

PUBLIC SERVICE MANAGEMENT BILL

Briefing Report

Department of Human Resources

ABSTRACT

A brief summary of the various provisions within the Public Service Management Bill in order to assist stakeholders to participate meaningfully in the consultation process and to provide feedback where improvements can be made. For ease of reference a summary of the intent of each of the relevant clauses is provided, followed by a brief commentary where appropriate.

1 Section I

1.1 BACKGROUND

1.1.1 The Public Service is the principal actor policy making infrastructure and an architect of an enabling environment for national development. Public Service management covers such aspects of management as productivity management, and management of human, financial and other resources. It involves an array of activities ranging from planning, formulation and implementation of policies, programmes and projects for the delivery of goods and services to the territory through a number of government and quasi-government agency arrangements. Consequently, it is imperative that the structures, policies and operations of the Public Service create an environment for high performance, and efficiency to respond adequately to the socioeconomic needs of the Territory and to global challenges.

1.1.2 The Department of Human Resources is mandated to provide the overall policy framework in human resources and performance (productivity) management practices.

1.2 THE NEED FOR CHANGE

1.2.1 On the enactment of the Virgin Islands Constitution Order, 2007 and the Labour Code, 2010, the Department of Human Resources, as part of this process of transformation initiated a review of the employment practices and procedures of the Public Service and commenced a legal reconciliation exercise towards aligning employment laws within the Public Service. Most of the employment practices and procedures previously in operation were designed prior to the new Constitution and were consequently no longer relevant or valid.

1.2.2 The General Orders contain rules and procedures relating to the employment of public officers, the management of their career incidents and performance, and the termination of their services. Not only are many of these rules and procedures out-dated, they do not focus effectively on the attainment of key human resource objectives such as the establishment of employment equity and tend to emphasise process at the expense of the achievement of strategic outcomes. The adoption of the Nolan principles and the issuance of the Public Service Statement of Principles and Values provided further momentum to the process of reviewing the Public Service's employment policy by articulating the basic values and principles which should underlie human resources management in the Public Service.

1.2.3 Guided by the principles of natural justice, separation of powers, rule of law, good governance and the fundamental rights and freedoms of individuals, the Department of Human Resources began the development of the new PSM Bill, which will establish appropriate mechanisms and structures to create broad policies on the employment, deployment and development of human resources, and the development of a management system, in which the responsibility and capacity to make decisions are placed with the most appropriate functionary and levels of management. It also addresses a systematic approach to accountability in which indicators are developed for measuring, monitoring and evaluating the quality of performance of ministries/departments, public officers and employees. In view of the importance of effective and equitable people management, the Department of Human Resources has decided to develop this Briefing Report to provide an overview of the key policy changes, the basis for such policy decisions and to elicit comments and inputs from stakeholders on the values and principles which should guide the employment practices of a transformed Public Service.

1.2.4 The introduction of new employment practices will be incomplete without linking continued employment and promotion to clear performance indicators. This will require the introduction of new mechanisms to monitor and evaluate performance on the basis of results and quality of service. A new Performance Management Programme was already initiated and information about this project has been included in this Paper. The underlying principles relating to remuneration, human resources development, leave and other conditions of service, are mentioned in the Bill, the details of which the details are to be expounded in the supporting Regulations.

1.2.5 The drafting team consisted of officers from the Department of Human Resources and the Attorney General's Chambers.

1.2.6 This *Paper* is to outline the broad structure of the PSM Bill and provide a brief summary of the various provisions within in order to assist stakeholders to provide feedback on where improvements can be made.

2 OVERVIEW OF PUBLIC SERVICE MANAGEMENT BILL

2.1 The purpose of the Public Service Management Bill

2.1.1 *The purpose of the PSM Bill states:*

“to establish a high performing apolitical service, promote the effectiveness and efficiency of government ministries and departments; and provide for the

administration of the service and the employment and management of officers and employees; and provide for the rights and obligations of officers and employees; and promote equality of employment opportunity in the service."

