Collective Bargaining in the Northern Territory Public Sector

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Introduction

The purpose of this paper is to provide Ministers and Chief Executives with a brief overview of collective bargaining in the Northern Territory Public Sector. ‘Collective bargaining’ refers to the bilateral process in which employers and employees, and their representatives and their organisations, negotiate over the terms and conditions that regulate the employment relationship (Bray, Deery, Walsh and Warring, 2005, p.282). It is distinguished from individual bargaining in that the employees bargain as a group.

Although in the Northern Territory Public Sector collective bargaining generally occurs across the sector, it can also occur at other levels. Some collective bargaining deals with specific groups of employees such as medical practitioners, nurses or teachers. Other collective bargaining covers particular agencies, such as the Power Water Corporation or Darwin Port Corporation.

Part 1: The Employment Relationship in the Northern Territory Public Sector

The Public Sector Employment and Management Act

Employment in the Northern Territory Public Sector is primarily governed by the Public Sector Employment and Management Act, its regulations, by-laws, instruments, employment instructions and determinations. Awards and union collective agreements regulate other terms and conditions of employment for Northern Territory Public Sector employees.

Changes to award and agreement-based terms and conditions of employment are usually negotiated through the collective bargaining process.

As well as forming the legislative basis for the employment relationship in the Northern Territory Public Sector, the Public Sector Employment and Management Act sets out the roles of the Minister for Public Employment and the Commissioner for Public Employment ('the Commissioner').

It also needs to be noted that as a Northern Territory statute the Public Sector Employment and Management Act is subordinate to Commonwealth legislation covering the employment relationship. The principal Commonwealth statute is the Fair Work Act 2009. Subject to the Fair Work Act 2009, awards and agreements prevail over the Public Sector Employment and Management Act (including its subordinate and delegated legislation) to the extent of any inconsistency.

The Role of the Minister for Public Employment

The Public Sector Employment and Management Act sets out the responsibilities of the Minister for Public Employment. It is the duty of the Minister to:

- advise other ministers on policies, practices and procedures that should be applied to any aspect of human resource management in the Public Sector generally or in Agencies for which they have ministerial responsibility;
- advise other ministers on structural changes that should, in the opinion of the Minister, be made in order to improve the efficiency and effectiveness of Public Sector operations;
cause to be carried out planning for the future management of the Public Sector;

cause to be reviewed, on the Minister's own motion or at the request of another minister, the efficiency and effectiveness of any aspect of Public Sector operations; and

cause to be devised programs and initiatives for management improvement in the Public Sector and recommend their implementation to other ministers.

Although the Minister has responsibility for the Office of the Commissioner and public sector employment policy, he or she should not be directly involved in collective bargaining. Ministers with responsibility for other Agencies should also refrain from direct involvement in collective bargaining.

The Role of Cabinet

The Northern Territory Government’s ability to fund pay increases for public sector employees depends on the state of the budget and any efficiency measures that can be realised through the collective bargaining process.

Through consultation with the Northern Territory Treasury and agencies, the Office of the Commissioner develops collective bargaining parameters. The Minister for Public Employment takes these parameters to Cabinet for approval.

If the collective bargaining negotiations require changes beyond the set parameters, the Commissioner will seek Cabinet approval for the proposed change.

Similarly, Ministerial approval is sought for broad industrial relations matters, especially responses to strikes; major action in Fair Work Australia¹ and other controversial or sensitive matters that are being considered in negotiations.

The Role of the Commissioner for Public Employment

Under the Public Sector Employment and Management Act, the Commissioner is deemed to be employer of all employees on behalf of the Territory or an agency. In particular, the Commissioner has responsibility for determining the terms and conditions of employment (including remuneration) of employees.

The Administrative Arrangements Order² also ascribes responsibility for industrial relations to the Commissioner. This responsibility is also confirmed in the Northern Territory Government Wages Policy (which is discussed below).

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¹ Fair Work Australia is the name given to the industrial tribunal that replaced the Australian Industrial Relations Commission when the Fair Work Act 2009 was enacted.

