



PUBLIC ACCOUNTS COMMITTEE

REPORT OF THE INQUIRY INTO THE IMPLICATIONS OF THE NEW STRUCTURE AND FUNCTIONS OF THE DEPARTMENT OF THE PREMIER AND CABINET AND THE PUBLIC SECTOR COMMISSION

**Report No. 2
in the 38th Parliament**

2009

Published by the Legislative Assembly, Parliament of Western Australia, Perth, June 2009.

Printed by the Government Printer, State Law Publisher, Western Australia.



Public Accounts Committee

Report of the Inquiry into the Implications of the New Structure and Functions of the Department of the Premier and Cabinet and the Public Sector Commission

ISBN: 978-1-921355-59-2

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Public Accounts Committee. Report 2)

328.365

Copies available from:

State Law Publisher
10 William Street
PERTH WA 6000

Telephone:

(08) 9321 7688

Facsimile:

(08) 9321 7536

Email:

sales@dpc.wa.gov.au

Copies available on-line:

www.parliament.wa.gov.au



PUBLIC ACCOUNTS COMMITTEE

REPORT OF THE INQUIRY INTO THE IMPLICATIONS OF THE NEW STRUCTURE AND FUNCTIONS OF THE DEPARTMENT OF THE PREMIER AND CABINET AND THE PUBLIC SECTOR COMMISSION

Report No. 2

Presented by:

Mr John Kobelke, MLA

Laid on the Table of the Legislative Assembly
on 11 June 2009

COMMITTEE MEMBERS

Chairman	Mr J.C. Kobelke, MLA Member for Balcatta
Deputy Chairman	Mr J.M. Francis, MLA Member for Jandakot
Members	Mr A.J. Carpenter, MLA Member for Willagee Mr A. Krsticevic, MLA Member for Carine Mr C.J. Tallentire, MLA Member for Gosnells

COMMITTEE STAFF

Principal Research Officer	Ms Katherine Galvin, BSW
Research Officer	Mr Mathew Bates, BA (Hons)

COMMITTEE ADDRESS

Public Accounts Committee
Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Tel: (08) 9222 7494
Fax: (08) 9222 7804
Email: lapac@parliament.wa.gov.au
Website: www.parliament.wa.gov.au

TABLE OF CONTENTS

COMMITTEE MEMBERS	i
COMMITTEE STAFF.....	i
COMMITTEE ADDRESS	i
COMMITTEE'S FUNCTIONS AND POWERS	v
INQUIRY TERMS OF REFERENCE	vii
CHAIRMAN'S FOREWORD.....	ix
ABBREVIATIONS AND ACRONYMS	xi
EXECUTIVE SUMMARY	xiii
FINDINGS.....	xvii
RECOMMENDATIONS.....	xxiii
MINISTERIAL RESPONSE.....	xxvii
CHAPTER 1 INTRODUCTION.....	1
1.1 BACKGROUND	1
1.2 CONDUCT OF THE INQUIRY	5
1.3 PRESCRIBED LIMITATIONS ON THE CONDUCT OF THE INQUIRY	6
1.4 SCOPE OF THE INQUIRY	8
CHAPTER 2 THE PUBLIC SECTOR COMMISSION.....	9
2.1 RATIONALE FOR STRUCTURAL CHANGE.....	9
2.2 LEGISLATIVE AND/OR OTHER BASIS FOR THE ESTABLISHMENT OF THE PUBLIC SECTOR COMMISSION	13
2.3 ROLES, FUNCTIONS AND ORGANISATIONAL STRUCTURE OF THE PUBLIC SECTOR COMMISSION AND THE DEPARTMENT OF THE PREMIER AND CABINET	16
2.4 BUDGET OF THE DEPARTMENT OF THE PREMIER AND CABINET AND THE PUBLIC SECTOR COMMISSION	20
2.5 STAFFING OF THE DEPARTMENT OF THE PREMIER AND CABINET AND THE PUBLIC SECTOR COMMISSION	22
2.6 THE CABINET SECRETARY	24
2.7 INTERRELATIONSHIP WITH OTHER PUBLIC SECTOR AGENCIES	25
CHAPTER 3 THE IMPLICATIONS OF STRUCTURAL REFORM AND THE ADEQUACY OF LEGISLATION TO PROVIDE FOR THESE CHANGES.....	29
3.1 A SOUND CONCEPT	29
(a) Background	29
(b) Planning for the Future.....	30
(c) Defining Independence	32
(d) Addressing Politicisation	35
3.2 PROBLEMS WITH THE DETAIL OF THE STRUCTURAL REFORMS	38
(a) Background	38
(b) Delegated not legislated	38
(c) The powers of the Public Sector Commissioner	44
(d) Security of tenure for the Public Sector Commissioner	48
(e) Appointment of the Commissioner for Public Sector Standards.....	49
(f) Public Sector Commission Board	49
(g) Adequacy of planning for structural reform.....	50
CHAPTER 4 BALANCING EFFICIENCY AND INTEGRITY IN CHIEF EXECUTIVE OFFICER SELECTION	53
4.1 CHIEF EXECUTIVE OFFICER SELECTION PROCEDURES IN AUSTRALIAN PUBLIC SECTORS.....	53
(a) Commonwealth Government	53
(b) New South Wales	56
(c) Victoria	56
(d) Queensland.....	57

(e)	South Australia	58
(f)	Tasmania.....	58
(g)	Australian Capital Territory	58
(h)	Northern Territory.....	59
4.2	CHIEF EXECUTIVE OFFICER SELECTION IN WESTERN AUSTRALIA.....	59
(a)	Origins of Western Australia's public sector Chief Executive Officer selection process	59
(b)	The process	61
(c)	Dismissal of Chief Executive Officers.....	63
4.3	THE APPOINTMENT OF MR PETER CONRAN	63
(a)	Background.....	63
(b)	Media speculation on Mr Conran as a 'front runner' for the position of Director General, Department of the Premier and Cabinet.....	65
(c)	Applications received.....	68
(d)	Conduct of an executive search.....	69
(e)	Composition of the selection panel	73
(f)	Timeliness	77
(g)	Section 73 of the <i>Public Sector Management Act 1994</i>	84
APPENDIX ONE.....		89
SUBMISSIONS RECEIVED		89
APPENDIX TWO.....		91
HEARINGS		91
APPENDIX THREE.....		93
LEGISLATION		93
APPENDIX FOUR.....		95
REQUEST FOR CONDUCT OF INQUIRY		95
LEADER OF THE OPPOSITION		95
APPENDIX FIVE.....		99
TIMELINE - PUBLIC SECTOR COMMISSION AND APPOINTMENT AND SELECTION PROCESS FOR THE DIRECTOR GENERAL, DEPARTMENT OF THE PREMIER AND CABINET.....		99
APPENDIX SIX 107		
DELEGATIONS		107
APPENDIX SEVEN		113
DRAFT ORGANISATIONAL STRUCTURE- PUBLIC SECTOR COMMISSION.....		113
APPENDIX EIGHT.....		117
DRAFT ORGANISATIONAL STRUCTURE - DEPARTMENT OF THE PREMIER AND CABINET....		117
APPENDIX NINE.....		121
PUBLIC SECTOR MANAGEMENT ARRANGEMENTS IN SELECT AUSTRALIAN JURISDICTIONS.....		121
APPENDIX TEN		125
TABLE OF DATA RELEVANT TO 14 CEO APPOINTMENTS PRIOR TO DIRECTOR GENERAL, DPC SELECTION PROCESS		125
REFERENCES		127

COMMITTEE'S FUNCTIONS AND POWERS

The Public Accounts Committee inquires into and reports to the Legislative Assembly on any proposal, matter or thing it considers necessary, connected with the receipt and expenditure of public moneys, including moneys allocated under the annual Appropriation bills and Loan Fund. Standing Order 286 of the Legislative Assembly states that:

The Committee may -

- 1.1 Examine the financial affairs and accounts of government agencies of the State which includes any statutory board, commission, authority, committee, or trust established or appointed pursuant to any rule, regulation, by-law, order, order in Council, proclamation, ministerial direction or any other like means.
- 1.2 Inquire into and report to the Assembly on any question which -
 - (i) it deems necessary to investigate;
 - (ii) (Deleted V. & P. p. 225, 18 June 2008);
 - (iii) is referred to it by a Minister; or
 - (iv) is referred to it by the Auditor General.
- 1.3 Consider any papers on public expenditure presented to the Assembly and such of the expenditure as it sees fit to examine.
- 4 Consider whether the objectives of public expenditure are being achieved, or may be achieved more economically.
- 5 The Committee will investigate any matter which is referred to it by resolution of the Legislative Assembly.

INQUIRY TERMS OF REFERENCE

The Public Accounts Committee will examine and report on:

1. The implications of the new structure and functions of the Department of the Premier and Cabinet and the Public Sector Commission and the adequacy of the *Public Sector Management Act 1994* and other statutes to provide for these changes; and
2. The implications of a more timely and efficient government Chief Executive Officer appointment process.

CHAIRMAN'S FOREWORD

The establishment of the new Public Sector Commission by the Barnett Liberal National Government is seen as a positive move to address a range of issues and challenges faced by the Western Australian public sector. In inquiring into the implications of the new structure and functions of the Department of the Premier and Cabinet and the Public Sector Commission, this report makes findings and recommendations which it is envisaged will deliver real benefits beyond the minor structural changes achieved to date.

The new Public Sector Commission has been formed as a department with its powers delegated by the Minister. This has the advantage of creating a single agency to give greater status and focus to the public sector but does not guarantee true independence from the Minister. In fact this potentially complicates reporting and accountability. If the detail of the reform program can be more clearly laid out and established in legislation, Parliament and the public will be assured of a reformed and more independent public sector.

The appointment of Mr Peter Conran, as Director General of the Department of the Premier and Cabinet, within an exceedingly short time raised questions about the procedures for a more timely and efficient government Chief Executive Officer appointment process. In considering these matters, the Inquiry reviewed processes associated with Mr Conran's appointment and public sector Chief Executive Officer appointments more generally.

As illustrated in Appendix 5 of this report, the time taken to appoint a public sector Chief Executive Officer can often take longer than it should. While lowering the average time taken for such appointments should be an achievable goal, it needs to be done without undermining public confidence in the integrity of the merit selection process. I fear that the very short time in which Mr Conran's appointment was achieved has led to a public suspicion that the process was biased, despite compliance with related provisions of the Act.

I wish to express my appreciation to all the Members of the Public Accounts Committee for the commitment and hours of work given to gathering evidence and contributing to the report. Due to the political nature of the issues involved, some parts of the findings and recommendations only received majority support along party lines. While much of the report had unanimous support of the Public Account Committee Members, the final report had majority support due to differences over some parts.

The evidence presented to the Inquiry is, I trust, laid out clearly enough for the reader to be informed adequately and to make their own determinations. Importantly, the information presented to the Inquiry has given a much clearer insight into the state of play relating to these two matters, the subject of the Committee's terms of reference.

Last but not least this report would not have been possible without the dedicated work of, Ms Katherine Galvin, Principal Research Officer and Mr Mathew Bates, Research Officer. Their attention to detail and commitment to the completion of the report is most appreciated.

MR J.C. KOBELKE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

“ACT”	Australian Capital Territory
“APS”	Australian Public Service
“the APSC”	The Australian Public Service Commission
“CEOs”	Chief Executive Officers
“COAG”	Council of Australian Governments
“COG”	Commission on Government
“CPSUCSA”	Community and Public Sector Union Civil Service Association
“DPC”	Department of the Premier and Cabinet
“FTEs”	Full-Time Equivalent (employees)
“HR”	Human Resources
“ICAC”	Independent Commission Against Corruption
“ICG”	Integrity Coordinating Group
“IPAA”	Institute of Public Administration Australia
“NSW”	New South Wales
“NSWDPC”	New South Wales Department of Premier and Cabinet
“OPSSC”	Office of the Public Sector Standards Commissioner
“the PA Act (Vic)”	<i>The Public Administration Act 2004 (Vic)</i>
“PAC”	Public Accounts Committee
“the PS Act (Qld)”	<i>Public Service Act 2008 (Qld)</i>
“the PS Act (Cth)”	<i>Public Service Act 1999</i>
“PSC”	The Public Sector Commission
“PSM Act”	<i>Public Sector Management Act 1994</i>
“the PSME Act”	<i>The Public Sector Employment and Management Act 2002</i>
“PSWO”	Public Sector Workforce Office
“Qld”	Queensland

“SES”	Senior Executive Service
“the SSA”	The State Services Authority
“UK”	United Kingdom
“Vic”	Victoria
“WA”	Western Australia

EXECUTIVE SUMMARY

This report examines the implications of the new structure and functions of the Public Sector Commission (PSC) and the adequacy of the *Public Sector Management Act 1994* (the PSM Act) and other relevant statutes to effect those changes; and the implications of a more efficient Chief Executive Officer (CEO) appointment process in Western Australia (WA).

The Department of the Premier and Cabinet (DPC), the PSC and the Office of the Public Sector Standards Commissioner were central to the Inquiry.

Chapter One outlines the Committee's powers to conduct the Inquiry; the background to the appointment of the Public Sector Commissioner and the Director General of DPC, and the establishment of the PSC; and the Committee's conduct of the Inquiry.

Chapter Two focuses on the legal and policy basis for the establishment of the PSC; and the governance structures of the PSC and DPC consequential to those changes. It provides a critical foundation on which to examine the implications of those reforms.

Government's rationale for structural change is noted as 'enhancing the independence, professionalism and integrity of Western Australia's public service.' The Committee notes that there is inadequate documentation on which to base an assessment of government's rationale, the structural changes, outcomes to be achieved by the reforms and the mechanisms by which those outcomes will be measured.

Government's reforms arose from a state Liberal Party election commitment, which imposed an obligation to appoint a Public Sector Commissioner within 100 days of government. This short time-frame limited the government to empowering the Commissioner by delegation of the Minister for Public Sector Management's authority under the PSM Act. In establishing the PSC, the Minister delegated his powers more extensively to the Public Sector Commissioner than had previously occurred in relation to the Director General, DPC.

The Public Sector Commissioner has not yet been established as an independent entity akin to the Public Sector Standards Commissioner (the Standards Commissioner). Neither has the Public Sector Commissioner yet assumed the functions of the Standards Commissioner as envisaged in Liberal Party documentation. The Public Sector Commissioner is a CEO of a government department, reporting to the responsible Minister, namely the Minister for Public Sector Management. The titles of 'Commission' and 'Commissioner' were afforded to give greater status to the agency in effecting its responsibilities but do not enhance the independence of that office.

It was intended that the PSC be established on a cost neutral basis; however, this assumption could not be tested by the Committee given that agency budgetary information had not been finalised.

Broadly, the PSC has been entrusted with management of the public sector and the DPC with responsibility for the administration of the policy program of government. This occurred through the transfer of public sector management functions from the DPC to the PSC.

The framework for operation of the PSC remains fluid and is currently the subject of a strategic planning exercise. Finalisation of the PSC's structure, budget and associated staffing is largely reliant on several senior appointments and consultation with government agencies regarding incorporation of related public sector management type functions into the PSC. The Committee recommends, to ensure successful implementation of the reforms, that government develop expeditiously, detailed plans on the outcomes it intends to achieve.

Chapter Three examines the implications of the structural reform and the adequacy of legislation to provide for these changes.

The establishment of the PSC is viewed as a sound policy decision with the potential to give focus and leadership to building the capacity of the public sector in this state.

The move by many Australian jurisdictions towards greater responsiveness of the public sector to government's agenda is explored. On the basis of a review of related research information, the Committee examines the meaning of independence and the requisite balance between independence and responsiveness.

The Committee views that the evidence tendered by the Public Sector Commissioner and the Standards Commissioner does not support the Liberal Party's contention that independence of the public sector had been undermined by politicisation.

The Committee determines that delegation of authority to empower the Public Sector Commissioner and create the PSC to be inadequate because:

- the independence of the Public Sector Commissioner is impacted by the Minister's capacity to intervene or alter the delegations, without public notification of such actions;
- the PSM Act limits the extent to which delegation can be applied to achieve government's structural reforms; creates confusion in reporting arrangements; provides no more power to the Public Sector Commissioner than the Minister for Public Sector Management to effect changes to, or to lead, the public sector; and further complicates the Act;
- devolution of human resource functions under the PSM Act impacts the Public Sector Commissioner's capacity to lead the public sector; and
- the Public Sector Commissioner's capacity to appoint the Standards Commissioner presents a conflict of interest.

The Committee recommends amendment of the PSM Act to establish the Public Sector Commissioner as an independent officer of the Parliament incorporating the functions of the Standards Commissioner; to institute a public sector advisory board; and to simplify the Act to reflect reviews of the legislation.

Further, whilst delegation remains the instrument of empowerment of the Public Sector Commissioner any intervention by the Minister in the delegations should be subject to a requirement for timely disclosure.

Chapter Four examines the processes employed in this state and other Australian jurisdictions for the selection and appointment of public sector CEOs.

The Committee notes that the majority of Australian jurisdictions, excepting WA, provide for a greater level of political involvement in public sector CEO recruitment. This state's strongly independent process is founded on the recommendations of the Royal Commission into the Commercial Activities of Government and Other Matters. However, the Minister can directly appoint a CEO to a public sector entity following a merit selection process by the Standards Commissioner and rejection of the associated nomination by the Minister.

Notably, despite delegation of the Minister's authority to the Public Sector Commissioner, aimed at minimising political involvement in CEO recruitment, the Premier may exercise or revoke the powers at any time.

The Committee assesses the timeliness and efficiency of the CEO recruitment process in WA in the context of the recent appointment of the Director General, DPC, given the uncharacteristically short time-frame in which that appointment occurred. It notes:

- that media speculation regarding Mr Conran (the successful appointee) as a prospective candidate for the position of Director General, DPC was likely to have resulted in the small number of applications received for the position, significantly less than the norm;
- that public confidence in the independence of the selection process may have been undermined by media speculation, the short time-frame for conduct of the selection process, and the small number of applications received;
- the appointment by the Standards Commissioner of individuals to the selection panel with a long association with the Liberal Party had the potential to undermine the public's perception of the panel's impartiality;
- that there was no evidence to suggest that the Premier had interfered in the panel's composition;
- that the requirement to appoint a new Director General, Department of the Premier and Cabinet within a significantly shortened time-frame compromised the Standards Commissioner's capacity to maintain the integrity and independence of the process; and
- that restrictions in section 73 of the PSM Act regarding political appointments in the public sector have been circumvented.