2.1.2 *The PSM Bill is divided into 24 parts:*

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| 1. Preliminary | 13. Rights and Duties of Public Officers and Employees |
| 2. The Public Service | 14. Establishment of Offices and Categories of Employment |
| 3. Public Service Values and Principles | 15. Appointments |
| 4. Relevant Commissions | 16. Remuneration |
| 5. Duties, Responsibilities and Powers of the Head of the Public Service | 17. Performance Management |
| 6. Executive Members | 18. Training and Development |
| 7. Permanent Secretaries | 19. Categories and Qualification of Leave |
| 8. Heads of Department | 20. Modes of Leaving the Service |
| 9. Role of the Director of Human Resources | 21. Discipline of Officers and Employees |
| 10. Committee of Senior Managers | 22. Association of Officers and Employees |
| 11. Government Media Relations | 23. Whistleblowers |
| 12. Role of the Director of Information and Technology | 24. Miscellaneous |

2.2 **PART 2 – THE PUBLIC SERVICE**

2.2.1 **Section 5 – The Public Service**

This section properly establishes the Public Service and provides a schedule to set out the offices that comprise the Public Service and any person holding an office laid out in the Schedule to be deemed a public officer.

Commentary

Whilst the responsibility to make appointments to public offices clearly rests with the Governor in Chapter 7 of the Constitution, it fails to properly constitute the Public Service as an organisation comprised of ministries/departments/ offices, etc.

2.2.2 **Section 6 – The Role of the Public Service.**

This section defines the role of the Public Service to provide and administer the public services for which the Government is responsible with integrity, honesty, and impartiality; assist with the formulation of the policies of the Government by providing frank, honest,

comprehensive, accurate and timely advice; and implement policy, programmes and decisions of the Government. Officers and employees in the Service, as a condition of employment, are to uphold the values and principles set in Part III.

2.2.3 **Section 7 – Ministries and Departments**

This section establishes a ministry and constitutes it as being an organisation under a Minister, who is assigned responsibility in accordance with section 56 of the Constitution, and states that the organisational structure of a ministry, which consists of:

- the Minister and his or her secretariat;
- the office of the Permanent Secretary and other officers or employees of the ministry; or
- such other departments, divisions, sections, or other units within the service as may be placed or established within that ministry by the Governor.

2.2.4 Also, this section highlights the Governor's power to establish a new ministry or department, transfer, separate/divide terminate, alter the designation of existing ministries and change office titles.

Commentary

The Constitution speaks to a Minister having oversight of a department, but does not make mention of a ministry. As previously highlighted, one of the objectives of this Bill is to rationalise the operations and practices of the Government. In this instance, it was necessary for a ministry to be properly established, and defined which also assists in distinguishing the roles between a Permanent Secretary and Head of Department.

2.2.5 **Section 8 – Minister's Role in the Service**

This section seeks to rationalize the role of the Minister in relation to a ministry or department for which he/she has responsibility, in consideration of the Minister's constitutional powers and those through statute. Without limiting or affecting the other functions of the Minister, the functions provided for are:

- (a) promote the overall effectiveness and efficiency of the ministry or department;
- (b) direct a Permanent Secretary or Head of Department about steps that should be taken to improve the effectiveness and efficiency of the ministry or department;

- (c) authorise reviews of activities or functions of the ministry or department;
- (d) refer to the Deputy Governor for review, matters relating to the effectiveness or efficiency of the ministry or department;
- (e) monitor the performance of the Permanent Secretary in the ministry and report on same to the Deputy Governor.

2.2.6 Section 9 – Delegation of functions of a Minister

This section provides for the delegation of the Minister's functions to either a Permanent Secretary or Head of Department. Each delegation is to be made in writing and shall not include the power to delegate. In law, a power that is delegated may not be further delegated.

Commentary

Section 9 of the Public Service Act, requires any delegation of power to be in writing, and such delegation shall be revocable in writing and shall not affect or prevent a Minister from exercising any function or power or relieve the Minister from the overall responsibility for the actions of that Permanent Secretary or Head of Department acting under the Minister's delegation.