² An Administrative Arrangement Order is an order made by the Administrator of the Northern Territory of Australia under section 35 of the Interpretation Act. These orders are published in the Gazette. They set out ‘which … department or other Authority or body is nominated as an Agency and the administration of a provision of an Act, or the responsibility for an area or activity of government, is allotted to a specified minister or to a specified Agency.’
Collective Bargaining in the Northern Territory Public Sector

Part 2: Collective Bargaining in the Northern Territory Public Sector

The Legislative Basis for Collective Bargaining

Until the 1990s in the Commonwealth, a centralised system of conciliation and arbitration regulated the employment relationship (Creighton and Stewart, 2005, pp 45—57). Through the Industrial Relations Reform Act 1993, the Keating Government introduced an enterprise bargaining stream that shifted the regulation of the employment relationship away from the centralised conciliation and arbitration system. These reforms provided the mechanism to establish certified agreements or enterprise flexibility agreements that could be negotiated without trade union or employer association assistance (Creighton and Stewart, 2005, p. 57).

Under the Workplace Relations Act 1996, the Howard Government continued the shift away from a centralised system of conciliation and arbitration. It did this through reducing the scope of awards to twenty allowable matters and increasing the capacity of employers to influence the regulation of employment through either collective bargaining—which included a non-union stream of agreements—and the introduction of new statutory individual employment agreements called Australian Workplace Agreements.

Industrial relations reform has continued under the Rudd Government with the introduction of the Fair Work Act 2009, which amongst other things, abolished statutory individual agreements and established an enhanced collective bargaining regime.

Some of the key features of collective bargaining under the Fair Work Act 2009 are:

- enterprise agreements are underpinned by a safety net of modern awards and statutory minimum conditions of service, known as national employment standards;
- new rules about representational rights;
- a new test known as the ‘better off overall test’ against which the terms of an enterprise agreement are assessed to ensure that employees are not disadvantaged;
- a requirement to bargain in good faith as well as the capacity to seek orders from Fair Work Australia to facilitate good faith bargaining; and
- the ability of the negotiating parties to take protected industrial action as part of the bargaining process.

The Bargaining Parties

In the Northern Territory Public Sector, the principal bargaining parties are the Commissioner and the relevant employees who would be covered by the proposed enterprise agreement.

Under the Fair Work Act 2009, employees can choose to represent themselves or appoint a bargaining representative. In lieu of appointing a bargaining representative, the relevant trade union will be the default bargaining representative.
The principal trade unions or employee organisations with coverage in the broader Northern Territory Public Sector are the:

- Community and Public Sector Union (CPSU);
- United Voice (UV);
- Australian Manufacturing Workers Union (AMWU);
- Australian Nursing Federation (ANF);
- Australian Education Union (AEU);
- Association of Professional Scientists and Managers of Australia (APESMA);
- Communications, Electrical and Plumbing Union (CEPU);
- Australian Salaried Medical Officers Federation (ASMOF);
- Transport Workers Union (TWU);
- Maritime Union of Australia (MUA);
- Australian Maritime Officers Union (AMOU); and
- Northern Territory Police Association (NTPA).

**Northern Territory Government Wages Policy**

From time to time, Cabinet approves a wages policy in which it sets out the broad parameters that it will apply to bargaining with Northern Territory Government employees.

Generally, the objectives of the policy are to:

- clearly define the roles and responsibilities of Ministers, Chief Executive Officers and the Commissioner for Public Employment
- process and the Government’s bargaining principles;
- keep costs within Government parameters;
- deliver increased efficiency, effectiveness, service outcomes and workplace reform across agencies (‘efficiency measures’); and
- support collective bargaining wherever possible

The policy could also set out the bargaining principles that will be followed, such as:

- support for a one system or common approach to bargaining;
- bargaining in ‘good faith’ and negotiating with the relevant unions;
- salary quantum;
- efficiency measures; and
- the timing of offers.

**The Issues generally covered in the Collective Bargaining Process**

As indicated above, the collective bargaining process generally deals with a range of employment related matters. The main matters covered are:
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- salary rates;
- hours of work;
- flexible work arrangements;
- consultation about change;
- work-life balance;
- salary sacrifice arrangements;
- parental leave;
- redeployment and redundancy;
- training and development;
- matters relating to the relationship between the employer and the employee organisation; and
- matters relating to the operation of the agreement.