In brief, the Committee recommends a tightening of the legislation to ensure compliance with section 73. Further, that the Standards Commissioner ensures that internal and external factors do not impact on the integrity of the selection process and that those processes are not compromised by inflexible timelines; gives due consideration to the nature of the panel composition; and reports to Parliament on mechanisms for improving the efficiency of the process whilst maintaining its integrity.

FINDINGS

Page 16

Finding 1

The Public Sector Commission is a department of state, with its Chief Executive Officer titled as Public Sector Commissioner. The Public Sector Commissioner does not have the status or independence of an Officer of the Parliament as in the case of the Public Sector Standards Commissioner.

Page 16

Finding 2

The functions and powers of the Public Sector Commissioner are those delegated by the Minister for Public Sector Management and extend further than those previously delegated to the Director General, Department of the Premier and Cabinet.

Page 20

Finding 3

The available documentation on these structural changes and the outcomes to be achieved is not sufficiently detailed to give clear expectations as to the desired outcomes and how they will be assessed.

Page 22

Finding 4

The assumption that the establishment of the Public Sector Commission from the Department of the Premier and Cabinet could be achieved on a cost neutral basis could not be tested given the incomplete cost projections currently available.

Page 28

Finding 5

The position of Public Sector Commissioner established by Government does not yet meet the Liberal Party election commitment for the appointment of a 'Public Sector Management and Standards Commissioner' incorporating the functions of the Public Sector Standards Commissioner.

Page 29

Finding 6

The Government's move to establish an agency to lead and oversee the public sector is viewed as sound policy. The creation of the Public Sector Commission has the capacity to enhance public sector performance through the separation of public sector matters from the Department of the Premier and Cabinet.

Page 35

Finding 7

Across jurisdictions, governments have been restructuring their public services to achieve greater responsiveness to the delivery of government policy agendas. This may affect the provision of independent advice by public servants and the political impartiality of the public sector. How the structural reforms in Western Australia will shift the balance between responsiveness and independence of the public sector is not clear at this stage.

Page 38

Finding 8

Evidence to the Committee did not support the Premier's contention that the public sector had been politicised.

Page 39

Finding 9

The Liberal Party's election commitment to undertake structural reform within 100 days of office meant that Government was limited to establishing the Public Sector Commissioner by delegation.

Page 40

Finding 10

Delegation of powers by the Minister for Public Sector Management to the Public Sector Commissioner does not preclude the Minister from exercising, varying or revoking a power at any time without public notification of such action.

Page 42

Finding 11

A Public Sector Commissioner, whose powers are delegated by a Minister, cannot be considered an independent commissioner in the sense that the term is normally used.

Page 43

Finding 12

The intricacies of the *Public Sector Management Act 1994* limited the extent to which delegation could be used to achieve the Government's intended structural reform.

Page 44

Finding 13

The delegation of authority to the Public Sector Commissioner is not accompanied by clear reporting and accountability requirements. This has the potential to create confusion and uncertainty.

Page 45

Finding 14

The limitations of the *Public Sector Management Act 1994* which have restricted the Minister for Public Sector Management in addressing the challenges and problems of the public sector now constrain the Public Sector Commissioner.

Page 47

Finding 15

Without legislative change, the use of delegation to appoint the Public Sector Commissioner and establish the Public Sector Commission has the potential to further complicate the administration of the *Public Sector Management Act 1994*.

Page 49

Finding 16

The appointment and dismissal processes involving the Public Sector Standards Commissioner and the Public Sector Commissioner, raises concerns of potential conflicts of interest.

Page 51

Finding 17

The election commitment of a 100 day time line on establishment of the Public Sector Commission, which was met, limited the opportunity for detailed planning both with respect to the Public Sector Commission and the Department of the Premier and Cabinet.

Page 52

Finding 18

The separation of the functions of the Public Sector Commissioner and the Office of the Public Sector Standards Commissioner creates complexities and inefficiencies. Both entities are charged with leading and maintaining the integrity of the public sector: functions that are intrinsically linked and have the potential for overlap.

Page 59

Finding 19

Legislative frameworks in most Australian jurisdictions provide for significant political involvement in public sector Chief Executive Officer recruitment.

Page 62

Finding 20

The Minister for Public Sector Management can presently appoint a person as a Chief Executive Officer who is not merit selected, but only after completion of the merit selection process. Such an appointment has the potential to attract political and public controversy.

Page 68

Finding 21

Ministers and senior executives in the public sector need to refrain from making comments that may fuel speculation regarding potential candidates or likely appointees to a position of public sector Chief Executive Officer as such public speculation may impact negatively on the selection process.

Page 69

Finding 22

The number of applications received for the Director General, Department of the Premier and Cabinet position was low compared with the average number received for comparable positions.

Page 72

Finding 23

The media speculation as to who would get the position, the short time-frame, and the small number of applications had the potential to undermine public confidence in the independence of the merit selection process.

Page 76

Finding 24

The Committee is unable to reconcile the conflicting statements by the Premier and the Commissioner for Public Sector Standards as to whether they had discussed the qualities of the people to form the selection panel.

Page 77

Finding 25

There was no evidence of interference by the Premier in the composition of the selection panel for the Director General, Department of the Premier and Cabinet.

Page 77

Finding 26

The appointment of Mr Barry McKinnon and Mr Peter Browne to the selection panel had the potential to undermine the perception of the panel's impartiality and engender accusations that Mr Conran was a political appointment.

Page 83

Finding 27

The requirement to appoint a new Director General, Department of the Premier and Cabinet within a significantly shortened time-frame compromised the Public Sector Standards Commissioner's capacity to maintain the integrity and independence of the process.

Page 84

Finding 28

The capacity exists for reducing the average time taken for the Chief Executive Officer selection and appointment process and enhancing public sector governance.

RECOMMENDATIONS

Page 28

Recommendation 1

To ensure successful implementation of its stated reforms, the Government should provide, as expeditiously as possible, detailed plans on the outcomes it intends to achieve.

Page 52

Recommendation 2

That the Government make the necessary amendments to the *Public Sector Management Act 1994* to:

- establish the Public Sector Commissioner as an independent officer of the Parliament with appointment and dismissal provisions similar to the office of Auditor General;
- amalgamate the offices of Public Sector Standards Commissioner and Public Sector Commissioner;
- establish in statute a Public Sector Board, with an advisory function to the Public Sector Commission; and
- update and simplify the *Public Sector Management Act 1994* based on its consideration of the reviews already completed of the Act.

Page 52

Recommendation 3

For as long as the Public Sector Commission exists without its own statutory foundation, any variation or intervention in delegated powers by the Minister for Public Sector Management should be subject to a requirement for timely public disclosure.

Page 62

Recommendation 4

The *Public Sector Management Act 1994* should be amended to provide the Minister for Public Sector Management, when appointing a Chief Executive Officer, the option of merit selection or direct appointment. In the case of direct appointment, the appointee's tenure should be limited to the term of government and the decision published in the *Government Gazette*.

Page 73

Recommendation 5

Where internal and external factors may cause the integrity of the Chief Executive Officer selection and appointment process to be called into question, the Public Sector Standards Commissioner must take all reasonable steps to ensure maintenance of the integrity of that process.

Page 77

Recommendation 6

That the Public Sector Standards Commissioner give greater consideration to the panel composition for public sector Chief Executive Officer selection in order to avoid any perception of bias, ensure impartiality and retain public confidence in the process.

Page 84

Recommendation 7

That the Public Sector Standards Commissioner ensures that selection and appointment processes for public sector Chief Executive Officers are not compromised by inflexible timelines.

Page 84

Recommendation 8

That the Commissioner for Public Sector Standards report to Parliament on how the selection and appointment process for public sector Chief Executive Officers can be completed in a more timely way, whilst maintaining the integrity of, and public confidence in, the process.

Page 88

Recommendation 9

That the technical loophole that allows political appointees to circumvent the restriction of Section 73 of the *Public Sector Management Act 1994* be closed by legislative amendment.

MINISTERIAL RESPONSE

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Public Accounts Committee directs that the Hon. Colin Barnett, MLA, Premier and Minister for Public Sector Management report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

CHAPTER 1 INTRODUCTION

1.1 Background

The Public Accounts Committee is empowered under the Standing Orders of the Legislative Assembly ‘to inquire into and report to the Assembly on any proposal, matter or thing it considers necessary, connected with the receipt and expenditure of public monies’¹ in relation to government entities or organisations allocated government funding. That said, it has the capacity to examine more broadly in relation to its portfolio responsibilities, determined by the Speaker of the Legislative Assembly at the commencement of each Parliament.² On 11 November 2008, the Public Accounts Committee was allocated the portfolios of Premier and Treasury.³ The Public Sector Commission (PSC) is largely the result of the excision of functions from the Department of the Premier and Cabinet (DPC) hence the extension of the Committee’s oversight responsibilities to that agency.

In early September 2008, the Liberal Party of Western Australia (WA) released its ‘2008 Election Commitments,’ including a policy entitled ‘Government Accountability and Public Sector Management.’⁴ The Liberal Party contended that the public sector in WA was ‘deeply politicised’⁵ and that the ‘independence’ of the public sector needed to be restored, in part through the appointment of a ‘Public Sector Management and Standards Commissioner,’ independent of the DPC.⁶ The position was intended to recommend suitable persons to appointment as Chief Executive Officers (CEOs); oversee ethics and standards; and provide leadership, to the public service.⁷ The Liberal Party committed to appointing a Public Sector Management and Standards Commissioner within 100 days of successful attainment of Government.

On 23 September 2008 the Liberal National Government was sworn in by the Governor following the state election on 6 September 2008. Hon. Colin Barnett, MLA (the Premier) assumed office as the Premier of WA and Minister for Public Sector Management.^{8 9} On 24 September 2008,¹⁰ a

¹ Standing Order 285, Standing Orders of the Legislative Assembly of the Parliament of Western Australia.

² Standing Order 287, Standing Orders of the Legislative Assembly of the Parliament of Western Australia.

³ Hon. Grant Woodhams, MLA, Speaker of the Legislative Assembly, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 11 November 2008, pp73-74.

⁴ Liberal Party of Western Australia, *Government Accountability and Public Sector Management*, 1 September 2008. Available at: http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 31 March 2009.

⁵ *ibid.*, p1.

⁶ *ibid.*, p4.

⁷ *ibid.*

⁸ *Western Australian Government Gazette*, Government Printer, Perth, Tuesday 23 September 2008, No.163.

Ministerial Contract for Service was awarded to Concept Economics Pty Ltd (Peter Conran) for the provision of ‘advice to the incoming government on COAG [Council of Australian Governments], government administration and general policy issues.’¹¹ The contract had a cessation date of 23 December 2008 unless terminated earlier by mutual agreement.¹²

On 30 September 2008 the Premier announced the establishment of the PSC as an initial stage in ‘enhancing the independence, professionalism and integrity of Western Australia’s public service’, and the transfer of Mr Malcolm Wauchope, Director General, DPC, to the position of Public Sector Commissioner (Public Sector Commissioner).¹³ A narrower role than that described in Liberal policy documents was prescribed for the Commission and the Public Sector Commissioner centring on leadership, capacity building, evaluation, the development of policies and practices, driving reform and ensuring public sector accountability. These roles excluded oversight of Public Sector Standards and ethics. The Public Sector Commissioner has effectively assumed the majority of functions administered under the *Public Sector Management Act 1994* (PSM Act) by the Minister for Public Sector Management, excluding those relating to ministerial officers.¹⁴

On 18 September and 1 October 2008 respectively, articles in the *West Australian* newspaper reported the belief that an approach had been made to ‘former Howard government policy director Peter Conran to move west’¹⁵ and the Premier as citing that ‘former consultant to the Howard Federal government Peter Conran was a possibility for the job as head of the Premier’s Department.’^{16 17} The latter alleged commentary by the Premier receives condemnation by the Hon. Eric Ripper, MLA, Leader of the Opposition, (the Leader of the Opposition) who claimed such an act to be ‘contrary to the Government’s stated intention of having an apolitical independent public service.’^{18 19} An issue which the government allegedly implies to be irrelevant

⁹ Although the Committee acknowledges that the Premier is acting as Minister for Public Sector Management when exercising functions under the Public Sector Management Act 1994, the Committee has elected to use the title Premier in all instances. Generally the Premier in this state is also responsible for Public Sector Management.

¹⁰ Tenders WA, ‘Consultant’, 24 September 2008. Available at: <https://www.tenders.wa.gov.au/> Accessed on 31 March 2009.

¹¹ Submission No. 18 from Mr Greg Moore, Assistant Director General, Department of the Premier and Cabinet, Attachment 6 ‘Tax Invoice’, 9 April 2009, p2.

¹² Submission No. 18 from Mr Greg Moore, Assistant Director General, Department of the Premier and Cabinet, 9 April 2009, Attachment 3, p1.

¹³ Hon. Colin Barnett, MLA, (Premier), *Establishment of the Public Sector Commission and position of Public Sector Commissioner*, Media Statement, Government Media Office, Perth, 30 September 2008.

¹⁴ *ibid.*

¹⁵ Robert Taylor, ‘Cautious Colin takes his time in transition’, *The West Australian*, 18 September 2008, p7.

¹⁶ Robert Taylor, ‘Barnett moves to depoliticise public service’, *The West Australian*, 1 October 2008, p12.

¹⁷ Robert Taylor, ‘Barnett Returns to Public Service Commissioner’, *The West Australian*, 1 October 2008, p12.

¹⁸ Robert Taylor, ‘Barnett moves to depoliticise public service’, *The West Australian*, 1 October 2008, p12.

in the context of the independence of the CEO appointment process by the Commissioner for Public Sector Standards (under section 45 of the PSM Act).²⁰ Further mention of Mr Conran as a potential candidate occurs on ABC breakfast radio on 3 October 2008, on 18 October 2008 in *The Australian* and on 20 and 23 October 2008 in the state's *Business News*.²¹

On or about the 6 October 2008, in lieu of initial media coverage indicating a likely vacancy in the Office of the Director General, DPC, the Commissioner for Public Sector Standards (the Standards Commissioner), Dr Ruth Shean, commenced work on forming the selection panel and devising a related timeline for the recruitment and appointment process. This was pending formal approval to proceed being given on 13 October 2008 by Mr Wauchope in his then capacity as Director General, DPC.

Panel membership is subsequently confirmed by 10 October 2008 as Ms Cheryl Gwilliam, Director General Department of the Attorney General, Mr Peter Browne, a former senior public servant and Chief of Staff to Hon. Norman Moore, MLC during the Court government, and Mr John Langoulant, former State Under Treasurer and a previous Chief Executive of the Chamber of Commerce and Industry WA, with short-listing and interviews to occur on 3 and 5 November 2008 respectively.²² Both Mr Wauchope²³ and Ms Deirdre Wilmott,²⁴ Chief of Staff to the Premier, are informed on 9 October 2008 of those arrangements. Between 13 and 16 October 2008, both Mr Langoulant²⁵ and Ms Gwilliam²⁶ withdraw due to interstate commitments and are replaced by Mr Barry McKinnon, former Parliamentary Leader of the State Liberal Party, and Ms Jenny Mathews, Director General, Department of Local Government and Regional Development. The Standards Commissioner continues to apprise Mr Wauchope and Ms Wilmott of changes to panel composition as they occur.^{27 28}

On 18 October 2008, the position of Director General, DPC is advertised at a state and national level,²⁹ with closure of receipt of applications listed as noon on 31 October 2008.³⁰ On 28

¹⁹ Robert Taylor, 'Barnett Returns to Public Service Commissioner', *The West Australian*, 1 October 2008, p12.

²⁰ *ibid.*

²¹ Kennedy, Peter (ABC Reporter), *Week in Politics*, Breakfast 720 ABC, Perth, 3 October 2008.

²² Submission No. 12 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 16 March 2009, p1.

²³ *ibid.*, p2.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ *ibid.*, p3.

³⁰ Submission No. 7 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Commissioner for Public Sector Standards, 23 January 2009, p10.

October 2008, the Standards Commissioner met with the Premier and Ms Wilmott pursuant to section 45(4) of the PSM Act to discuss matters that the Premier wished her to take into account in nominating a person suitable for appointment to the position. The Premier is informed of the composition of the panel although no further discussion occurs on this issue.³¹ The Premier in debate in the Legislative Assembly expressed a contrary view on his discussions regarding the composition of the panel.³²

Three applications are received for the position, including one from Mr Conran.³³ On 18 November 2008, the Premier announces Mr Conran as the successful applicant.³⁴ On 21 November 2008, the PSC was established by the Governor, to take effect from 28 November 2008.³⁵ Subsequently, the Premier effected the disposition of offices and public service officers and made other necessary changes to formalise the PSC, also effective from 28 November 2008.³⁶

The appointment of Mr Conran as Director General sparked considerable debate in both Houses of the Parliament of WA throughout November and December 2008. Members of the Opposition Labor Party focussed principally on the integrity of the selection and appointment process used to employ Mr Conran, contending it to be a political appointment. In responding to the Opposition's claims, the Premier in broad terms denied political interference in the selection and appointment of Mr Conran and claimed independence of process to be afforded through the involvement of the Standards Commissioner.

Notably, the focus of debate was on the recruitment and appointment process, not on Mr Conran's credentials and capacity to fulfil the role of Director General, DPC.³⁷

On 2 December 2008 the Leader of the Opposition, wrote to the Public Accounts Committee (PAC) requesting that it consider conducting an inquiry into 'the intent and content of any proposed statutory changes [relating to the establishment of the PSC] and the adequacy of the transitional arrangements to ensure compliance with legislation impacting on the Commission's

³¹ Submission No. 12 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 16 March 2009, p3.

³² Hon. Colin Barnett MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 4 December 2008, pp956-957.

³³ Submission No. 17 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Commissioner for Public Sector Standards, 7 April 2009, p1.

³⁴ Submission No. 7 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Commissioner for Public Sector Standards, 23 January 2009, p10

³⁵ *Western Australian Government Gazette*, Government Printer, Perth, Friday 21 November 2008, No.195, p4943.