2.2.7 Section 10 – Employing ministerial staff

This section recognises the needs of the Minister to engage staff and requires persons employed as ministerial staff to execute a contract between that person and the Permanent Secretary. The Deputy Governor may issue guidelines on the administration and engagement of ministerial staff.

Commentary

A distinction with ministerial offices and public officers is necessary in order to address the influence a Minister has on the employment of his/her advisory staff. Ministerial offices are employed to help Ministers on matters where the non-political and political work of Government overlap and where it would be inappropriate for public officers to become involved. Ministerial staff serve as advisors and private secretaries who share the ruling party's political commitment, and who can complement the professional, expert and nonpartisan advice and support of the Public Service.

To recognise the unique, partisan role performed by persons appointed to ministerial offices, as a condition of employment, they will be required to comply with guidelines issued by the Governor for their standards of conduct. The guidelines will provide guidance on how ministerial staff may exercise their partisan duties while also respecting the nonpartisan role of officers and employees in the Public Service.

2.3 Part 3 – Public Service Values and Principles

2.3.1 This Part lays out the values and core principles to which the Public Service shall aspire to, which shall govern its management and operations. These following sections form part of the basic level of conduct expected in the service and are to be upheld by the Deputy Governor, Permanent Secretaries, Heads of Department, officers and employees:

- Section 13 – Public administration and management principles.
- Section 14 – Human resources management principles
- Section 15 – Principles of accountability
- Section 16 – Merit principle
- Section 17 – Code of Conduct and Ethics and Code of Discipline.

2.3.2 A breach of the Codes under section 17 shall constitute grounds for disciplinary proceedings against the officer or employee.

Commentary

The Merit principle has been identified as the core principle and sole basis upon which vacancies in the service are to be filled. The merit principle is determined through a fair and transparent assessment process based on the stated principles of merit, natural justice, human resource management and conduct. The administrative processes that are usually followed, in order to achieve a merit-based outcome would include the advertisement of the vacancy. However, on its application, the definition of the merit principles has been expanded.

The PSM Bill expands the application of the merit principle to provide some flexibility and to address practical approaches to selection, where a merit-based outcome can be achieved with the advertisement of the vacancy. Section 16, introduces an exception to the application of this principle in instances when:

- *employing persons as ministerial staff;*
- *employing persons in the non-established division;*

- *employing persons under the Cadet Programme; or*
- *the promotion of an officer by way of reclassification of the officer's post.*

2.3.3 *Conflicts of Interest and Disclosure*

This section requires a public officer or employee to disclose a potential or actual conflict of interest including notifying the service of all personal, financial, business or other interests, in particular any

- (a) *directorship, partnership, agency or any shareholding in an entity;*
- (b) *interest in any activity or business in which or with which the Government is engaged;*
- (c) *interest in goods or services recommended or supplied to the Government;*
- (d) *sponsorships;*
- (e) *gifts of any value, other than gifts received from a family member;*
- (f) *benefits; and*
- (g) *immovable property.*

The requirement for disclosure also extends to any financial, business or other interests of his or her spouse or a person living with that officer or employee as if they were married to each other. Failure by an officer or employee to comply with the obligation referred to in this section constitutes gross misconduct, and the officer or employee may be subject to disciplinary proceedings.

Commentary

The Public Service is increasingly expected to ensure that public officers do not allow their private interests and affiliations to compromise official decision-making and public management. In an increasingly demanding society, inadequately managed conflicts of interest on the part of public officers have weakened the public's trust in the service and conflicts of interest the public service has become a major matter of concern.

The PSM Bill seeks to promote a culture where conflicts of interest are properly identified and resolved or managed in an appropriately transparent and timely

way that is practical in our small society and without unduly inhibiting the effectiveness and efficiency of the public service.