Practicalities of Collective Bargaining

Although every collective bargain follows its own dynamic the general steps are set out below.

- The Commissioner consults with agencies and the Northern Territory Treasury about the proposed bargaining agenda.
- Cabinet approves or modifies the bargaining agenda.
- The Commissioner finalises the offer documents in preparation for the start of bargaining.
- The Commissioner writes to all employees advising them that he or she intends to commence bargaining for an enterprise agreement and their representational rights.
- The relevant trade unions consult with their members about issues that they would like to have covered in the new enterprise agreement.
- The Commissioner invites the relevant trade unions and bargaining representatives to bargain for a new agreement. This could involve putting an offer to the unions or receiving a log of claims from them.

At times, trade unions will attempt to apply pressure through the:

- use of protected industrial action (which requires trade unions meeting certain statutory requirements, such as approvals from Fair Work Australia to conduct secret ballots that authorise the protected action or minimum notice periods);
- use of media campaigns; or
- lobbying ministers or members of the Legislative Assembly.

It is important, especially during industrial campaigns that ministers and chief executives refrain from making comments about resolving the dispute or meeting the demands of the trade unions. Media comments about the progress of negotiations should be reserved for the Commissioner in his or her role as the statutory employer and the principal bargaining party.
Once in-principle agreement has been reached, the agreement text is finalised and voted on by the affected employees. If the agreement is approved, the Office of the Commissioner for Public Employment submits it to Fair Work Australia for approval. Fair Work Australia will approve an agreement if it is satisfied that each award employee covered by the agreement would be better off overall if the agreement applied to the employee than if the relevant modern award applied to the employee.

**Part 3: Police**

Collective bargaining in relation to the conditions of employment for the Northern Territory Police is similar to that which occurs for the broader Northern Territory Public Sector, but on a different legislative basis.

The *Police Administration Act* regulates the conditions of service for the Northern Territory Police. It establishes the Police Arbitral Tribunal, which has ‘jurisdiction to hear and determine all matters relating to the remuneration and terms and conditions of service of members of the Police Force other than the Commissioner, a Deputy Commissioner, an Assistant Commissioner or a member of the rank of Commander.’ The Police Arbitral Tribunal performs similar functions to those of Fair Work Australia.

The Police Arbitral Tribunal issues determinations that set out the terms and conditions of employment for police. In addition, the parties, in this case the Minister for Public Employment—represented by the Office of the Commissioner for Public Employment and the Commissioner of Police—and the Northern Territory Police Association for agreements that cover improvements or changes in pay and conditions. The Police Arbitral Tribunal certifies these agreements, which are called consent agreements. They operate in conjunction with the determination issued by the Police Arbitral Tribunal.

**Part 4: Certain Other Northern Territory Government Employees outside the Collective Bargaining Process**

**Executive Contract Officers**

Executive Contract Officers are employed under the *Public Sector Employment and Management Act*, but sit outside the collective bargaining process. Their conditions of service are set out in Determination 13 of 2011 as amended from time to time. Despite this the movement of executive contract salaries are linked to salary movements in the general Northern Territory Public Sector. Senior police are also employed on executive contracts.

**Ministerial Advisers**

The Department of the Chief Minister administers common law contracts for ministerial advisers (including advisers to the Leader of the Opposition). Advisers can have contracts at either the executive level or levels equivalent to the general Northern Territory Public Sector. Their salary movements are currently linked to Northern Territory Public Sector salary movements.
**Electorate Officers**

The Department of the Legislative Assembly administers the employment of electorate officers. Their conditions of service are set out in a determination issued by the Speaker of the Legislative Assembly. Apart from some conditions that recognise the volatility of their employment, the conditions of service of electorate officers are currently similar to those of the general Northern Territory Public Sector.

**Part 5: Further Information**

For further information, please contact the Employee Relations Division in the Office of the Commissioner for Public Employment on 89994282.

**References**
