirements on the Gaining Area	Authority
<ul style="list-style-type: none"> <li>• The losing area took action, in accordance with the PSM Act and Standards to fill the vacancy;</li> <li>• A person has been selected to fill the vacancy; and</li> <li>• The person has been notified that they have been selected.</li> </ul>	<p>The gaining area <b>must</b> take the remaining steps required under the PSM Act and Standards to fill the vacancy.</p>	<p>PSM Act section 15(6).</p>

Progress of the Losing Area	Requirements on the Gaining Area	Authority
<ul style="list-style-type: none"> <li>• The losing area took action to fill the office in accordance with the PSM Act and Standards; and</li> <li>• There has been no notification of the selection of a person to that position.</li> </ul>	<p>The gaining area <b>may</b> take the remaining steps required under the PSM Act and Standards to fill the vacancy.</p> <p>There is no obligation on the gaining Agency to take the remaining steps needed to fill the vacancy.</p>	<p>PSM Act sections 15(7) and 15(8).</p>

### Agencies' Role in the Preparation of Machinery of Government Changes

17. MOG changes are made with an instrument prepared by the Governance Division for Commissioner approval. Where an Agency's staff are to be moved by a MOG power described in [paragraph 10](#) above, the losing Agency is required to provide the Governance Division with the relevant information about affected offices and employees. Following changes to AAOs, the Governance Division will contact Agencies and outline the required staff information.

### MANAGEMENT INITIATED CHANGES

18. As stated in [paragraph 9](#) above, MOG can only follow administrative arrangements. However, a decision may be made to move staff who cannot be moved by MOG. This would occur if the staff to be moved do not collectively fall within a *matter*. For example, the provision of Human Resources support is not reflected in the *matters* listed in the AAOs.
19. If staff are to be moved between administrative units, and MOG cannot be used, the alternative is management initiated changes. Management initiated changes are carried out under sections 83, 94 and 96 of the PSM Act. These powers move officers individually, but can be used on a larger scale, for example to move each member of a team to a different administrative unit, or move each officer across the ACTPS who performs a certain function.

### Permanent Transfers between Agencies

20. Under section 83 of the PSM Act an officer can be transferred to a vacant office. This power can be used to move officers between administrative units. To use this power to move staff, the Chief Executive of the gaining administrative unit is required to create a new office in their administrative unit, which has the same, or an equivalent classification to that held in the losing administrative unit. When a new office is created, an officer can then be transferred to that office.
21. Before an officer can be transferred to a vacant position under section 83 the Chief Executive must:
- give the officer the opportunity to state their views in relation to the transfer; and
  - consider any views that the officer has.
22. Once this has been done, where a transfer is to a different administrative unit, section 94 of the PSM Act requires that if either:
- the officer; or
  - the Chief Executive of the losing administrative unit;
- does not agree to the transfer, the Commissioner rather than the Chief Executive will be required to approve the transfer.

23. Before the Commissioner can approve a transfer they must give:
- ❑ the Chief Executive of the losing administrative unit;
  - ❑ the Chief Executive of the gaining administrative unit; and
  - ❑ the officer to be transferred;

a reasonable opportunity to make a submission in support of, or against, the transfer. The Commissioner must consider any submissions before making their decision.

#### **Temporary Transfers between Agencies**

24. Under section 96 of the PSM Act the Commissioner may temporarily transfer an employee between administrative units. The Commissioner must:

- ❑ hold the opinion that the transfer is in the interests of efficient administration of the service;
- ❑ give the employee an opportunity to state their views in relation to the transfer;
- ❑ consider any views the employee expresses; and
- ❑ notify the Chief Executives of the gaining and losing administrative units.

25. If an employee is temporarily transferred by the Commissioner, the Chief Executive of the losing administrative unit must temporarily release that employee. The transfer is until the end of the temporary contract.

#### **Further Information**

26. HR areas that require further information regarding machinery of government or management initiated changes can contact:

- Policy Officer on (02) 6207 5586; or
- Senior Policy Officer on (02) 6207 1255.

27. Employees requiring further information are advised to contact their HR area for advice.