³⁶ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, Attachment 2.

³⁷ Hon. Alannah MacTiernan, Shadow Minister for Regional Development; Strategic Infrastructure; Climate Change, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p660.

activity...'.³⁸ The Leader of the Opposition, in sync with commentary in the Legislative Assembly, tendered support for public sector reform aimed at enhancing and strengthening 'the professionalism, independence and productivity' of the Public Service.³⁹ That said, it was viewed that given the extent of the reform proposed, the aims and statutory basis of the reforms should be clearly articulated.⁴⁰ The Leader of the Opposition proposed terms of reference for the inquiry.⁴¹ The latter made clear reference to the 'adequacy', 'propriety' and 'legality' of the appointment process for the appointment of the Director General, DPC.⁴² Correspondence related to this request is attached at Appendix 4.

1.2 Conduct of the Inquiry

On 10 December 2008, following a period of preliminary research and deliberation, the Committee resolved to conduct an *Inquiry into the New Structure and Functions of the Department of the Premier and Cabinet and the Public Sector Commission* and determined related terms of reference. The PAC advertised the Inquiry in the *West Australian* newspaper on 20 December 2008 and called for submissions to be received by 23 January 2009. The PSC, DPC, the Office of Public Sector Standards Commissioner (OPSSC), experts in public sector management, and external recruitment consultants involved in the selection of Public Sector CEOs, were approached independently to provide a submission. In relation to the aforementioned government entities and recruitment consultants, a series of formulated questions, designed to elicit information around key components of the Inquiry, were included in the request, although agencies were not confined in their responses. The Committee requested supplementary submissions during the conduct of the Inquiry in order to seek clarification on specific matters as they arose. In total, the Committee received 21 submissions for the Inquiry, a summary of which is provided at Appendix 1.

Where appropriate the Committee conducted open evidence hearings with stakeholders. These were convened in Perth between 11 and 23 March 2009 with 10 witnesses from 8 organisations tendering evidence. A list of witnesses is available at Appendix 2. Approaches were also made to relevant government agency counterparts in other Australian jurisdictions to enable an examination of public sector models and processes and their relevance to the WA Public Sector, although no interstate investigative travel was undertaken. Similarly, an assessment of reviews and other relevant research material on the WA Public Sector and pertinent legislation was undertaken. Legal advice was also sought from the State Solicitor on specific provisions of the PSM Act relating to the establishment of the PSC, CEO selection and recruitment processes, agency responsibility for Ministerial officers and the nature of the contract awarded to Concept Economics Pty Ltd (Peter Conran).

³⁸ Hon. Eric Ripper, MLA, Leader of the Opposition, Parliament of Western Australia, letter, 2 December 2008, p1.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*, p2.

⁴² *ibid.*

The Committee's Inquiry has demanded an examination, in part, of issues of efficiency, effectiveness and timeliness. This has required an assessment of relevant actions taken by government or government entities, the date(s) on which this occurred and the premise for doing so. A degree of confusion arises in terms of comprehending the processes involved in the establishment of the PSC and the appointment of the Director General, DPC. This can be attributed to the complexity of the processes and the rapidity by which outcomes were achieved. For ease of comprehension, the Committee has attached a timeline at Appendix 5.

1.3 Prescribed limitations on the Conduct of the Inquiry

On 3 March 2009, the Standards Commissioner contacted the Hon. John Kobelke, MLA, Chairman, PAC, citing the prohibitive effect of section 105 of the PSM Act on the Committee's capacity to inquire into the appointment of Mr Peter Conran. The relevant part of that section is as follows:

*'105. Restriction on communications by members of Parliament etc.'*⁴³

- (1) *Subject to this section, a person who is a member of Parliament or ministerial officer shall not interview or communicate with -*
- (b) *the Commissioner or his or her delegate concerning the selection, appointment or reappointment of a chief executive officer.'*

An offence under that section carries a maximum penalty of \$1000.

Subsequent to that discussion, the Chairman sought advice from Mr Peter McHugh, Clerk of the Legislative Assembly, on the effect of Section 105 on the Committee's powers of Inquiry.

A formal written response was tendered by the Clerk on 4 March 2009. He took the view that the principal matters pertinent to the Committee's enquiry were determined to be whether: the restriction on communication by a Member of Parliament applies to a Member when acting jointly with other Members in the context of a separate entity, namely a Parliamentary Committee; and whether a temporal element applies to the section given the potential harm to which the section is directed.⁴⁴

In respect to the first principle, it was determined:

- that the Acts, Standing Orders and practices of the Legislative Assembly relating to the powers and procedures of committees establish the Committee as a separate entity to its participant members;

⁴³ There are certain office holders who are excluded from the prohibition imposed by section 105, including the responsible Minister.

⁴⁴ Mr Peter McHugh, Clerk of the Legislative Assembly, Parliament of Western Australia, letter, 4 March 2009, p1.

- that whilst individual Members are protected by certain components of privilege, the Committee is a separate entity vested with powers of inquiry; and
- that '[t]here is good authority⁴⁵ that the powers and privileges of Parliament are of such fundamental importance that they should not be abrogated without express provision or necessary implication in legislation.'⁴⁶

The Committee was informed that Section 105 only places restrictions on individual Members, not on Houses of Parliament or Parliamentary Committees. There is no express provision in this instance to remove the power of the aforementioned entities to inquire into such matters, nor is there 'a necessary implication that Parliament intended to fetter its own powers of inquiry.'⁴⁷ Numerous instances were provided by the Clerk where information relevant to public service appointments has been supplied to a House of Parliament. It was contended that it would be implausible for the House to expect to receive that information and for a Committee of the House not to.

The Clerk advised that in his view section 105 was aimed at preventing Members from interfering in the appointment process as it proceeds, not to restrict a Member or Committee's capacity to inquire. That being said, it was perceived that it would be prudent for a committee 'to avoid inquiring into and releasing personal information or information about other candidates unless that was considered absolutely necessary.'⁴⁸

As per the Committee's commentary in section 1.1, the PAC is not concerned about Mr Conran's credentials or ability to ably fulfil the functions of his appointed role. The relevant part of this Inquiry is about the integrity of the process of selection and appointment. The focus of the Inquiry has meant that there has been no necessity to access personal information in regard to Mr Conran or other candidates a party to this process. The Committee, however, considers it critical that a Parliamentary Committee, particularly one established to examine public accountability, is not constrained from examining appointments of this significance and seniority and recognises the Clerk's advice to that effect.

⁴⁵ Senate Standing Committee on Constitutional and Legal Affairs, *Commonwealth Law Making Power and the Privilege of Freedom of Speech in State Parliaments*, Parliament of Australia, Canberra, 30 May 1985, PP235/1985, p2 and CJC & Ors v Dick [2000] QSC 272.

⁴⁶ Mr Peter McHugh, Clerk of the Legislative Assembly, Parliament of Western Australia, letter, 4 March 2009, p2.

⁴⁷ *ibid.*, pp2-3.

⁴⁸ *ibid.*, p2.

1.4 Scope of the Inquiry

The Committee is cognisant that there have been innumerable reviews of the PSM Act, many of which have determined the Act to be unduly complex and creating a fragmented WA Public Sector. Similar concerns were again raised in the course of this Inquiry. Whilst the Committee acknowledges the need to more broadly address some of the deficiencies of the Act and makes mention of such in this report, the Committee is confined to matters directly relevant to its terms of reference.

CHAPTER 2 THE PUBLIC SECTOR COMMISSION

2.1 Rationale for structural change

The Committee questioned the Public Sector Commissioner on the rationale for the structural changes and outcomes to be achieved through the establishment of the PSC. In a written response, the Public Sector Commissioner referred the Committee to the Premier's media statement, dated 30 September 2008.⁴⁹ The Committee notes in the context of this report that it regularly relies on two Premier's media statements and the Liberal Party's election documentation given the lack of available government data on the PSC. As cited in Chapter 1, the primary rationale is noted as 'enhancing the independence, professionalism and integrity of Western Australia's public service.' The media statement also mentions the structural changes being 'positive steps towards better government and a better State.'⁵⁰ As a foundational document for understanding the rationale and outcomes envisaged by the Government's reforms, the 30 September 2008 Premier's media statement is insufficient. The PSC's website provides no further insight into the meaning of the terminology contained within the statement of rationale.

Commentary in the Liberal Party's election commitments, media articles subsequent to the 30 September 2008 release, and a further Premier's media statement of 28 November 2008, provides some clarification, albeit fairly minimal:

- it is not 'administratively correct to have the head of the public service within the Premier's Department', that 'an independent and professional public sector ...needs to be seen' as such.⁵¹
- limiting DPC to dealing with government policy and issues related to federal-state relations will address the 'compromise and conflict of interest' that has existed 'between administering the policy program of the government and looking after the independence and professionalism of the public service.'⁵²
- the reforms will 'deliver a more efficient and streamlined public sector.'⁵³
- the structural changes will 'end years of political interference in the public service' following 'a string of damaging Corruption and Crime Commission revelations about MPs and public servants doing the bidding of ...lobbyists.'⁵⁴

⁴⁹ Hon. Colin Barnett, MLA, (Premier), *Establishment of the Public Sector Commission and position of Public Sector Commissioner*, Media Statement, Government Media Office, Perth, 30 September 2008.

⁵⁰ *ibid.*

⁵¹ Robert Taylor, 'Barnett returns to public service commissioner', *The West Australian*, 1 October 2008.

⁵² Amanda O'Brien, 'Premier acts to 'restore integrity'', *The Australian*, 1 October 2008, p10.

⁵³ Liberal Party of Western Australia, *Government Accountability and Public Sector Management*, 1 September 2008. Available at: http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 31 March 2009, p3.

- the PSC's responsibility for all matters relating to the Public Service brings an end to 'the Premier's role in overseeing the public service.'⁵⁵

The Parliamentary debates referenced in Chapter 1 were centrally focused on the appointment of Mr Conran as Director General, DPC, hence minimal reference was made to the rationale for the public sector reforms. There were several repeat statements about the Public Sector Commissioner restoring the professionalism, independence and competency or quality of the public sector.⁵⁶ The following represents the only detailed commentary the Committee could locate in Hansard around the time structural reform commenced regarding the Premier's rationale:

*The Department of the Premier and Cabinet reports to the Premier. It has a prime role in implementing the policy program of the government of the day and of the Premier of the day, as it should. It is entirely sensible and appropriate, therefore, that the leadership of the public service should not be in the Department of the Premier and Cabinet. That is why we have set up a Public Sector Commissioner,... and have separated out those functions of the management, leadership, recruitment, appointment and standards in the public sector so that they will be quite separate from the Premier's own department. That was a fundamental reform, and will be to the betterment of the public service.*⁵⁷

That being said, Hon. Colin Barnett, MLA, in his contribution to the Premier's Statement debate as Member for Cottesloe in February 2008, iterated the following:

The public service, which is fundamental to a Westminster system, is meant to be an independent and professional public service. A departmental head should be able to advise his or her minister without fear or favour on any issue. I was lucky as a minister; I had public servants, perhaps of the old ilk, who did that, certainly without any fear, and I respected them. I did not interfere in their department, and there was a clear understanding of the role of the minister and the role of the public servant. I was fortunate to have experienced public servants working with me. However, a lot of that has been changed, and again this has happened under both governments. We have seen some of the best senior public servants lost from the system. As I have said previously, there have been a number of serious failings in state administration. We have seen confusion over the roles of ministers and chief executive officers. We even see public servants being sent out to the media to debate issues with the opposition of the day. That is inappropriate; that is not what is done under the Westminster system. If it is a political issue, the minister goes out and takes on the opposition; a public servant should not be sent out. I recommend that we re-establish the position of a public service commissioner as the head of the public service. It should not be someone who is jointly heading up the public service and the Department of the Premier and Cabinet. Re-establishing a public service commissioner will give the independence, professionalism and integrity back to our public service. We should let the

⁵⁴ Amanda O'Brien, 'Premier acts to 'restore integrity'', *The Australian*, 1 October 2008, p10.

⁵⁵ *ibid.*

⁵⁶ Hon. Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p658-659.

⁵⁷ *ibid.*, pp642e-643a.

*public service rebuild itself, because it is under question, just as this Parliament is. We should also reinstate the concept of permanency for heads of departments.*⁵⁸

The concept of ‘independence’ within the context of the Government’s rationale for structural change received considerable focus in the Inquiry partly because of the Liberal Party’s contention that increased independence would result in de-politicisation of the Public Service, but also because of the renewed focus of the PSC to building the capacity of the Public Service. Integrity was largely viewed as integral to independence and professionalism.

The following provides a summary of statements made in submissions to the Inquiry regarding the Government’s premise for appointing the Public Sector Commissioner and establishing the PSC:

- it will enable an improved focus, in consultation with other agencies and stakeholders, on DPC’s capacity building and hence the provision of better quality advice to Government.⁵⁹
- it will remove the oversight of the public sector from the ‘largely political environment’ of DPC which diminished the importance of public sector management functions.⁶⁰
- it will reduce the opportunity for nepotism and patronage in the appointments process, enabling public servants to offer unfettered advice.⁶¹
- it could bring more centralised control to an otherwise fragmented public sector.⁶²

The Institute of Public Administration Australia (IPAA) noted that it was difficult to provide commentary on the proposed changes given the absence of publicly available information.⁶³

In an evidence hearing with the Public Sector Commissioner on 11 March 2009, the Committee asked Mr Wauchope about the meaning of ‘independent’ in the context of the Premier’s claims on 30 September 2008, and how he envisaged that the PSC would achieve improvements in independence and professionalism in the public service. Mr Wauchope replied:

I think the Premier was specifically relating to independence from the functions of the Department of the Premier and Cabinet. My understanding of it is that he held the view that it was very difficult for the head of the public sector or the head of the public service

⁵⁸ Hon. Colin Barnett, MLA, Member for Cottesloe, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 28 February 2008, p522b-533a.

⁵⁹ Submission No. 9 from Mr Peter Conran, Director General, Department of the Premier and Cabinet, 22 January 2009, p2.

⁶⁰ Submission No. 4 from Ms Jan Sagers, Nexus Strategic Solutions, 20 January 2009, p7.

⁶¹ Submission No. 5 from Ms Toni Walkington, General Secretary, Community and Public Sector Union Civil Service Association of WA, 23 January 2009, p3 referencing ECS Wade and CG Phillips, *Constitutional and Administrative Law*, 1977, p260, referring to Cmnd 3638, app. B (which reprints the 1854 report), p108.

⁶² Submission No. 10 from Hon, Gavin Fielding, 27 February 2009, pp1-4.

⁶³ Submission No. 2b from Mr Christopher Williams, Institute of Public Administration WA, 13 February 2009, p2.

*to be able to operate and to be seen to be operating in that capacity unless it was a separate entity, and so the independence is essentially from being bound up with other government-type functions that are held in the Department of the Premier and Cabinet.*⁶⁴

Elaborating on this comment, the Public Sector Commissioner stated that whereas in the past an examination of public sector management issues may well have involved consideration of other matters in which DPC was involved, this is no longer the case. Consultation with DPC and other agencies will still occur but the difference lies in the independence of decision-making and other processes.⁶⁵ The Public Sector Commissioner views that current workforce challenges, particularly the ageing population, and the requirement for the Public Sector to ‘keep its eye on where it has to be positioned’ demands such an approach.⁶⁶

The Committee clarified further that that there was no statutory requirement for the Public Sector Commissioner to act independently as per the Standards Commissioner and that the section 49 dismissal provisions of the PSM Act continue to apply. The PSC and its Director General are therefore subject to the same constraints as any other department of state.⁶⁷ The Public Sector Commissioner is still required to report to the responsible Minister for that department, in this case the Premier.⁶⁸

In summary therefore, the structural reforms were principally seen to create an independent and professional public service by removing the opportunity for conflict of interest and political interference when the policy arm of Government and the administration of the Public Service coexist in one agency.

An assessment of the detail provided within this section however, indicates that a level of independence from political influence in public sector management was also intended. The Premier in his capacity as member for Cottesloe in February 2008, references the position of Public Service Commissioner (as it was then called) as the head of the public service and goes on to state that we (as in Parliament) should let the public service ‘rebuild itself.’⁶⁹ The *Australian Newspaper* on 1 October 2008 cites the Premier as stating that creation of the PSC to deal with all matters relating to the public sector would end ‘the Premier’s role in overseeing the public service.’⁷⁰ The Premier in his two media statements about the Commission iterates his intention

⁶⁴ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p2.

⁶⁵ *ibid.*, p3.

⁶⁶ *ibid.*, p7.

⁶⁷ *ibid.*, p3.

⁶⁸ Hon. Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p659.

⁶⁹ Hon. Colin Barnett, MLA, Member for Cottesloe, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 28 February 2008, pp522b-533a.

⁷⁰ Amanda O’Brien, ‘Premier acts to ‘restore integrity’’, *The Australian*, 1 October 2008.

that the Public Sector Commissioner performs all his functions under the Act, including playing an ‘independent role in the selection of public sector CEOs.’⁷¹

2.2 Legislative and/or other basis for the establishment of the Public Sector Commission

As detailed in Section 1.1 of this report, the establishment of a Public Sector Commissioner to ‘head’ the Public Sector in WA was a state Liberal Party election promise.⁷² Given the 100 day implementation obligation on successful attainment of government, the Premier was required to ‘move quickly to implement all...election commitments.’⁷³

Section 35(1)(a) of the PSM Act prescribes that the Governor, on recommendation of the Premier, may establish and designate; amalgamate and divide; abolish; or alter the designations, of departments. Notice of such an act is required to be published in the *Government Gazette*. On 21 November 2008, the establishment and designation of the PSC was gazetted with effect on and from 28 November 2008.⁷⁴ Section 35 limits the PSC to being established as a department with the Public Sector Commissioner as its CEO. The level of involvement of the responsible Minister is dictated by the associated legislation, in this case the PSM Act.