2.4 Part IV – Role of Relevant Commissions

2.4.1 This part recognises that service commissions, namely the Public Service Commission, Teaching Service Commission and the Judicial and Legal Services Commission and that they are relevant and critical agencies that contributes significantly towards supporting the public services' principle and values. The relevant Commissions assist, through the separation of duties, towards ensuring transparency, equity, fairness, and justice. This all support the proper management of and development of human resources in the Public Service.

2.5 Part V – Head of the Public Service

2.5.1 This part details the duties of the Head of the Public Service for administering the PSM Bill and the management of the Service, as the Deputy Governor.

2.5.2 These duties include:

- identifying reform opportunities and advising the Governor on policies and strategies in areas of reform;
- advising the Governor on leading the strategic development and management of the service in relation to;
 - leadership and structural changes required to improve efficiency and effectiveness;
 - developing service delivery strategies and models for the public service; and
 - policies, practices and equity and diversity strategies reflective of the wider community;
- managing the performance of Permanent Secretaries in consultation with the relevant Minister.
- reviewing the effectiveness of the PSM Bill.
- conducting inquiries, investigations, etc., into management practices in ministries and departments.

2.5.3 The principal objectives of the Office of the Deputy Governor are to:

- (a) promote and maintain the highest levels of integrity, impartiality, equity, accountability and leadership across the service;

- (b) improve the capability of the service to provide strategic and innovative policy advice, implement the decisions of the Government and meet public expectations;
- (c) attract and retain a high calibre professional workforce in conjunction with the Department of Human Resources;
- (d) ensure the recruitment and selection processes comply with the merit principles and adhere to professional standards;
- (e) foster a public service culture in which service to clients, initiative, individual responsibility and the achievement of results are strongly valued;
- (f) build public confidence in the Service; and
- (g) support the Government in achieving positive budget outcomes through strengthening the capability of the Service.

Commentary

This part formally establishes the Office of the Deputy Governor and the role of the Deputy Governor as the Head of the Public Service. Whilst the Constitution, is clear that the Governor is the ultimate authority responsible for public service employment, the work involved is not directly performed by the Governor's office. Hence, the establishment of the role of Deputy Governor, an office created by the Constitution, is provided to assist the Governor in executing his/her functions and provides a separation of duties.

Section 38(1) informs that the role of the Deputy Governor is to assist the Governor in the exercise of his or her functions and in some instances, at the request of the Premier, and such functions, may be authorised, in writing, by the Governor in accordance with section 38 of the Constitution.

The PSM Bill recognises that every Permanent Secretary is subject to the direction of the appropriate Minister, in accordance with section 56 of the Constitution, with certain crucial exceptions, particularly with respect to appointments to the Public Service. The relevant Commissions are not subject to direction, influence or control of any person or authority. It's important to highlight subsection 56(6) which requires that a Minister exercise his/her powers in accordance with the policies of the Government as determined by Cabinet.

In section 29, a mechanism is newly introduced whereby Permanent Secretaries or Heads of Department may report instances of political pressure from Ministers

to the Deputy Governor and outlines the actions to be taken by the Deputy Governor to address such reports.

2.6 Part VI - Permanent Secretaries

This Part establishes that every Permanent Secretary, including the Financial Secretary is subject to the direction of the appropriate Minister, with certain crucial exceptions.

2.6.1 Appointments to the post of Permanent Secretary shall be on contractual terms, for a period of five years. The remuneration of Permanent Secretaries will be agreed to between the Deputy Governor and the Permanent Secretary and will include a performance-related portion.

2.6.2 Section 38 outlines the functions of the Permanent Secretary, under the direction of a Minister, which are to manage that ministry, and in particular:

- to provide strategic direction and a focus on results for that ministry;
- to provide advice on policy to the relevant Minister;
- to plan for and undertake financial, and information management in relation to that ministry and to monitor the administrative and financial performance of that ministry;
- assess the appropriateness, effectiveness and efficiency of the service provided by the ministry;
- to be responsive on matters relating to the collective interests of Government by a ministry;
- to ensure the appropriate utilisation of resources within that ministry;
- to ensure the proper organisation of that ministry, including the devising of organisational structures and arrangements to the core and support functions of the ministry;
- to ensure the appropriate division of responsibilities between, and the assignment of functions to, the officers, employees and ministerial staff employed in that ministry;
- to evaluate the performance of officers and employees employed in that ministry in any manner that the Director may prescribe and make recommendations to the Director on staff training and development;
- to hold general staff meetings at least twice per year to communicate and review the strategic direction, major challenges and the goals and objectives of the ministry;