The Committee queried the Public Sector Commissioner at hearing on why the Commission had been titled as such and Mr Wauchope given the title of Commissioner. Mr Wauchope replied as follows:

*It is legally a department, but the value in having it called a commission is to set it apart from the other departments in terms of being seen to be the head of the public sector, which is the intention of the change.*⁷⁵

Section 36(4) of the PSM Act enables the Premier to ‘effect the disposition of offices and public service officers and such other consequential changes...[w]hen departments are established in lieu of existing departments or organisations or by the amalgamation or division of existing

⁷¹ Hon. Colin Barnett, MLA, (Premier), *Establishment of the Public Sector Commission and position of Public Sector Commissioner*, Media Statement, Government Media Office, Perth, 30 September 2008 and Hon. Colin Barnett, MLA, (Premier), *Public Sector Commission to deliver better public service*, Media Statement, Government Media Office, Perth, 28 November 2008.

⁷² Liberal Party of Western Australia, *Government Accountability and Public Sector Management*, 1 September 2008, p4. Available at: http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 31 March 2009.

⁷³ Liberal Party of Western Australia, ‘Liberal Plan for the First 100 days of Government’, 1 September 2008. Available at: http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 21 April 2009.

⁷⁴ *Western Australian Government Gazette*, Government Printer, Perth, Friday 21 November 2008, No.195., p4943.

⁷⁵ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p24

departments or organisations.’ In line with the establishment of the PSC, the Premier ‘effected the disposition of offices and public service officers on and from 28 November 2008,’⁷⁶ the specific detail of which is provided later in the Chapter.

Section 15 of the PSM Act empowers the Minister to delegate ‘in writing and either generally or as otherwise provided by the instrument of delegation...to a person any of the powers or duties of the Minister’ under the Act or any other Act, other than the power of delegation or the power of direction conferred by Section 11(1).⁷⁷ On 28 November 2008, the Premier formally delegated the majority of powers and duties of the Premier under the PSM Act to the Public Sector Commissioner. This included all functions apart from those precluded by section 15; the employment of Ministerial officers; the temporary appointment of CEOs for periods of less than 3 months; and redeployment and redundancy provisions under Section 93(1) of the Act and related regulations delegated to the person holding the office of Minister for Commerce. Specifically, functions delegated to the Public Sector Commissioner include:

- *overall public sector operational efficiency;*
- *chief executive officers (including disciplinary);*
- *SES [Senior Executive Service] management (including performance management);*
- *public service classification and appointment processes;*
- *redployment and voluntary severance arrangements; and*
- *remuneration setting for Government boards and committees.*⁷⁸

It is surmised that employment of Ministerial Officers under Part 4 of the Act was specifically delegated to the Director General, DPC, given the political nature of those appointments and the Premier’s intent to create a more independent and apolitical public service through the creation of the PSC. The delegations are attached at Appendix 6.

Some of these powers were delegated to the former Director General, DPC who at the time had responsibility for Public Sector Management. The principal difference is that in this instance they were used, together with the following additional powers granted to the Public Sector Commissioner, above and beyond that formerly delegated to the Director General, DPC, to create the PSC.⁷⁹

⁷⁶ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, p6.

⁷⁷ Section 11(1) allows the Minister, in writing, to direct a suitably qualified person(s) to hold a special inquiry into a matter relating to the Public Sector.

⁷⁸ Hon. Colin Barnett MLA, (Premier), *Establishment of Public Sector Commission and position of Public Sector Commissioner*, Media Statement, Government Media Office, Perth, 30 September 2008.

⁷⁹ Mr Raymond Andretich, Senior Assistant State Solicitor, State Solicitor’s Office, letter, 13 March 2009.

- Part 2, Division 2; relating to functions of the Minister;
 - promoting overall effectiveness and efficiency across the public sector;
 - planning the management and operation of the public sector; and
 - ‘authorising reviews for which powers of entry and inquiry are provided’;
- Part 2, Division 3; appointment of the Standards Commissioner;
- Part 3, Division 1; constitution of the public service and creation of departments; and
- Part 3, Division 2; constitution of the Senior Executive Service and CEO recruitment and general management.⁸⁰

The Committee queried the Public Sector Commissioner at hearing on the administrative processes underpinning the structural reforms, specifically whether government had prepared a detailed position paper or whether this was a task of the PSC. Mr Wauchope responded as follows:

*The only documentation we had to work with was the election commitment and a discussion with the Premier, me and his chief of staff about what he was expecting out of a public sector commission and looking at resourcing it. I proposed that the logical business of Premier and Cabinet would come across. I was happy to have all services provided by DPC.*⁸¹

In response to further questioning on the form this documentation took (i.e. a position paper or a Cabinet Submission), Mr Wauchope detailed that ‘[p]apers were prepared as proposals but ultimately they ended up in the cabinet submission.’⁸²

Mr Conran, when questioned on the same issue, cited that he was not involved in the considerations or position papers on how the structural reforms could be implemented.⁸³

⁸⁰ Ms Ruth Young, Principal Policy Officer, Public Sector Commission, Electronic Mail, 13 May 2009.

⁸¹ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p8.

⁸² *ibid.*

⁸³ Mr Peter Conran, Director General, Department of the Premier and Cabinet, Western Australia, *Transcript of Evidence*, 23 March 2009, p6.

Finding 1

The Public Sector Commission is a department of state, with its Chief Executive Officer titled as Public Sector Commissioner. The Public Sector Commissioner does not have the status or independence of an Officer of the Parliament as in the case of the Public Sector Standards Commissioner.

Finding 2

The functions and powers of the Public Sector Commissioner are those delegated by the Minister for Public Sector Management and extend further than those previously delegated to the Director General, Department of the Premier and Cabinet.

2.3 Roles, functions and organisational structure of the Public Sector Commission and the Department of the Premier and Cabinet

To put it simplistically, the role of the PSC and DPC are management of the public sector and administering the policy program of government respectively.⁸⁴

The Premier's media statement dated 28 November 2008 prescribes the functions of the PSC as including:

- *overall public sector operational efficiency;*
- *chief executive officers and senior executive service members;*
- *public service classification and appointment processes and standards;*
- *redeployment and voluntary severance arrangements;*
- *remuneration setting for government boards and committees; and*
- *public service officers located within Ministerial offices.*⁸⁵

The functions of the Public Sector Commissioner have been outlined in section 2.2 in line with the delegations from the Premier under section 15 of the PSM Act.

⁸⁴ Amanda O'Brien, 'Premier acts to 'restore integrity'', *The Australian*, 1 October 2008, p10.

⁸⁵ Hon. Colin Barnett MLA, (Premier), *Public Sector Commission to deliver a better public service*, Media Statement, Government Media Office, Perth, 28 November 2008.

A media article dated 1 October 2008 quotes the Premier as stating in relation to the formation of the PSC '[t]his is taking all the functions to do with public sector management which are currently in the Premier's Department and simply moving them into this public sector commission.'⁸⁶ This is supported by the Premier's statement in Hansard on 4 December 2008⁸⁷ and the transfer of public sector related functions, including the Office of e-Government, Accountability Support Unit and Public Sector Management Division from DPC to the PSC.⁸⁸

In brief, these business units are entrusted with the following:

The Public Sector Management Division - for building 'a vibrant and sustainable public sector' focussing 'on individual and service excellence' and setting the legal and policy framework for employment, remuneration, redeployment and machinery of government reform. It comprises two divisions:

- Organisational Management Branch - responsible principally for the development of strategies to enhance public sector workforce planning; recruitment practices; women in leadership and governance of boards and committees; and
- Workforce Management Branch - addressing a range of issues and priorities centring on policy, compliance and service delivery outcomes. The unit provides considerable support to CEOs on the application of legislation and policies; manages legislatively prescribed CEO recruitment functions; and electronic management of public sector recruitment, professional development and redeployment advice.⁸⁹

The Office of e-Government - developing whole-of-government policies to increase public sector efficiencies with respect to Information and Communications Technology (ICT) and to providing support to individual agencies regarding the development and implementation of e-government projects. The notion is that this will be achieved through improving processes within and between agencies and ensuring value for money in ICT purchases, and improved accessibility to, and participation in, government, by the community. On incorporation into the PSC, the work of the Office of e-Government became a deliverable of the Commission.⁹⁰

The Accountability Support Unit - is dedicated to public sector accountability. It provides information and resources to CEOs and public sector employees on accountable and ethical

⁸⁶ Amanda O'Brien, 'Premier acts to 'restore integrity'', *The Australian*, 1 October 2008, p10.

⁸⁷ Hon. Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 4 December 2008, p949b-964a.

⁸⁸ Hon. Colin Barnett MLA, (Premier), *Public Sector Commission to deliver a better public service*, Media Statement, Government Media Office, Perth, 28 November 2008.

⁸⁹ Public Sector Management Division, Available at: <http://www.dpc.wa.gov.au/PSMD/AboutPSMD/Pages/OurStructure.aspx>. Accessed on 24 April 2009.

⁹⁰ Office of e-Government, Available at: <http://www.egov.dpc.wa.gov.au/AboutUs/Pages/Default.aspx>. Accessed on 24 April 2009.

decision-making and references relevant legislation, Premier's Circulars (now Commissioner's Circulars) and other directives pertaining to the Public Sector accountability framework.⁹¹

On 23 January 2009, the Public Sector Commissioner detailed that the Commission was undertaking a strategic planning exercise to determine the degree of emphasis to be placed on the roles and functions of the PSC.⁹² The Public Sector Commissioner also noted that discussions had commenced with other relevant Public Sector agency heads to determine whether there were functions within those agencies better located with the PSC.⁹³ These discussions principally involved the Department of Commerce in relation to labour relations functions, and the Standards Commissioner regarding diversity related functions associated with the Director of Equal Opportunity and Employment.⁹⁴

The PSC submission dated 23 March 2009 notes that until the positions of acting Deputy Commissioners with responsibility for Public Sector Agency Support, Strategic Policy and Planning and Public Sector Capability and Development, are filled, the structure below that organisational level cannot be finalised. The draft structure as at March 2009 is provided at Appendix 7.

Despite the establishment and transfer of functions from DPC to the PSC 'on and from' 28 November 2008, at the time of drafting of the report, DPC had not updated its website to reflect its new role as a consequence of the functional division.⁹⁵ In a submission from DPC, dated 23 January 2009, Mr Conran indicates that the role of the agency will be to consult with other government agencies, industry and the community to 'provide quality advice to Government on strategic objectives.'⁹⁶ Mr Conran in evidence delineates between the policy of government and DPC's strategic roll-out of that policy within the context of public sector agencies:

I have a view that you cannot run policy from a Premier's department because you will not have the day-to-day expertise. But what you can do from the Premier's department is have an overview of the general direction of where the government wants to go. They have a policy platform, and you want to seek to implement that and you want to ensure that the policy capacity within the departments is up to scratch. You want to encourage them to

⁹¹ Department of the Premier and Cabinet, 'The Public Sector Commission', Available at: <http://ww2.dpc.wa.gov.au/index.cfm?event=accountabilitySupport>. Accessed on 24 April 2009.

⁹² Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, p2.

⁹³ *ibid.*, p1.

⁹⁴ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p8.

⁹⁵ Department of the Premier and Cabinet, 'Departmental Role', 24 April 2009. Available at: <http://www.dpc.wa.gov.au/AboutUs/Pages/DepartmentalRole.aspx>. Accessed on 24 April 2009.

⁹⁶ Submission No. 9 from Mr Peter Conran, Director General, Department of the Premier and Cabinet, 23 January 2009, p2.

*really come up with policy initiative consistent with the government's philosophies. I think what we can best do is coordinate policy across the board.*⁹⁷

Mr Conran envisages establishing a strategic policy unit similar to that in situ in the Victorian DPC.⁹⁸

The organisational structures for DPC, WA as at 15 October 2008 and 25 March 2009 are provided at Appendix 8 of this report. The most recent structure reflects the transfer of public sector management type functions to the PSC, relocation of the Office of Development Approvals Coordination to the Department of State Development and the retention within DPC of the following business units: Cabinet and Policy Division; State Administration and Corporate Support; Office of Road Safety; State Security and Emergency Coordination; State Law Publisher; and the Constitutional Centre.⁹⁹ In evidence, Mr Conran comments on the functional elements retained within DPC:

*I still have the state administration area; I have a policy focus. I am still looking at the operations of the policy unit. I have various elements within it. I have an intergovernment relations unit, which the former Premier would be most familiar with. I have an element of domestic policy, for want of a better description, which looks at day-to-day policy issues in relation to areas such as health, environment, social and the like. That is what the department looks like at the moment. I will be looking to give it a much more strategic focus over a period of time. We are in the process of looking at that right now.*¹⁰⁰

DPC will be providing the PSC with broad corporate support services, subject to a service level agreement and consistent with the level of service provided to business units whilst under the management of DPC including, 'Corporate Information, Financial Services, HR [Human Resource] Services, IT services, Reception and Switchboard; Ancillary Services and Facilities Management.' A smaller specialised corporate support unit, to include the functions of 'Chief Finance Officer, management accounting and financial analysis and strategic human resource management' will be established within the PSC.¹⁰¹

⁹⁷ Mr Peter Conran, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 23 March 2009, p3.

⁹⁸ *ibid.*

⁹⁹ Department of the Premier and Cabinet, 'Organisational Chart', March 2009, Available at: <http://www.dpc.wa.gov.au/AboutUs/Pages/OrganisationalChart.aspx>. Accessed on 24 April 2009.

¹⁰⁰ Mr Peter Conran, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 23 March 2009, p2.

¹⁰¹ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, p3.

Finding 3

The available documentation on these structural changes and the outcomes to be achieved is not sufficiently detailed to give clear expectations as to the desired outcomes and how they will be assessed.

2.4 Budget of the Department of the Premier and Cabinet and the Public Sector Commission

The Committee queried Mr Conran at hearing in March 2009 on whether cost projections were undertaken to determine the net cost of the establishment of the PSC prior to 28 November 2009, Mr Conran cited:

*No, not precisely. I think the objective was to do it so that it was budget-neutral, and we are going to try to achieve that. That will be pretty hard, because in a sense there is a new director general position, and that position has a cost and it will need some executive support. Having said that, we will look at the end-budget position and see whether we can trim some areas here or there and balance it all out to be a budget-neutral position. That will not be that easy to do, but we will have a crack at it anyway.*¹⁰²

In a written submission in April 2009, Mr Conran noted the Department's budget as \$112.715 million, down from DPC's budget appropriation for the 2008-09 budget period of \$123.633 million. The Department's contribution to the Efficiency Dividend¹⁰³ is budgeted at \$1.640 million for 2008-09 (approximately a six month period) and \$3.440 million for the following financial year.¹⁰⁴

The Committee similarly queried the Public Sector Commissioner on the established budget for the PSC at hearing on 11 March 2009. Mr Wauchope responded as follows:

I am smiling because we are still going through that process. In the split, 90 per cent of it was fairly clear in terms of those units that I indicated. There is some other funding. It is not clear whether it falls into DPC or PSC. The answer is that I do not have a designated budget at this stage, although we are pretty close. It may well be if you can give us a little

¹⁰² Mr Peter Conran, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 23 March 2009, p9.

¹⁰³ The Efficiency Dividend is designed to give government agencies (to which the dividend is applied) an incentive to find efficiencies; redirect funds to higher priority activities; and to demonstrate efficiency improvements in the public sector.

¹⁰⁴ Submission No. 15 from Mr Peter Conran, Director General, Department of the Premier and Cabinet, 1 April 2009, p2.

*time, I can provide that information for you. I need it as part of our own budget process but I could not give it to you today.*¹⁰⁵

On further questioning in relation to the additional net cost of the PSC over the previous arrangement under DPC, Mr Wauchope cited:

*We can certainly give you the expected cost of the Public Sector Commission operation, assuming that we do not take on any more of these functions that I indicated earlier [functions arising as a consequence of negotiations with other public sector agencies]. I can give you an estimate of what was being provided. For example, the accountability support unit was not a separate service; it was buried in another area of the department. We need to extract all the oncosts that go with that as well as the direct costs. I can give you an estimate of both.*¹⁰⁶

The Committee queried the figure for the 3% Efficiency Dividend applied to the Commission, however, Mr Wauchope was unable to provide sufficient clarification, although he indicated that he believed that it had been applied to the total budget for DPC.¹⁰⁷

In a supplementary submission¹⁰⁸ to the Inquiry dated 23 March 2009, the PSC tendered the following budgetary figures for the next five years of its operation:

Item	2008/09 ¹ \$'000	2009/10 \$'000	2010/11 ² \$'000	2011/12 ³ \$'000	2012/13 \$'000
Budget for Public Sector Commission	10,839	20,252	17,385	15,040	15,189
Approved Special Acts - Commissioner's salary	232	408	422	434	446
Total	11,071	20,660	17,807	15,474	15,635

1 The budget for 2008-09 is for the period 28 November 2008 to 30 June 2009 inclusive.

2 Public Sector Improvement Initiatives ceased.

3 WA Leadership Program ceases.

It was noted that the current budget and forecasts are drawn from the operational budgets and on-costs from the following business units within DPC: Executive and Administrative Services, the Accountability Support Unit, the Office of e-Government, the Public Sector Management Division

¹⁰⁵ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p9.

¹⁰⁶ *ibid.*, p9.

¹⁰⁷ *ibid.*, pp9-10.

¹⁰⁸ Submission No. 13 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 March 2008, p1.

and elements of corporate support. Additional net costs include \$260,000, allocated to progress the transition process and the Commissioner's salary (and on-costs) as detailed.¹⁰⁹

Further, the 3% Efficiency Dividend will apply to the adjusted budget transferred from DPC. Noting that the Efficiency Dividend for the period 2008-09 is for 28 November 2008 to 30 June 2009 inclusive, the figures were tendered as follows¹¹⁰:

Item	2008/09 \$	2009/10 \$	2010/11 \$	2011/12 \$	2012/13 \$
Efficiency Dividend	227,020	479,488	436,640	449,304	449,304

The Efficiency Dividend only applies to the annual operational budget of the PSC, not to the Commissioner's salary component determined by the Salaries and Allowances Tribunal. The Committee calculates on the basis of the efficiency and budgetary figures provided for the PSC that it does not meet the 3% Efficiency Dividend until 2011/12.

Finding 4

The assumption that the establishment of the Public Sector Commission from the Department of the Premier and Cabinet could be achieved on a cost neutral basis could not be tested given the incomplete cost projections currently available.

2.5 Staffing of the Department of the Premier and Cabinet and the Public Sector Commission

From a staffing perspective, the number of Full-Time Equivalents (FTEs) for DPC as at 4 September 2008 was 808.66 which decreased to 638.92 following the transfer of staff to the PSC and a reduction in the number of ministerial officers concurrent with the change of government.¹¹¹

In DPC's first submission to the Inquiry in January 2009, Mr Conran noted that the transfer of staff associated with PSC business units had occurred.¹¹² Mr Wauchope further confirmed in his

¹⁰⁹ *ibid.*, pp1-2.

¹¹⁰ Ms Ruth Young, Principal Policy Officer, Public Sector Commission, Electronic Mail, 30 April 2009.

¹¹¹ Submission No. 15 from Mr Peter Conran, Director General, Department of the Premier and Cabinet, 1 April 2009, p2.

¹¹² Submission No. 9 from Mr Peter Conran, Director General, Department of the Premier and Cabinet, 23 January 2009, p2.

agency's submission of that same month that a number of other staff external to the functional areas had been transferred to the PSC, as well as staff substantively occupying special offices, wherein employment or appointments had not otherwise expired prior to 28 November 2008. It was noted that staff were retained in the same positions and on the same classifications, terms and conditions of employment that they had been employed under previously. Staff seconded to special offices were also moved across, although their employment within the PSC was subject to the direction of the Public Sector Commissioner.¹¹³

Staffing arrangements for Ministerial Officers are such that public sector officers appointed to special offices under section 75 of the PSM Act remain the responsibility of the PSC. Term of Government employees under section 68 of the PSM Act are the employment responsibility of DPC with PSC entrusted with the determination of terms and conditions pursuant to section 70(1) of the PSM Act.¹¹⁴

As at 23 March 2009, the PSC was unable to provide a final FTE figure for the Commission given that it was still 'finalising its structure.'¹¹⁵ Further, it was noted that finalisation of the structure was unlikely to occur until appointment of the three Deputy Commissioners and completion of a planning exercise. The Committee notes that the funding of these three positions amounts to approximately \$565,000 per year plus on-costs.¹¹⁶

That being said, as at 12 February 2009 the total FTE was 129 although the actual number employed was 117.¹¹⁷ Given the transfer of business units from DPC, the Committee requested the PSC provide a comparison of the FTE required to perform the equivalent role within the formerly structured DPC. PSC responded as follows:

*As the Commission has a new mission which will include, but will not be limited to, the roles undertaken by units within the formerly structured Department of the Premier and Cabinet, and elements of corporate support are now required, a direct comparison of FTE is not possible.*¹¹⁸

¹¹³ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, p6.

¹¹⁴ *ibid.*, pp2-3.

¹¹⁵ Submission No. 13 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 March 2008, p2.

¹¹⁶ Western Australian Industrial Relations Commission, 'Public Service General Agreement 2008', Available at: <http://www.wairc.wa.gov.au/Agreements/Agrmnt2008/PUB006.doc>. Accessed on 29 April 2009.

¹¹⁷ Submission No. 13 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 March 2008, pp1-2.

¹¹⁸ Submission No. 13 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 March 2008, p2.

2.6 The Cabinet Secretary

As a consequence of government's reforms, change has also occurred to the staffing of the position of Cabinet Secretary.

In 1995, the Commission on Government (COG), formed as a consequence of a recommendation of the Royal Commission into the Commercial Activities of Government and Other Matters (WA Inc Royal Commission), proposed the abolition of the position of Parliamentary Secretary to the Cabinet and the creation of the position of Cabinet Secretary to be 'a senior level public servant appointed on the basis of merit with extensive experience in government, parliamentary and cabinet matters.'¹¹⁹ The premise behind the recommendation was 'to ensure that the important functions which the incumbent performs are carried out with impartiality and in conformity with stated guidelines.'¹²⁰ In line with the Commission's recommendation and the principle underpinning its formulation, the then Premier, Hon. Geoff Gallop MLA, appointed a senior public servant to the position. On attainment of government, the current Premier appointed Ms Deirdre Wilmot, his Chief of Staff to the role.

The Committee sought clarification from the Premier on why the policy decision was taken to assign a term of government employee to the position rather than a public servant as recommended by the Commission. The Premier stated that the WA Inc Royal Commission which as detailed underpinned the COG, 'found that Cabinet procedures had been disregarded and record keeping had been totally inadequate' but that it did not recommend abolition of the position of Parliamentary Secretary.¹²¹ Further, that COG proposed that WA utilise the Commonwealth system of note taking to 'record the individual contributions of ministers and, while not being a verbatim account of proceedings, [to] accurately reflect the discussion which occurred.'¹²² The Premier in referencing COG noted that only 3 states in Australia, including WA, used Members of Parliament to record Cabinet minutes or decisions, hence COGs recommendation to abolish the position of Parliamentary Secretary and appointment of a Cabinet Secretary.

The Premier notes that the COG report recommendation was considered in determining who should be Cabinet Secretary, who should attend Cabinet meetings and the approach to record-keeping. As a consequence, the Cabinet Secretary has been assigned management of the Cabinet agenda and a public servant as note taker, therein ensuring objectivity in recording. Further, that as per the Cabinet Handbook, the Director General, DPC remains custodian of the Cabinet records with the Cabinet Services Branch responsible for their maintenance. In summary, the Premier cited:

¹¹⁹ *Commission on Government*, Report No.1, Perth, Western Australia, August 1995, pp126-127.

¹²⁰ *ibid.*, p.126.

¹²¹ Hon. Colin Barnett, MLA, Premier, letter, 6 May 2009, p1.

¹²² *ibid.*

*I am satisfied that the important functions of accurate note taking, maintaining the Cabinet record and advising on Cabinet procedures are being performed objectively and professionally.*¹²³

2.7 Interrelationship with other Public Sector agencies

As indicated, at the point of the Premier's announcement of the establishment of the PSC and the Public Sector Commissioner on 30 September 2008, the role of the Commissioner had changed from that envisioned in the Liberal Party's '2008 Election Commitments' released in early September 2008, when it was known as the Public Sector Management and Standards Commissioner.¹²⁴ This earlier title, inclusive of 'Standards Commissioner' was prescribed in part the role of 'setting ethics and standards for the public service.' These functions, which are currently the mandate of the Standards Commissioner, indicate a possible intention by the Liberal Party to combine public sector management functions with those of the Standards Commissioner. By 30 September 2008, the Premier clearly delineates between the two roles in citing that '[i]n addition to the new department and commissioner, the Commissioner for Public Sector Standards will continue to play an important and independent role in the selection of public sector CEOs, and in establishing and monitoring compliance with public sector codes and standards of behaviour.'¹²⁵

An article in *The West Australian* on 1 October 2008 reports the Premier as citing that 'the position of public sector standards commissioner would not be abolished but a working party would report on any overlaps between the new commission's role and the standards commissioner.'¹²⁶

In sync with the afore referenced statement of the Premier, the Standards Commissioner detailed in the agency's initial submission to the Inquiry that government had 'confirmed that OPSSC will continue to exist as a separate and independent office responsible for establishing standards and monitoring compliance in the public sector.'¹²⁷ In addition, the Standards Commissioner cited that none of the functions of the PSC overlap with the 'legislative brief or operations of the OPSSC', although some functions, such as those under Section 45 of the PSM Act pertaining to CEO selection and appointment, are 'contiguous.'¹²⁸

¹²³ *ibid*, pp1-2.

¹²⁴ Liberal Party of Western Australia, *Government Accountability and Public Sector Management*, 1 September 2008, p1. Available at: http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 31 March 2009.

¹²⁵ Hon. Colin Barnett, MLA, (Premier), *Establishment of the Public Sector Commission and the position of Public Sector Commissioner*, Media Statement, Government Media Office, Perth, 30 September 2008.

¹²⁶ Robert Taylor 'Barnett moves to depoliticise the public service', *The West Australian*, 1 October 2008, p12.

¹²⁷ Submission No. 7 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 23 January 2009, p1.

¹²⁸ *ibid.*, p3.

The Committee questioned the Standards Commissioner on 11 March 2009 on the mooted working group. The Standards Commissioner reported that she had made inquiries regarding the matter and was told that the media article was a misinterpretation of other government activities involving the establishment of a working group.¹²⁹

Mr Wauchope responded to the notion of a working group, albeit indirectly, as follows:

*I can answer that on two levels. Firstly, there has been considerable discussion between Dr Shean and myself about how we operate. Essentially, the interface does not change. Her role is set out in legislation and does not change. My role, as you indicated, has been delegated from the powers of the minister and that has not changed. The bigger picture in terms of how these agencies interface is something that is obviously part of the bigger picture that will be considered by the economic audit committee. In some sense some of the other things have rolled over and taken their place in terms of process.*¹³⁰

The PSC in submission detailed that, apart from the Public Sector Commissioner assuming the role of the Minister for Public Sector Management under the PSM Act, the role of the Public Sector Commissioner and the Standards Commissioner remain as they stood at the commencement of the Act in 1994.¹³¹

Given the Liberal Party's initial inclusion of the functions of the Standards Commissioner in the role of the Public Sector Commissioner, it is notable that Hon. Gavin Fielding, who authored the review of the PSM Act in 1996, suggests that 'the role of the new Public Sector Commission and indeed the efficient management of the public sector would be enhanced if the office of the Commissioner for Public Sector Standards was abolished and its functions incorporated into the Public Sector Commission.'¹³² He views that the PSC 'should be well qualified to establish the [Human Resource] Standards', particularly if it is established as a statutory agency which would enable it to be 'sufficiently removed from the day to day management of the various agencies to oversee compliance with those standards,' and to assume other functions of the OPSSC,¹³³ including CEO selection and ethical codes.¹³⁴ Mr Fielding purports that establishment of the Corruption and Crime Commission has also resulted in some overlap with the OPSSC in respect to breach of standards and that this similarity of jurisdiction reinforces the need to abolish the

¹²⁹ Dr Ruth Shean, Commissioner for Public Sector Standards, Office of the Commissioner for Public Sector Standards, *Transcript of Evidence*, 11 March 2009, p2.

¹³⁰ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, pp10-11.

¹³¹ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, p2.

¹³² Submission No. 10 from Mr Gavin Fielding, 27 February 2009, p3.

¹³³ *ibid.*

¹³⁴ *ibid.*, p5.

OPSSC.¹³⁵ Appendix 9 outlines models of Public Sector Management in other Australian jurisdictions. Many of those arrangements reflect that suggested by Mr Fielding.

The Public Sector Commissioner detailed in submission that separate meetings are held with the Standards Commissioner, the Corruption and Crime Commission, the Ombudsman, the Auditor General and the Integrity Coordinating Group (ICG) to which these agencies contribute, on issues of common interest such as integrity and accountability. The PSC further detailed that it is not a member of the ICG given that it is not an independent body reporting directly to Parliament, nor does it share the same monitoring and reporting roles.¹³⁶

This comment is noteworthy given the foundation for the establishment of the ICG. The concept of an integrity group is based on a recommendation from a report of a study undertaken by Griffith University and Transparency International into national integrity systems entitled 'Chaos and Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems?'.¹³⁷ Recommendation 2 of that report proposes the establishment of a Governance Review Council, citing related terms of reference.¹³⁸ The ICG confirmed at hearing with the Joint Standing Committee on the Corruption and Crime Commission in September 2006 that the group is based on this model, although without legislative foundation, and has adopted terms of reference similar to those proposed in the report.¹³⁹ Recommendation 2 also suggests that membership be comprised of the types of agencies that currently form the ICG as well as the 'public service head'.¹⁴⁰ The report references critical integrity issues that include those managed by the PSC as a consequence of the transfer of functions from DPC. Namely, promoting a more ethical and accountable public sector through the development of associated practices and procedures and organisational reform; by instilling ethical values within senior executive and other employees; through leadership development; and the development of sound human resource (HR) practices.¹⁴¹ The lack of independence of the PSC results in an anomaly in that an agency charged with a similar role to other ICG members is precluded from participation.

¹³⁵ Submission No. 10 from Mr Gavin Fielding, 27 February 2009, pp3-4; and Mr Gavin Fielding, *Transcript of Evidence*, 23 March 2009, p11..

¹³⁶ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, p2.

¹³⁷ Australian Development Gateway, 'Chaos and Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems', December 2005. Available at: http://www.transparency.org.au/documents/nisa_final.pdf. Accessed on 29 April 2009.

¹³⁸ *ibid.*, pp93-94.

¹³⁹ Joint Standing Committee on the Corruption and Crime Commission, *Public Hearing with the Integrity Coordinating Group on 13 September 2006*, Legislative Assembly, Perth, 13 September 2006, pp1-2.

¹⁴⁰ Australian Development Gateway, 'Chaos and Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems', December 2005. Available at: http://www.transparency.org.au/documents/nisa_final.pdf. Accessed on 29 April 2009, p94.

¹⁴¹ Australian Development Gateway, 'Chaos and Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems', December 2005. Available at: http://www.transparency.org.au/documents/nisa_final.pdf. Accessed on 29 April 2009.

Finding 5

The position of Public Sector Commissioner established by Government does not yet meet the Liberal Party election commitment for the appointment of a ‘Public Sector Management and Standards Commissioner’ incorporating the functions of the Public Sector Standards Commissioner.

Recommendation 1

To ensure successful implementation of its stated reforms, the Government should provide, as expeditiously as possible, detailed plans on the outcomes it intends to achieve.

CHAPTER 3 THE IMPLICATIONS OF STRUCTURAL REFORM AND THE ADEQUACY OF LEGISLATION TO PROVIDE FOR THESE CHANGES

3.1 A sound concept

(a) Background

The establishment of the PSC by the Liberal National Government in late 2008 placed WA in sync with the majority of Australian jurisdictions in managing its public sector outside of the political environment of a Premier's Department. The generalised adoption of this framework indicates wide consensus amongst those jurisdictions that a public sector that is managed, examined and reviewed by an independent commission is one that can best deliver on expectations of effectiveness and efficiency. Outside of this core arrangement, interstate models vary in the manner in which they are constructed although all are established in legislation to lend permanence to those arrangements. It is notable that many of these structures have combined the roles of the Standards Commissioner with public sector management functions. The Committee has provided a summary of frameworks from the majority of jurisdictions at Appendix 9. Where relevant, reference will be made in this chapter to these models.

Section 2.1 established that whilst there were varying opinions amongst witnesses in relation to the rationale for the establishment of the PSC, the majority viewed the PSC as a sound public policy decision that, properly developed, could lead to improvement in the capabilities of the WA public sector. However, potential problems were identified regarding the manner in which the PSC was established.

In order to comprehend the difficulties posed by the way in which the model was applied, it is necessary to understand the potential the model has for public sector improvement, especially given some of the challenges the public sector is expected to encounter in coming years. This discussion also lends itself to a review of the Premier's notions of independence, professionalism and integrity.

Finding 6

The Government's move to establish an agency to lead and oversee the public sector is viewed as sound policy. The creation of the Public Sector Commission has the capacity to enhance public sector performance through the separation of public sector matters from the Department of the Premier and Cabinet.

(b) Planning for the Future

The public sector faces innumerable challenges in sync with a fluctuating economy, demographic shifts and changing policy agendas. It should be strategically placed to effectively manage these issues.

This was essentially the view of the Auditor General for WA in a report released in June 2006 regarding the administration of the public service (comprising approximately 25% of the public sector) in this state. The Auditor General noted that despite a multitude of valuable reports being undertaken or instigated by DPC on public sector workforce issues (such as skills shortages and an ageing workforce) there had been no coordinated response to, and no lead agency designated to address, associated recommendations.¹⁴²

There was a belief amongst a number of witnesses to the Inquiry that the model of structural reform could provide necessary coordination and leadership to address workforce issues.

Ms Jan Sagers, Director of Nexus Strategic Solutions and an HR professional with considerable experience in the WA public sector, viewed the structural division of DPC as contributing to a greater focus on leadership of the public sector:

*[It] is helpful for the commission to be independent of the Department of the Premier and Cabinet because the agenda of DPC is, frankly, quite political. In my view, the public sector management role within the former Department of the Premier and Cabinet was given a lower priority. Therefore, I think the fact that it has its own agency led by the Public Sector Commissioner gives it greater credibility and will enable it to provide greater leadership and greater drive....*¹⁴³

Professor Mike Wood, a former Public Service Commissioner¹⁴⁴ and now Professor of Management at the University of Notre Dame, noted the difficulties associated with the Premier of the day being responsible for the management of the public sector workforce:

*I think [the Premier of the day being the head of the public sector workforce] created a number of problems both for governments and for the public service; in particular that matters involving public sector employment then landed on the Premier's desk for resolution. I think it would have been more effective for those problems to have landed on the desk of the Public Service Commissioner.*¹⁴⁵

¹⁴² Auditor General for Western Australia, *Help Wanted: Public Service Workforce Management*, June 2006, pp21-23. Available at: http://www.audit.wa.gov.au/reports/report2006_06.pdf. Accessed on 29 May 2009.

¹⁴³ Ms Jan Sagers, Director, Nexus Strategic Solutions, *Transcript of Evidence*, 23 March 2009, p2.

¹⁴⁴ Professor Wood was the last person to occupy the office of the Public Service Commissioner prior to its abolition in 1994 following the introduction of the *Public Sector Management Act 1994*.

¹⁴⁵ Professor Mike Wood, Professor of Management, University of Notre Dame, *Transcript of Evidence*, 23 March 2009, p2..

Mr Fielding expressed concern with the fragmentation of the public sector under the current legislative arrangements. He viewed that ‘...the effectiveness and efficiency of the public sector is best promoted by means of a central controlling agency such as a Public Sector Commission.’¹⁴⁶

And, perhaps not surprisingly, the Public Sector Commissioner, Mr Mal Wauchope, purported that the new body is well placed to tackle the problems facing the public sector:

*Separating from DPC enables a greater focus to go on the public sector issues.[The] issue that we need to continue to have in the back of our mind is that whilst we are going through a cycle in the economy, which impacts on the state government, the demographics and the basic requirements will not change. Where we are now and where we are going to be in 2020, for example, will not change. We need to make sure that the public sector keeps its eye on where it has to be positioned. That is a key role for the Public Sector Commissioner, which will be more difficult in a diluted role in Premier and Cabinet.*¹⁴⁷

The Public Sector Commissioner’s observation reflects the direction taken by other public sector commissions (or their equivalents) in Australian jurisdictions. Many of these entities have, in a similar manner to DPC, completed detailed examinations of the challenges facing Australia’s public sectors. Several witnesses appearing before the Committee suggested that future capability planning was somewhat neglected under the leadership of DPC and that the PSC would have an enhanced ability to focus on these problems. As cited above, however, the Auditor General viewed the problem to be not so much about an absence of planning but lack of coordination and implementation by a central agency.