- to seek to resolve or redress the grievances of officers and employees in that ministry;
- subject to the Archives and Records Management Act, 2010, to ensure that the ministry keeps proper records; and
- to perform such other functions as are conferred or imposed on the Permanent Secretary under this Act or any other enactment

2.6.3 *Section 38 outlines the functions of the Permanent Secretary, under the direction of a Minister, which are to manage that ministry, and in particular:*

2.6.4 *In performing his or her functions, a Permanent Secretary shall endeavour to:*

- *attain performance objectives agreed with the relevant Minister;*
- *achieve Government objectives, in coordination as necessary with other ministries, departments, and other government entities;*
- *achieve satisfactory levels of efficiency and quality in the delivery of any services to the public;*
- *promote and uphold the values and principles set out in Part II and applicable policies and directives governing staff conduct, management and the use of resources;*
- *comply with the Deputy Governor's instructions, service standards, codes of conduct, ethics and any codes that may be established;*
- *comply with any lawful directions or instructions given to him or her from time to time by the relevant Minister.*

Commentary

To promote the progression of officers throughout the Service, to provide greater flexibility, to encourage performance and accountability, it is being recommended that appointments to the post of Permanent Secretary be on contractual terms, for a period of 5 years.

The Deputy Governor is to enter into a performance agreement with the Permanent Secretary within 30 days of the passage of the Budget, and established the key performance areas. When assessing the performance of the Permanent Secretary the Deputy Governor shall consult with the relevant Minister. The provision supports the strategic management and performance

excellence frameworks by incorporating same into the functions of the Permanent Secretary.

This section excludes Executive Members because they do not report to a Minister, instead they report to the Governor and act independently.

Section 56(5) of the Constitution gives rise to concerns regarding the role of the Permanent Secretary, DGO who does not report to a Minister. Furthermore, in 38(1)(c), the Deputy Governor is restricted from performing functions independently, [not of a ministerial nature],

2.7 Part IX – Role of the Director of Human Resources

2.7.1 This Part details the Director of Human Resources' functions, with the primary emphasis on providing administrative and technical support to the Governor and Deputy Governor on human resources matters and responsible for the employment/human resources framework in the Public Service.

These functions include, inter alia:

- *ensuring adherence to the merit principles, Codes, Rules and policies developed for the management of human resources in the Service;*
- *determining classification of posts;*
- *salaries and allowances;*
- *grievances; and*
- *terms and conditions of employment*

Commentary

This Part formally establishes the role of the Director of Human Resources as the main functionary for human resources and performance management in the Public Service. It is important to highlight this role, as previous legislation and statutes failed to highlight the role of the Director of Human Resources.

2.8 Part X – Committee of Senior Managers

2.8.1 This part formally recognises and establishes the Committee of Senior Managers, inclusive of the following offices:

- *Deputy Governor, Chairperson*
- *Financial Secretary*
- *Permanent Secretaries*
- *Cabinet Secretary, and*
- *Director of Human Resources*

The purpose of the Committee is to expedite the decision making process in matters involving several ministries and departments.

The functions assigned to the Committee are as follows:

- (a) advise the Governor, through the Deputy Governor, on
 - (i) such areas of the management of the Public Service as the Governor requires; and
 - (ii) the policies necessary to administer and develop the Public Service;
- (b) consider and make recommendations on any specific matter referred to it by the Governor;
- (c) co-ordinate those functions of the Public Service that relate to the management of the services that cut across ministries or departments to ensure that there exists the capacity of Government to provide a modern and efficient public service;
- (d) expedite the decision making process, particularly in matters requiring the involvement of several ministries or departments;
- (e) facilitate the realisation of Government's policies and ensure the achievement of objectives that cut across ministries or departments; and
- (f) generally create a working environment that is conducive to
 - (i) increased productivity and greater job satisfaction in the public service; and
 - (ii) achieving satisfactory levels of efficiency and quality in the delivery of services to the public.