In 2005, the Australian Public Service Commission (the APSC) identified challenges facing the Australian Public Service (and also other public sectors in Australia) in recruiting and retaining skilled staff, including:

- the tight labour market resulting from a strong economy;
- higher levels of remuneration and other non-salaried means of compensation available in the private sector;
- demographic changes sweeping the nation, as the population ages and fewer young people enter the workforce each year; and
- increasing demand from the private sector for workers with particular skills sets which are also required in the public sector.¹⁴⁸

¹⁴⁶ Submission No. 10 from Mr Gavin Fielding, 27 February 2009, p1.

¹⁴⁷ Mr Mal Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p7.

¹⁴⁸ Australian Public Service Commission, *Managing and sustaining the APS workforce: Paying particular attention to graduate recruitment and career development*, Australian Public Service Commission, Canberra, 2005, p1-3.

The APSC identified a number of strategies to address these challenges, including:

- systematic workforce planning to identify emerging issues and challenges in relation to the recruitment, development, advancement and succession of employees;
- effective processes for attracting and recruiting new staff, including new entrants to the labour force and experienced employees from other sectors;
- smarter approaches to graduate recruitment and development, including using the flexibilities available through agreement-making to attract and retain graduates;
- learning and development opportunities to ensure new Australian Public Service (APS) employees have the required skills and capabilities;
- promotion of opportunities for mobility and exchange for those employees who require this;
- strategies to ensure the increasingly diverse current and longer-term career needs of the APS workforce are met; and
- investing in identifying and developing future leaders of the APS, including ensuring they have the breadth and depth of experience to provide leadership in a whole of government context.¹⁴⁹

The Committee notes that Victoria's State Services Authority (the SSA) has completed a similar publication to the APSC in relation to the Victorian Public Service, with findings reflective of the national publication.¹⁵⁰

With the onset of the global financial crisis and the resultant slowing in the growth of private sector employment, many of the pressures on public sectors identified above will have reduced. That being said, the Public Sector Commissioner in his commentary above, and Ms Saggars, both viewed that the economic slowdown would only bring temporary respite.¹⁵¹ The long-term trends associated with a more competitive labour market will once again become dominant when the economic cycle picks up again.

(c) Defining Independence

As detailed in Section 2.1, there was considerable focus in the Inquiry on the notion of independence, both in terms of separation of public sector management functions from the

¹⁴⁹ Australian Public Service Commission, *Managing and sustaining the APS workforce: Paying particular attention to graduate recruitment and career development*, 2005. Available at: <http://www.apsc.gov.au/mac/apsworkforceexec.htm>. Accessed on 29 April 2009.

¹⁵⁰ Victorian State Services Authority, *The future of the public sector in 2025*, Victorian Government, Melbourne, 2006.

¹⁵¹ Ms Jan Saggars, Director, Nexus Strategic Solutions, *Transcript of Evidence*, 23 March 2009, p.6.

political functions of government, reducing political influence and enhancing opportunity for capacity building in the public sector. There was, however, a lack of clarity in evidence about the form and the extent of independence created and ensured by the structural reforms. Perhaps underpinned by a failure of government to clearly enunciate and elaborate on its rationale for the creation of the PSC. It is difficult to adequately assess the efficiency and effectiveness of the model proposed in the absence of a clear understanding of the meaning of independence.

One of the earliest identifications of the importance of an independent public service occurred in the Northcote-Trevelyan Report of 1854 on the organisation of the United Kingdom's (UK) civil service. The Report was highly influential because it formed the basis on which public sector legislation in Westminster systems enshrined notions of impartiality and independence. The following excerpt elaborates on that notion:

*The Government of the country could not be carried on without the aid of an efficient body of permanent officers, occupying a position subordinate to that of the Ministers, yet possessing sufficient independence, character, ability, and experience, to be able to advise, assist, and, to some extent, influence those who are set over them.*¹⁵²

This understanding of independence was endorsed by several witnesses who provided evidence to the Inquiry, although the Committee notes that the meaning attached to independence by governments and those with a keen interest in public sector management has changed over the years. The IPAA commented on a current focus by many governments on responsiveness of the public sector to its policies and agendas:

*Broadly speaking, I think the reforms of the public sector have been about responsiveness. Governments of all political persuasions and all jurisdictions have been trying to make the public sector, via their reforms, more responsive to the policy needs of the government of the day, and in our view, that is a perfectly appropriate objective.*¹⁵³

This shift away from a strongly independent public service identified by the Northcote-Trevelyan Report has occurred in Australian public sectors. This does not mean that the public sector has ceded all of its independence; rather, that it has been required to more effectively respond to the policy directions and agendas of government. Mr Andrew Podger, a former Australian Public Service Commissioner, noted this change in the context of the APS:

...after seventy five years, the dominant concern was... that the Public Service was too independent and not sufficiently responsive to the elected Government. That was the first of the three themes that ran through the Coombs Royal Commission Reports. Successive governments - Whitlam, Fraser, Hawke/Keating, Howard - all felt the Service was too slow to respond to their democratically determined authority, and over the last twenty years in

¹⁵² *Report on the Organisation of the Permanent Civil Service*, 1854, p3. Available at: <http://www.civilservant.org.uk/northcotetrevelyan.pdf>. Accessed on 23 April 2009.

¹⁵³ Mr Christopher Williams, President, Institute of Public Administration Australia, *Transcript of Evidence*, 18 March 2009, p6.

*particular we have seen a series of measures taken to improve our responsiveness to the elected Government.*¹⁵⁴

The concepts of responsiveness and independence are also relevant to CEO selection and appointment, discussed in Chapter 4.

Finding the balance between responsiveness and independence has been an objective for many governments. Former Prime Minister, Hon. John Howard MP, saw the responsibility of the public service to respond to the directions of government and elaborated on mechanisms that he viewed government could employ to ensure a responsive public sector. This was principally confined to the CEO appointment process and hence is discussed in the chapter that follows. At the same time, however, Mr Howard balanced this need for responsiveness with commentary about the enduring need for the public service to be viewed as a public good, owned by the nation as a whole, rather than the government of the day:

*No government ‘owns’ the public service. It must remain a national asset that services the national interest, adding value to the directions set by the government of the day. The responsibility of any government must be to pass on to its successors a public service which is better able to meet the challenges of its time than the one it inherited.*¹⁵⁵

The view that governments should not ‘own’ their public sectors is also shared by the British government in relation to its civil service. That being said, the British government’s Committee on Standards in Public Life¹⁵⁶ asserted that the public sector should not interpret this lack of ownership as a freedom to pursue agendas independent of that set by the government of the day:

*Impartiality signifies, for example, acting in a way which is independent of political partisanship. It does not signify that the Civil Service is independent of government. On the contrary, the Civil Service is bound to give full support and commitment to government Ministers in carrying out their state responsibilities. This will include delivering the party’s manifesto into government policy.*¹⁵⁷

Clearly, balancing responsiveness and independence has preoccupied those charged with the task of administering public sector governance in Australian jurisdictions, with many having differing views on the extent of public sector independence or government intervention. Therefore in the context of an assessment of the meaning of independence, the Committee acknowledges that there is always going to be debate.

¹⁵⁴ Australian Public Service Commission, *Managing the interface with ministers and the Parliament*, April 2004. Available at: <http://www.apsc.gov.au/media/podger230404.htm>. Accessed on 24 April 2009.

¹⁵⁵ Howard, John 1998, ‘A healthy Public Service is a vital part of Australia’s democratic system of government’, The Sir Robert Garran Oration, 19 November 1997, *Australian Journal of Public Administration*, vol. 57, no. 1, March. p11.

¹⁵⁶ The Committee on Standards in Public Life is an independent public body which advises government on ethical standards across the whole of public life in the United Kingdom.

¹⁵⁷ Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*, London, April 2003, p15.

From the above detail, it is determined that a public sector framework such as that espoused by the Liberal National Government that claims to enhance independence, should be one in which:

- the public sector is free from ownership by the government of the day but gives full support and commitment to government in meeting its policy agenda;
- the body entrusted with public sector management is granted sufficient freedom and power to oversee the efficient operation of the public sector (in accordance with government's agenda) by ensuring continual improvement in the sector's capacity to meet the requirements of existing and future governments; and
- the public sector management body's capacity to function with sufficient freedom is enshrined in an instrument of establishment that clearly defines the extent to which government involvement in the operation of the sector is warranted and permissible.

Finding 7

Across jurisdictions, governments have been restructuring their public services to achieve greater responsiveness to the delivery of government policy agendas. This may affect the provision of independent advice by public servants and the political impartiality of the public sector. How the structural reforms in Western Australia will shift the balance between responsiveness and independence of the public sector is not clear at this stage.

(d) Addressing Politicisation

In Chapter 1 it was noted that the Liberal Party contended in its '2008 Election Commitments' that the public sector in this state was 'deeply politicised'¹⁵⁸ and that 'independence' needed to be restored through something akin to a public sector commissioner. In the context of this Inquiry allegations of politicisation are integral to government's call for independence, hence it is incumbent upon the Committee to establish whether politicisation is a sound foundation for structural reform and whether the level of independence afforded to the PSC appropriately addresses this issue. As with the concept of independence there is some confusion about what actions by government constitute politicisation of the public sector. Liberal Party election documents and subsequent information provided by the Liberal National Government lacks detail on the issue.

In part four of her Ten Year Review, which comprises an analysis of the integrity regimes of the WA public sector, Ms Maxine Murray, identified three elements of politicisation within public sectors in general, namely:

¹⁵⁸

Liberal Party of Western Australia, *Government Accountability and Public Sector Management*, 1 September 2008, p1. Available at: http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 31 March 2009.

- over-responsiveness - that the public sector is ‘too ready to oblige the political actors of the day’ at the expense of core public sector values.¹⁵⁹
- politicians attributing politicised statements to officials - Ministers claiming for political purposes that public sector advice is independent and authoritative in circumstances where they have misrepresented that advice or left out caveats on the information provided.¹⁶⁰
- the legitimacy of political involvement in the employment arrangements of senior public sector staff - ‘the Premier as employer of public sector CEOs and five year contracts has had an extremely detrimental effect on the capacity of the public sector to maintain the desired level of political impartiality.’¹⁶¹

The notion of responsiveness and its balance with independence has already been discussed, with a determination made of the meaning of independence that achieves some degree of equilibrium. It is important to note that a responsive public sector does not necessarily equate to a politicised one.

The WA Public Sector Code of Ethics includes a requirement for public sector employees to be impartial in the conduct of their duties.¹⁶² This concurs with what the APSC describes as ‘good advice’ given by the public service:

*... unbiased and objective. It is politically neutral but not naïve, and is developed and offered with an understanding of its implications and of the broader policy directions set by government.*¹⁶³

Where confusion exists about the proper role of public sector employees in situations that may be perceived as political, the Standards Commissioner is responsible for monitoring compliance with the Code. Under the structural changes no additional powers have been granted to the Standards Commissioner, or indeed to the Public Sector Commissioner. That being said, the separation of the administrative responsibility for public sector management from the policy functions of government, which can be highly political, has the potential to progress impartiality of decision-making in relation to public sector matters.

In relation to dot point 2, it is questionable whether misrepresentation of public sector advice constitutes misuse by government of that advice or politicisation of the public sector, given that

¹⁵⁹ Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 4: The principle of integrity in official conduct*, Perth, May 2007, p42.

¹⁶⁰ *ibid.*, p44.

¹⁶¹ *ibid.*, p45.

¹⁶² Office of the Public Sector Standards Commissioner, ‘Public Sector Code of Ethics’, Available at: <http://www.opssc.wa.gov.au/ethics/codeofethics/index.htm>. Accessed on 24 April 2009.

¹⁶³ Australian Public Service Commission, ‘APS Values and Code of Conduct in practice’, Available at: <http://www.apsc.gov.au/values/conductguidelines4.htm>. Accessed on 24 April 2009.

the information was provided impartially. Under the structural reforms, the reporting arrangements between a public sector CEO and the responsible Minister do not alter. It follows that apart from the fact that the Minister's role in CEO selection may be reduced (as per the discussion in Chapter 4) and therefore the CEO may be subject to less influence, there are no real preventative measures associated with the establishment of the PSC that would curtail a Minister from misusing such advice in the future.

The third dot point is discussed in Chapter 4 where the role of Ministers and the Premier in the employment of public sector CEOs is examined in some detail.¹⁶⁴

While it has been established that the structural reforms may provide an environment less conducive to politicisation, it is necessary to examine government's allegations of politicisation of the WA public sector as a basis for the creation of the PSC.

In Legislative Council debates in 2007, the Hon. Helen Morton, MLC, then Shadow Minister for Public Sector Management claimed that public sector employees were '[f]earful of and... intimidated by the level of politicisation throughout every element of the public sector.'¹⁶⁵

The Committee questioned Mr Malcolm Wauchope, who until his recent transfer spent 12 years as Director General, DPC, under both Labor and Liberal governments, on his view of politicisation of the public sector. Mr Wauchope observed:

*My view is that I do not think the public sector is politicised. The WA Inc royal commission suggested there might have been some politicisation during, I guess, the 1980s, but in my time as the CEO of Premier and Cabinet I do not believe there has been politicisation.*¹⁶⁶

Dr Ruth Shean, speaking in relation to the CEO selection process was of a similar mindset noting that all the Ministers she had dealt with had been forthright in their determination to carry out their functions in a politically impartial manner:

*I have never seen any politicisation of appointment processes. To be fair to everyone that I have dealt with, every minister has been impeccable and every minister, regardless of political persuasion, has been at pains to do the right thing.*¹⁶⁷

¹⁶⁴ Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 4: The principle of integrity in official conduct*, report prepared by, Perth, May 2007, p46.

¹⁶⁵ Hon. Helen Morton, MLC, Shadow Minister for Public Sector Management, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 4 April 2007, p1138.

¹⁶⁶ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p5.

¹⁶⁷ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p8.

Finding 8

Evidence to the Committee did not support the Premier's contention that the public sector had been politicised.

3.2 Problems with the detail of the structural reforms**(a) Background**

Section 3.1 addresses the Premier's assertion that the PSC will enhance the 'independence, professionalism and integrity' of WA's public service. This section raises concerns about how the model was applied and therefore how it impacts on these three objectives and undermines the effectiveness of government's structural reforms.

Matters discussed include:

- the instrument of establishment used to appoint the Public Sector Commissioner and create the PSC;
- powers granted to the Public Sector Commissioner beyond that of the Minister for Public Sector Management;
- the manner in which the Public Sector Commissioner can be dismissed;
- the public sector management model adopted; and
- adequacy of planning for structural reform.

(b) Delegated not legislated**(i) *The instrument of delegation***

Section 1.1 notes that on 28 November 2008 the Premier formally delegated the majority of his powers under Section 15 of the PSM Act to the Public Sector Commissioner, with certain preclusions. Section 2.1 outlined the probable rationale for doing so, seemingly the need to create an independent and professional public service through separation of the administration of the Public Sector from the political arm of government, and to a lesser extent, reducing the degree of political influence in management of that sector.

The enactment of legislation by Parliament is a lengthy process. Delegation via section 15 of the PSM Act enabled the Premier to establish the position of Public Sector Commissioner to meet the Liberal Party's 100 day election commitment.

Section 15 of the PSM Act provides as follows:

The Minister may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a person any of the powers or duties of the Minister under this Act or under any other Act, other than -

- (a) *this power of delegation; or*
- (b) *the power of direction conferred on the Minister by section 11(1).*

The section does not limit the powers or duties or to whom they may be delegated, except by subsection (a) and (b). The delegation may be complete or limited by stipulation in the instrument of delegation.

According to legal advice from the State Solicitor's Office, '[s]ection 59(1) of the Interpretation Act contains a number of provisions relevant to the delegation of a statutory power or duty, in particular:

- (a) *a delegation shall not preclude a person so delegating from exercising or performing at any time a power or duty so delegated;*
- (b) *a delegation may be made subject to such conditions, qualifications, limitations or exceptions as the person so delegating may specify;*
- (e) *a delegation may be amended or revoked by instrument in writing signed by the person so delegating.*¹⁶⁸

Although true delegates are said to decide or act for themselves, they are required to abide by the 'limits imposed by the relevant statute and the instrument of delegation.'¹⁶⁹ According to the *Interpretation Act 1984*, however, nothing prevents the Minister intervening and exercising a delegated power or revoking that power at any time.¹⁷⁰ There is no requirement to publish when any action is taken such as a change to, or the exercise of, a delegated power by the Minister, despite the Minister having elected to publish in this most recent instance.

Finding 9

The Liberal Party's election commitment to undertake structural reform within 100 days of office meant that Government was limited to establishing the Public Sector Commissioner by delegation.

¹⁶⁸ Mr Raymond Andretich, Senior Assistant State Solicitor, State Solicitor's Office, letter, 13 March 2009, p1.

¹⁶⁹ *ibid.*

¹⁷⁰ *ibid.*

Finding 10

Delegation of powers by the Minister for Public Sector Management to the Public Sector Commissioner does not preclude the Minister from exercising, varying or revoking a power at any time without public notification of such action.

(ii) Use of delegation as a mechanism for achieving an independent public sector

Despite support being tendered for greater independence of the public sector, many submissions and witnesses viewed the use of delegation as the mechanism for structural reform as compromising independence.

In the following excerpts from evidence, Mr Fielding purports that independence is afforded through establishment of a statutory office which removes opportunity for the Premier to withdraw delegation. He views this as critical to the provision of fearless advice by public servants, the implication being advice by the Public Sector Commissioner:

*I think that if they want a truly professional and independent public service, the Public Sector Commission should be established as a statutory office, as it is in many other jurisdictions. I think this is a move in the right direction, but I do not think it is truly independent, because the Premier, as you would appreciate, could withdraw his delegation tomorrow if the Public Sector Commissioner does not do what he thinks should be done. I do not think there is a real degree of independence in it....*¹⁷¹

*... The way public servants think and operate is they are always worried about their jobs, which is natural, so they will not be fearless if they are at risk of having their delegation torn up tomorrow or their department abolished. That is why I think there should be a statutory office. It does not make sense to me to have a public sector standards office and not have an independent Public Sector Commissioner.*¹⁷²

Mr Fielding views that the Statutory Office could be established along similar lines to the current OPSSC and report to Parliament.¹⁷³

Ms Toni Walkington, General Secretary, Community and Public Sector Union Civil Service Association (CPSUCSA) similarly viewed delegation as requiring the Public Sector Commissioner to conduct him or herself at the behest of the Premier. She also queried the capacity of the Commissioner to perform the tasks of the Premier in regard to the Governor:

¹⁷¹ Hon. Gavin Fielding, *Transcript of Evidence*, 23 March 2009, pp2-3 .

¹⁷² Hon. Gavin Fielding, *Transcript of Evidence*, 23 March 2009, p5.

¹⁷³ Hon. Gavin Fielding, *Transcript of Evidence*, 23 March 2009, p5.

*We note that in the separation of the two functions and the creation of the Public Sector Commissioner, the Premier has expressly stated that the statutory functions are to be delegated to the commissioner so that the statutory functions can be performed independently. In our view, delegation specifically means that the person ought to do what the authority that has prescribed the power would have done. Therefore, the extent of independence is somewhat questionable in our view, in that the Public Sector Commissioner would need to do what he thinks the Premier would have done. We also are of the view that there is a specific advisory role to the Governor from the Premier, who is the minister with the powers in this case. Therefore, we also question how effective the delegation would be given that specific role. We believe that changes to legislation, specifically the Public Sector Management Act, are required to establish the role as envisaged by the Premier's statement.*¹⁷⁴

The IPAA viewed that 'independence, accountabilities, authority and relationships [with key entities such as the Standards Commissioner and Auditor General]' would be assured through legislation and other mechanisms to promote independence. It was of the opinion, however, that changes to the PSM Act should not be restricted to envisaged structural reform but should be pursued more holistically to contemporise the Act.¹⁷⁵

Ms Sagers viewed legislative prescription as critical to the independence of CEOs:

*The particular one that I am interested in is the employment of CEOs. I would like to see the Public Sector Commissioner be the employer of CEOs rather than the Minister for Public Sector Management. My reason for that is that I think it supports public servants in their role as being frank and fearless advisers to government. It is very difficult for public servants to fulfil that role if their employer ultimately is the minister, because if they lose the confidence of the minister—that might be due to something as inane as personality conflict—essentially they have to go; there is very little left for them to do. I believe very strongly in the need for a buffer between CEOs and ministers that helps to protect them so that they can provide that very frank and fearless advice.*¹⁷⁶

In a similar vein to Mr Fielding, Professor Wood viewed that legislative change should occur to ensure that the Public Sector Commissioner reports directly to the Parliament in a manner akin to the Auditor General. It was viewed that in the absence of such changes, theoretically, the Public Sector Commissioner's obligations to report to the Minister on matters delegated would compromise the independence of that office.¹⁷⁷

¹⁷⁴ Ms Toni Walkington, General Secretary, Civil Service Association, *Transcript of Evidence*, 18 March 2009, pp1-2.

¹⁷⁵ Submission No. 2b from Mr Christopher Williams, Institute of Public Administration Western Australia, 13 February 2009, pp1-2.

¹⁷⁶ Ms Jan Sagers, Director, Nexus Strategic Solutions, *Transcript of Evidence*, 23 March 2009, p3.

¹⁷⁷ Submission No. 11 from Professor Mike Wood, Professor of Management, Notre Dame University, 5 March 2009, p4.

Finding 11

A Public Sector Commissioner, whose powers are delegated by a Minister, cannot be considered an independent commissioner in the sense that the term is normally used.

(iii) Delegation in the context of the PSM Act

Section 2.5 of this report detailed arrangements for administering and managing Ministerial Officers.

The Liberal Party's '2008 Election Commitments' cited concerns with Ministerial staff 'communicating directly with departmental and agency staff' noting the capacity this had for interfering 'with the independence and the effectiveness of the public service.'¹⁷⁸ The intention of the Liberal Party was for the Public Sector Management and Standards Commissioner, as it was then known, to audit and report to Parliament on compliance by Ministerial staff with applicable provisions in the WA Public Sector Code of Ethics.¹⁷⁹ The Code of Ethics clearly establishes the level of interaction, at times with reference to established procedures, that these political office holders should, and can, have with the Public Sector.¹⁸⁰

The Premier's Media Statement of 30 September 2008 cited that '[t]he Public Sector Commissioner will perform all functions currently administered by the Minister for Public Sector Management (except those relating to employment of ministerial officers).'¹⁸¹ Notably, by the time of the Premier's second media release on 28 November 2008, there is no mention of excluding responsibility for ministerial officers from that role. In fact, the role of the PSC is prescribed as including responsibility for 'public service officers located within Ministerial offices.'¹⁸² As the Public Sector Commissioner affirms, whilst this arrangement is contrary to Government's intention that DPC retain responsibility for employing and managing ministerial officers, appointed under both section 68 and section 75 of the PSM Act, the 'construction of the Act' prevents this from occurring.¹⁸³ Mr Wauchope described this derivation as follows:

¹⁷⁸ Liberal Party of Western Australia, 'Government Accountability and Public Sector Management', 1 September 2008. Available at: http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 29 April 2009, p4.

¹⁷⁹ *ibid*, p5.

¹⁸⁰ Office of the Public Sector Standards Commissioner, 'Public Sector Code of Ethics', Available at: <http://www.opssc.wa.gov.au/ethics/codeofethics/index.htm>. Accessed on 24 April 2009.

¹⁸¹ Hon. Colin Barnett, MLA, (Premier), *Establishment of the Public Sector Commission and position of Public Sector Commissioner*, Media Statement, Government Media Office, Perth, 30 September 2008.

¹⁸² *ibid*.

¹⁸³ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, pp2-3.

...the requirement for my involvement in relation to seconded public servants and permanent public servants in relation to ministerial officers is a quirk of the act, both sections 70 and 75, which refer to the chief executive of the department principally assisting the minister who is responsible for the act; which is myself, not the head of Premier and Cabinet. What it means is that ministerial people who are seconded from a public service department to go and work in a minister's office are not seconded to Premier and Cabinet, they are seconded to the Public Sector Commission, which then places them into the relevant ministerial office. In a sense that actually gives more protection for the public servant. If you go back to the days of the old Public Service Commission, in fact that is exactly what happened in those days. In that sense, it is no different from that. They end up being seconded to the Public Sector Commission and then placed in the ministerial office. Of course they come back via that route back to their home agency when their secondment is finished. Section 68 appointees, the so-called "term of government" appointees, continue to be appointed by the Premier on delegation to the director general of the Department of the Premier and Cabinet.¹⁸⁴

A similar anomaly was noted as existing in relation to the Public Sector Commissioner's power to co-sign Executive Council Minutes associated with CEO selection and recruitment. The Committee was informed on two occasions that this practice was standardised,^{185 186} however, on seeking legal advice from the State Solicitor's Office who in turn discussed the matter with the PSC, the Committee was informed that the process ceased.¹⁸⁷

Finding 12

The intricacies of the *Public Sector Management Act 1994* limited the extent to which delegation could be used to achieve the Government's intended structural reform.

(iv) Delegation and reporting arrangements

The delegation of functions from the Minister for Public Sector Management to the Public Sector Commissioner has also created confusion regarding reporting arrangements in relation to the CEO recruitment process. In the context of examining effectiveness measures for the success of the selection process, the Standards Commissioner noted that despite delegation of the functions associated with section 45 of the PSM Act to the Public Sector Commissioner, the Minister for Public Sector Management remained her 'key customer.' Elaborating, Dr Shean cited that '[a]sking that minister what he or she feels about the process is, indeed, we believe a good

¹⁸⁴ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p3.

¹⁸⁵ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, p4.

¹⁸⁶ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p11.

¹⁸⁷ Mr Raymond Andretich, Senior Assistant State Solicitor, State Solicitor's Office, letter, 13 March 2009, p.4.

indicator of the process.¹⁸⁸ When asked by the Committee whether the effectiveness measure was likely to alter in the context of the delegations, Dr Shean advised that legal advice on the matter would need to be sought by the Committee.¹⁸⁹ This serves to highlight the scope for confusion regarding roles introduced following the delegations.

Finding 13

The delegation of authority to the Public Sector Commissioner is not accompanied by clear reporting and accountability requirements. This has the potential to create confusion and uncertainty.

(c) The powers of the Public Sector Commissioner

(i) Policy enforcement

Although the delegations may change who exercises the power vested in the PSM Act, the Act itself has not been amended to provide additional powers to achieve government's expressed outcomes. This was a cause for concern for the CPSUCSA:

*We believe there should be changes [to legislation] to ensure compliance if the Public Sector Commissioner has developed a policy or a practice. At the moment, the only way to ensure compliance is by adopting that as a standard or Approved Procedures. We believe that the Approved Procedures process is cumbersome and does not encompass sufficient scope, if you like; therefore, we believe there should be direct reporting to ensure that policies are implemented. It seems to be pointless to have an office developing policies and practices that are then not able to be enforced.*¹⁹⁰

Section 3(2)(a) of the PSM Act allows for the Public Sector Commissioner to create procedures (the 'Approved Procedures' detailed in the CSA's testimony above) for HR practitioners regarding classification, appointment and remuneration matters contained within the PSM Act. These are enforceable for employees under section 80(a) of the PSM Act, the specifics of which are detailed below. The Standards Commissioner may also issue Public Sector Standards (also detailed in the CSA's testimony) for public sector staff on matters relating to recruitment and appointment; transfer, secondment and performance management; redeployment, termination and temporary (acting) deployment; and grievance resolution and discipline. The Standards Commissioner is limited to reporting non-compliance by agencies to Parliament.

¹⁸⁸ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p3.

¹⁸⁹ *ibid.*

¹⁹⁰ Ms Toni Walkington, General Secretary, Civil Service Association (WA Branch), *Transcript of Evidence*, 18 March 2009, p4.

Contrary to the CSA's assertion cited above, the issuance of Approved Procedures are not the only mechanisms available to the Public Sector Commissioner for implementing policies requiring compliance by public sector employees. The Public Sector Commissioner also has the power to issue Commissioner's Circulars (previously Premier's Circulars) under section 10(1) of the PSM Act.¹⁹¹ These are used to communicate public sector administration and management requirements to promote and improve the overall effectiveness and efficiency of the public sector.¹⁹² Section 80(a) of the PSM Act allows for disciplinary action to be taken against an employee who disobeys or disregards a lawful order. A Circular becomes a lawful order for an employee if the employee is instructed by his or her CEO to comply with the circular. In terms of ensuring that CEOs comply with the information in a Circular, enforcement is not as clear. Section 8(2) of the PSM Act ensures that CEOs are not subject to direction from Ministers (and now the Public Sector Commissioner) in relation to HR matters. Other sections of the Act provide for the direction of members of the Senior Executive Service, including in matters of HR management. The PSC advised the Committee that this latter provision could be used to ensure compliance with policies published in a Circular. It should be noted, however, that these powers have never been legally tested and that compliance by agencies and CEOs has traditionally occurred on the basis of convention, rather than the receipt of an explicit legal direction.¹⁹³

Other jurisdictions provide for a direct connection between the powers of the public sector management body to issue policies and to ensure their compliance. In the Commonwealth, for example, section 42 of the *Public Service Act 1999* (PS Act) provides for the Australian Public Service Commissioner to issue Directions; and section 42(2) states that Agency Heads and employees must comply with these Directions.

Finding 14

The limitations of the *Public Sector Management Act 1994* which have restricted the Minister for Public Sector Management in addressing the challenges and problems of the public sector now constrain the Public Sector Commissioner.

(ii) Unnecessary complexity

It was contended in evidence that the Public Sector Commissioner's capacity to enforce policies under the PSM Act is affected by decentralisation of HR management functions. This means that any employee found to have failed to comply with a lawful order is liable to investigation by his or her individual agency under the Public Sector Standards established by the Standards

¹⁹¹ Ms Ruth Young, Principal Policy Officer, Western Australian Public Sector Commission, pers. comm., 22 April 2009.

¹⁹² Western Australian Public Sector Commission, *Public Sector Commissioner's Circulars*, Available at: <http://www.publicsector.wa.gov.au/Pages/PSCCirculars.aspx>. Accessed on 21 April 2009.

¹⁹³ Ms Ruth Young, Principal Policy Officer, Public Sector Commission, Electronic Mail, 19 May 2009, p1.

Commissioner. In effect, this means that the enforcement of a simple breach relies upon the action of three separate government departments.

Ms Saggars noted the shortcomings of this arrangement.

*Looking at this objectively, it would seem that the separation of responsibilities and inevitable duplications it produces is unhelpful and serves to create confusion and the potential for abrogation of responsibilities.*¹⁹⁴

As discussed in the section below, Mr Fielding views devolution of HR functions as resulting in unnecessary complexity and as constraining the ability of the Public Sector Commissioner to lead the public sector.

The WA Inc Royal Commission attributes the complexity of the public sector to the approach to reform by government:

*It [the public sector] has grown in the fashion of a coral reef, the new simply being added to the old. Some rationalisation has occurred. But much which has passed for reform has been designed more to further the managerial objectives of government than to give organisational integrity to the system itself.*¹⁹⁵

Mr Fielding, in his review of the PSM Act in 1996, elaborated on this notion describing the Act as ‘highly technical and complex.’¹⁹⁶ He noted that the Act distinguishes between an ‘employing authority’ and a ‘responsible authority’, between a ‘chief executive officer’ and a ‘chief employer’ and between a public sector ‘organisation’ and an ‘agency.’¹⁹⁷ Mr Fielding also detailed that Parliament chose to retain the existing structure of the public sector and, as a result, WA government employees work in bodies described variously as ‘departments of State’, ‘SES organisations’ or ‘non-SES organisations.’ Adding to the confusion, organisations detailed in Schedule 1 of the PSM Act¹⁹⁸ are deemed not to be organisations for the purposes of the PSM Act and are therefore excluded from its provisions.¹⁹⁹

¹⁹⁴ Submission No. 16 from Ms Jan Saggars, Nexus Strategic Solutions, 6 April 2009, p4.

¹⁹⁵ *Royal Commission into Commercial Activities of Government and Other Matters*, Report Two “The Administrative System”, p6-2.

¹⁹⁶ Hon. Gavin Fielding, *Review of the Public Sector Management Act*, Department of the Premier and Cabinet, 1996, p9. Available at: <http://www.dpc.wa.gov.au/PSMD/SiteCollectionDocuments/Machinery%20of%20Government/Machinery%20of%20Government%20-%20Commissioner%20G%20L%20Fielding%20-%202001%20Introduction.pdf>. Accessed on 29 April 2009.

¹⁹⁷ *ibid.*

¹⁹⁸ Examples of Schedule 1 organisations include Parliamentarians’ electorate offices, the University of Western Australia and the Western Australian Police Service.

¹⁹⁹ Hon. Gavin Fielding, *Review of the Public Sector Management Act*, Department of the Premier and Cabinet, 1996, p9. Available at: <http://www.dpc.wa.gov.au/PSMD/SiteCollectionDocuments/Machinery%20of%20Government/Machinery%20of%20Government%20-%20Commissioner%20G%20L%20Fielding%20-%202001%20Introduction.pdf>. Accessed on 29 April 2009.

Mr Fielding elaborated on this theme in evidence to the Committee:

There are all these various categories or classes of chief executive, to say nothing of employees, and that cannot be dealt with properly until the legislation is changed to get rid of them all and call everybody a public sector employee. So just as the Premier is caught with all these problems, so too will the public service commission. [T]hey are structural issues within the act that nobody can do anything about until Parliament rewrites the act. Although I have a vested interest in the sense that I review the act, I just cannot see how the act survived for about 14 years without any major amendment.²⁰⁰

Finding 15

Without legislative change, the use of delegation to appoint the Public Sector Commissioner and establish the Public Sector Commission has the potential to further complicate the administration of the *Public Sector Management Act 1994*.

(iii) Leadership of a devolved public sector

In his media release announcing the establishment of the PSC, the Premier stated that one of the key roles of the PSC would be to provide leadership to the state's public sector.²⁰¹ In evidence to the Committee, the Public Sector Commissioner suggested that the power granted by delegation to his office under section 10 of the PSM Act was sufficient for the proper exercise of his role:

The key function or the key powers for the Public Sector Commissioner is the section 10 powers because it actually does deal with efficiency and effectiveness. That is where you can provide the framework for the policy settings and the management of the public sector.²⁰²

As discussed in the previous section, most of the HR management functions in the public sector have been devolved to the CEOs of government agencies under section 29 of the PSM Act. That section grants CEOs the ability to (among other things) set levels of remuneration for employees, decide recruitment and selection procedures, and to otherwise direct and manage employees as necessary. It is worth noting that the PSM Act was created in part to abolish the former Public Service Commission and devolve HR authority to CEOs. Mr Fielding is of the view that this devolution of authority impacts upon the ability of the PSC, just as it does the Minister for Public Sector Management, to bring leadership to the public sector:

²⁰⁰ Hon. Gavin Fielding, *Transcript of Evidence*, 23 March 2009, p10.

²⁰¹ Hon. Colin Barnett MLA, (Premier), *Public Sector Commission to deliver a better public sector*, Media Statement, Government Media Office, Perth, 28 November 2008.

²⁰² Mr Mal Wauchope, Public Sector Commissioner, Western Australian Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p4.