2.9 Part IX – Government Media Relations

- 2.9.1 Recognises the Director of Communications as being responsible for the management of media relations and providing administrative support and technical advice on media and communication matters to the Senior Managers.
- 2.9.2 A Permanent Secretary or Head of Department are to liaise with the Director of Communications for all inquiries from the media.

2.10 **PART XII – Role of the Director, Information and Technology**

2.10.1 *Section 54, highlights the role and functions of the Director of Information and Technology, in particular*

- To promote access to public services through the use of information technology;
- acquire and use information and communication technologies in a manner which:
- ensures the interoperability of its information systems with information systems of other ministries, departments or other government entities to enhance internal efficiency or service delivery;
- eliminates unnecessary duplication and communication technologies in the public administration;
- leverages economies of scale to provide for cost effective service; and
- ensures security of its information systems.

2.11 **PART XII – Right and Duties of Public Officers and Employees**

2.11.1 *This Part addresses most of the rights and duties of officers and employees mentioned in the General Orders and incorporate the freedoms provided for in the Constitution, in particular, the freedom of association. The right for an officer or employee to work in a safe workplace, in accordance with the Labour Code is also provided for in this section. An officer or employee to submit him/herself for examination is so requested in order for the Government to maintain a healthy, and safe workplace.*

2.11.2 *A summary of the rights and duties of officers are provided below:*

- Legal representation – Officers and employees is provided legal representation in respect of acts done or liabilities incurred in the execution of the officer's or employee's official duties.
- Discrimination – An officer and employee is prohibited from discriminating against another officer or employee or a member of the public.
- Communication with the media - Officers and employee, who are not authorised to do so, may not communicate with the media
- Freedom of Association Every officer or employees has the right to freedom of association, including the right to form and join a trade union of his or her choice, save that officers or employees whose service is essential, are not permitted to engage in industrial actions.

- Safety in the Workplace - Officers and employees have a right to safe and healthy conditions at work and make take reasonable steps to safeguard that right, including the refusal to work in conditions which present an imminent danger to their person, health, safety or life. This section also, requires that an officer or employee submit him/herself to be examined by the Director, in order to determine if the officer or employee is physically or mentally fit to perform on the job, for the purpose of maintaining a safe workplace.
- Respecting elections – Officers and employees are prohibited from seeking nomination, being a candidate in a general Election or serving as an elected representative. Officers or employees wishing to contest a seat for General Elections are required to resign from the service. Furthermore, an officer or employee shall not solicit funds for or on behalf of a political party or candidate. Candidates who are unsuccessful for election may, upon application, be re-engaged in the Service.
- Outside employment prohibited – An officer or employee shall not accept or engage in any employment for reward without the written approval of the Deputy Governor. When considering applications for outside employment, the Deputy Governor shall take into account whether the employment
 - a. could reasonably be expected to interfere with or impede the effective or efficient performance of the officer's or employee's functions in the department; or
 - b. would constitute a contravention of the Code of Conduct and Ethics contemplated in section 22;
 - c. is prohibited by any other enactment; or
 - d. would bring the Service into disrepute.
- Grievances – An officer or employee may file a grievance arising from an administrative act, omission, or disciplinary action in accordance with the procedures outlined in the Bill.

2.12 **PART XVII – Association of Officers and Employees**

2.12.1 *This Part, formally recognises the Civil Service Association and renames it to the Public Service Association and with other associations (representative bodies established or to **be established**) in the Public Service.*

2.13 PART XVIII – Whistleblowers

2.13.1 This Part is to facilitate the disclosure, in the public interest, of maladministration and waste in the Service and of corrupt or illegal conduct generally providing the means by which such disclosure may be made and the appropriate protections for those who make such disclosures.