*Importantly, the Minister is not empowered to deal with human resource management matters affecting the public sector agencies. Section 29 of the Act vests those functions in the chief executive of each agency. Consistent with this arrangement the Act, which by section 10, gives the Minister the function “to promote the overall effectiveness and efficiency of the Public Sector”, requires only that this be done in accordance with the general principles of public sector administration outlined in section 7 of Act. No mention is made of the principles of human resource management contained in section 8 of the Act.*²⁰³

Notably, the Auditor General in an earlier cited report in June 2006 was also of the opinion that ‘[t]he devolved management of the public service makes it more challenging for central agencies to shape practices and to achieve a cohesive whole.’²⁰⁴

(d) Security of tenure for the Public Sector Commissioner

Several witnesses who appeared before or made submissions to the Committee identified the ability of the government of the day to dismiss the Public Sector Commissioner as a cause for concern, principally because of the impact this would have on the independence of the office. The CPSUCSA noted:

*Our view is that that also would provide a level of independence... [Protection from dismissal by the government of the day] does provide a greater independence than being able to be dismissed by the Premier or a minister for public sector management.*²⁰⁵

Professor Mike Wood indicated his support for establishing the Public Sector Commissioner as an Officer of the Parliament:

*The second [step] should be establishing the position so the incumbent holds an office of the Parliament, similar to that held by the Auditor-General and the former Public Service Commissioner. Without this step, the Commissioner has obligations to report to the Premier on the matters delegated to him. It is possible that this could compromise the independence of the office.*²⁰⁶

Several other Australian jurisdictions have established their public sector management bodies as independent entities under unique legislation. In Victoria, for example, the Public Sector Standards Commissioner can only be removed from office following a vote to that effect in both Houses of Parliament. A similar arrangement exists in the Commonwealth Government for the removal of the Australian Public Service Commissioner.

²⁰³ Submission No. 10 from Gavin Fielding, 27 February 2009, p2.

²⁰⁴ Auditor General for Western Australia, *Help Wanted: Public Service Workforce Management*, June 2006, pp21-23. Available at: http://www.audit.wa.gov.au/reports/report2006_06.pdf. Accessed on 29 May 2009, p4.

²⁰⁵ Ms Toni Walkington, General Secretary, Civil Service Association (WA Branch), *Transcript of Evidence*, 18 March 2009, p7.

²⁰⁶ Submission No. 11 from Professor Mike Wood, 5 March 2009, p4.

Due to the fact that the Public Sector Commissioner in WA is not a statutory office holder or an Officer of the Parliament, he or she may be removed from office under the same provisions used to remove other departmental CEOs in the wider public sector. This provides less security of tenure than some equivalent bodies in other Australian jurisdictions.

Pursuant to section 49 of the PSM Act, the Governor may on a recommendation of the Minister for Public Sector Management under Section 48 of the Act, remove (at any time) a CEO from office. Section 48 also provides that a CEO can be removed from office at a period prior to the expiration of the employment contract only after an assessment by the responsible Minister of the extent to which the CEO meets the performance criteria established in his or her performance agreement. That same section requires that the Standards Commissioner advises on the recommendation made in the assessment. If the Standards Commissioner advises against dismissal and the Minister for Public Sector Management rejects that advice, then a notice must be published in the *Government Gazette* indicating that the Minister has recommended dismissal.

(e) Appointment of the Commissioner for Public Sector Standards

The Standards Commissioner is an independent Officer of the Parliament who has responsibility for investigating breaches of Public Sector Standards across government agencies, including the PSC and Public Sector Commissioner. As detailed above, the Standards Commissioner may also be involved in the preparation of a report relating to the dismissal of the Public Sector Commissioner. In section 2.2 it was detailed that the Public Sector Commissioner is responsible for appointment of the Standards Commissioner. The interplay of powers between the two entities could compromise the independence of the Commissioners.

Finding 16

The appointment and dismissal processes involving the Public Sector Standards Commissioner and the Public Sector Commissioner, raises concerns of potential conflicts of interest.

(f) Public Sector Commission Board

Several of the submissions viewed that the structural reforms could have been used as an opportunity to adopt the Queensland or Victorian models as a mechanism for management of the public sector in this state. Broadly, this would involve the establishment of an independent board comprising several members from different sectors of the community, principally academia, industry and government. The main functions of the Board in relation to the public sector being: to promote high standards of governance, accountability and performance; strengthen professionalism and adaptability; and advise government on new policy initiatives for management.

The IPAA held the view that a multiple member Commission would have greater capacity for policy development:

*You would have the opportunity to harness expertise other than that embodied in the commissioner, perhaps other ex-senior public servants or people who have an interest and expertise in public administration being brought in, perhaps even from other jurisdictions... Bringing in that extra expertise would seem to be the main benefit.*²⁰⁷

Ms Sagers' view was largely the same, suggesting that the public sector had demonstrated an inability to solve problems independently:

*I have come to the conclusion that the public sector is not well positioned to solve its problems on its own. I think it has had a fair amount of time to do that and there are lots of quite complex demanding challenges facing this sector at the moment, and I suspect it would be helpful to have input into the governance and leadership of the sector from a variety of different perspectives as opposed to simply from within the public sector itself. Therefore, I think having a board of management that provides policy advice to the Public Sector Commission and to agencies in general from, for example, industry, business, NGOs, tertiary institutions etcetera would be of great assistance.*²⁰⁸

In a supplementary submission to the Committee, Ms Sagers provided further justification for the adoption of a public sector management board in WA. She noted the size and complexity of the public sector and trends emerging in public sector management including an expectation that the public sector deliver a greater number of higher quality services with less staff, fewer resources and limited flexibility.²⁰⁹ Ms Sagers also expressed concern at the decreasing capacity of the public sector to run policy, given the focus on realising operational objectives. She viewed that an independent board comprising members from a cross-section of the community with the requisite time and ability to focus on those issues was the best approach to achieve this:

*...bring fresh ideas, ask the hard questions, and pose alternatives. It would comprise people from a wide variety of backgrounds with very different experiences and perspectives. At the very least, these members would challenge the status quo, seek explanations for current approaches, and encourage debate and discussion about important issues surrounding public services and the delivery of those services to the WA community.*²¹⁰

(g) Adequacy of planning for structural reform

The 'Liberal Plan for the First 100 Days of Government' states that throughout the election campaign (prior to the Liberal National Government being sworn into government in September 2008), the party has:

²⁰⁷ Mr Christopher Williams, President, Institute of Public Administration Australia (WA Division), *Transcript of Evidence*, 18 March 2009, p4.

²⁰⁸ Ms Jan Sagers, Director, Nexus Strategic Solutions, *Transcript of Evidence*, 23 March 2009, p2.

²⁰⁹ Submission No. 16 from Ms Jan Sagers, Nexus Strategic Solutions, 6 April 2009, p2.

²¹⁰ *ibid.*, p3-4.

*...released 40 strong and detailed policies across all the major portfolio areas. These fully funded, fully costed policies explain how a Liberal Government will deliver the benefits of the boom to Western Australian families and small business.'*²¹¹

The document that forms the basis for structural reform of the public sector, entitled 'Government Accountability and Public Sector Management' is listed as one of those 40 policies.²¹²

While strong support was tendered for the concept of an independent and professional public service, evidence was tendered to the Inquiry questioning the adequacy of planning for the structural reforms, including:

- lack of publicly available information on the rationale for, and the intended structure of, public sector reform;
- absence of cost projections for the project;
- considerable delay in defining budget, 3% efficiency dividend, and FTE complement for the PSC;
- use of delegation as a mechanism for achievement of government's intention of an independent public sector;
- the absence of additional powers being granted to the Public Sector Commissioner to adequately fulfil his functions;
- the degree of security of tenure afforded in the context of the section 49 dismissal provisions of the PSM Act; and
- lack of consideration of alternative models for management of the public sector.

Finding 17

The election commitment of a 100 day time line on establishment of the Public Sector Commission, which was met, limited the opportunity for detailed planning both with respect to the Public Sector Commission and the Department of the Premier and Cabinet.

²¹¹ Liberal Party of Western Australia, 'Liberal Party Plan for First 100 Days of Government', 1 September 2008. Available at: http://wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 1 May 2009, p1.

²¹² Liberal Party of Western Australia, 'Government Accountability and Public Sector Management', 1 September 2008. Available at: http://wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 1 May 2009, p1.

Finding 18

The separation of the functions of the Public Sector Commissioner and the Office of the Public Sector Standards Commissioner creates complexities and inefficiencies. Both entities are charged with leading and maintaining the integrity of the public sector: functions that are intrinsically linked and have the potential for overlap.

Recommendation 2

That the Government make the necessary amendments to the *Public Sector Management Act 1994* to:

- establish the Public Sector Commissioner as an independent officer of the Parliament with appointment and dismissal provisions similar to the office of Auditor General;
- amalgamate the offices of Public Sector Standards Commissioner and Public Sector Commissioner;
- establish in statute a Public Sector Board, with an advisory function to the Public Sector Commission; and
- update and simplify the *Public Sector Management Act 1994* based on its consideration of the reviews already completed of the Act.

Recommendation 3

For as long as the Public Sector Commission exists without its own statutory foundation, any variation or intervention in delegated powers by the Minister for Public Sector Management should be subject to a requirement for timely public disclosure.

CHAPTER 4 BALANCING EFFICIENCY AND INTEGRITY IN CHIEF EXECUTIVE OFFICER SELECTION

4.1 Chief Executive Officer selection procedures in Australian public sectors

Just as there has been debate about the independence of the public sector as a whole, there have been similar levels of debate about the degree of independence afforded to the process used to select public sector CEOs in Australian jurisdictions. The importance afforded to either independence or responsiveness can be usefully considered in the varied approaches to CEO appointment and related governing legislation outlined at section 4.1 and 4.2 of this report. As an aside, these sections also contain a brief discussion of provisions relating to dismissal of Public Sector Commissioners or their equivalent, principally because of concerns raised by witnesses to the Inquiry regarding their effect on the independence of those positions and the entities for which they are responsible.

Those advocating a more responsive public sector argue that policy responsiveness is best achieved by the public sector when governments are able to appoint whomever they think best able to lead agencies with particular focus on ensuring successful implementation of the government policy agenda. This was the view of the former Prime Minister, John Howard:

*Any Government must and should reserve the right to adapt the administrative structures of the public service to best achieve the policy priorities on which it was elected. So also, any government must and should reserve the right to have in the top leadership positions within the public service people who it believes can best give administrative effect to the policies which it was elected to implement. Governments of both political persuasions have recognised these realities.*²¹³

At the other end of the spectrum there is an expectation that the public sector, as custodian of retained corporate knowledge (a resource best described as a public good to be shared with the government of the day),²¹⁴ provides ‘frank and fearless’ advice to the government on matters relating to the implementation of its policies. This presupposes that CEOs are appointed under a form of independent merit process and have some security of tenure.

(a) Commonwealth Government

Commonwealth Departmental Secretaries

The responsibility for the recruitment, selection and employment of Departmental Secretaries in the APS is vested by section 58 of the *Public Service Act 1999* (the PS Act) in the Prime Minister.

²¹³ Howard, John 1998, ‘A healthy Public Service is a vital part of Australia’s democratic system of government’, The Sir Robert Garran Oration, 19 November 1997, *Australian Journal of Public Administration*, vol. 57, no. 1, March, p8.

²¹⁴ *ibid.*, p11.

Among many important changes introduced by the PS Act was the removal of references to the Governor-General in the legislation and replacement with reference to the Prime Minister. This change simply reflected convention which required the Governor-General to act in accordance with advice based on the recommendation of the Prime Minister. That being said, it has been argued that it was symbolically important for making clear the connection between Secretaries and the government of the day.²¹⁵

The PS Act does not prescribe the method that should be undertaken in the selection of Departmental Secretaries. It does, however, require the Prime Minister to receive a 'report' from the Secretary of the Department of the Prime Minister and Cabinet in the case of an appointment to departments other than Prime Minister and Cabinet. In circumstances of an appointment being made to the Department of Prime Minister and Cabinet a report from the Public Service Commissioner is required.²¹⁶ Vacancies for Departmental Secretary positions are not advertised in the media and the content of the reports to the Prime Minister remains confidential. Generally speaking, however, the reports contain the view of the Secretary or Commissioner regarding who he or she may think suitable for the vacancy. The Prime Minister is under no obligation to appoint from the list of names provided in the report and is free to appoint whomever he or she feels is best able to carry out the functions of the Secretary once the report has been received.²¹⁷

Dismissal of Departmental Secretaries

Section 59 of the PS Act grants the Prime Minister the ability to terminate, in writing, an appointment of a Departmental Secretary at any time. Before doing so, however, the Prime Minister must first be in receipt of a report about the proposed termination from the Public Service Commissioner (in a case where the Public Service Commissioner's appointment is being terminated, the report must come from the Secretary of the Department of the Prime Minister and Cabinet).

There is precedent regarding the procedure for terminations arising from an appeal brought by the then Secretary of Defence in 1999. In this case the Secretary had been notified that his appointment was being terminated on the grounds that the Minister had lost trust and confidence in his abilities to carry out the functions of Secretary (it should be noted that this termination took place under legislation now superseded; however, there is a view that the precedent established in this case would still apply to the current legislation).²¹⁸ The Secretary requested details about the loss of trust and confidence and, when these details were not provided, appealed to the Federal

²¹⁵ Pittard, M. & Weeks, P, 'Public Sector Employment in the Twenty-First Century: Themes and Introduction', in Pittard, M. & Weeks, P (ed.), *Public Sector Employment in the Twenty-First Century: Themes and Introduction*, Australian National University E Press, Canberra, 2007, p37.

²¹⁶ Ms Lynelle Briggs, Australian Public Service Commissioner, Australian Public Service Commission, letter, 29 March 2009, p2.

²¹⁷ Labrum, P., Australian Public Service Commission, pers. comm., 3 April 2009.

²¹⁸ Pittard, M. & Weeks, P, 'Public Sector Employment in the Twenty-First Century: Themes and Introduction', in Pittard, M. & Weeks, P (ed.), *Public Sector Employment in the Twenty-First Century: Themes and Introduction*, Australian National University E Press, Canberra, 2007, p38.

Court on the grounds of procedural fairness. The matter was appealed to the Full Court of the Federal Court, which found in favour of the government's ability to terminate an appointment on the grounds nominated. The Court did, however, emphasise that an appointment was not terminable at pleasure, although there did not have to be a suggestion of a serious fault on the part of the Secretary before termination could take place.²¹⁹ In other words, a Secretary's appointment could be terminated on the grounds of a loss of trust and/or confidence alone, without particular substantiation.

Statutory office holders

In addition to filling Departmental Secretary positions, the Prime Minister and other Ministers are required by legislation to appoint persons to lead Public Service Agencies and statutory bodies. Until 2008, there was no requirement to conduct a merit based selection process for these positions.²²⁰ The methods used varied by agency, although some were already using merit based procedures to fill vacancies. Following the introduction of a new policy in 2008, agencies are now required to conduct a standardised merit process when filling statutory office holder positions.

This process is not legislatively based, although it is established in a detailed policy document from the APSC, which establishes the roles of the key stakeholders in the appointment process. At the centre is the Secretary of the department under which the statutory body sits. The Secretary is responsible for coordinating the recruitment activity and chairs (or delegates the chair of) the selection panel. Also on the panel is the Public Service Commissioner. The Secretary may appoint others to the panel if additional expertise is considered necessary.²²¹ It is the responsibility of the Secretary to liaise with the responsible Minister to ascertain the extent of advertising (the policy requires a minimum of national advertisement for the vacant position) and the scope of any additional selection criteria.²²²

The Secretary is responsible for drafting the selection report based on the deliberations of the panel. Before the report can be submitted to the Minister, however, it must be endorsed by the Australian Public Service Commissioner. Once the report is endorsed and submitted, the Minister considers the recommendations made and is free to meet with recommended candidates and to consult more widely in relation to the selection decision.²²³ There is scope earlier in the process for the Minister to encourage those he or she feels would be quality applicants to apply. The Minister may also choose not to proceed with a merit selection process if it is felt that an 'eminent person' is available to fill the position. In cases such as this, the Minister must request the Prime Minister's approval to make a direct appointment.²²⁴

²¹⁹ *ibid.*, p40.

²²⁰ Naess, C., Australian Public Service Commission, pers. comm., 7 May 2009.

²²¹ Australian Public Service Commission, *Merit and Transparency: Merit-based selection of APS agency heads and APS statutory office holders*, Australian Public Service Commission, Canberra, February 2009, p9.

²²² *ibid.*, p6 & 9.

²²³ *ibid.*, p7.

²²⁴ *ibid.*, p11.

At the end of the process, the Minister is also able to appoint a person who was not recommended by the selection panel if he or she is not satisfied with the person(s) recommended. The Minister is then required to write to the Prime Minister outlining reasons for the decision.

(b) New South Wales

In New South Wales (NSW), employment of public sector CEOs is prescribed in Part 2.2 of the *Public Sector Employment and Management Act 2002* (the PSME Act). Unlike WA's PSM Act, NSW's legislation does not go into particular detail about the processes required for the employment of a CEO. Although the PSME Act provides for appointments to vacant CEO positions to be made by the Minister for Public Sector Management (the Premier), in practice this function has been delegated to the Director General, DPC.²²⁵ The Director General is also the statutory Director of Public Employment, and is the employer of public servants for industrial relations purposes.

The majority of CEO positions are allocated following the conduct of a merit selection process, which is ordinarily chaired by the Director General, DPC.²²⁶ A merit selection process is not required by the PSME Act, however, and direct appointment of individuals from inside or outside the public sector by Ministers is allowed, although this is not said to happen frequently.²²⁷ Regardless of the method of appointment, Cabinet approval is required for all appointees.

Dismissal of CEOs

Section 77(1) of the PSME Act allows termination of the employment of CEOs by their employer (the Premier, although delegated to the Director General, DPC) for any reason or for no reason and at any time. It is normal, however, to seek the advice of the relevant Minister before the removal from office of a CEO by the Director General.²²⁸

(c) Victoria

The Victorian Public Service comprises ten departments each headed by a Department Head or Secretary, while the broader Victorian public sector comprises in excess of 250 employing bodies. Bodies comprising this latter group, the public sector, are usually established under unique legislation and employment structures are tailored to take into account the needs of each body. Employment of CEOs in these bodies is usually managed by the Board governing the body, although employment decisions are required to be made in the context of the overall employment

²²⁵ Mr John Lee, Director General, New South Wales Department of the Premier and Cabinet, letter, 9 April 2009, p2.

²²⁶ *ibid.*, p1.

²²⁷ Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 3: CEO recruitment and selection in the WA public sector*, Commissioner for Public Sector Standards, Perth, 21 November 2006, pp73-74.

²²⁸ New South Wales Department of the Premier and Cabinet, *Employment Guidelines for the Chief and Senior Executive Service in the NSW Public service*, November 2008, p72. Available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0010/1027/2008_SES_Guidelines.pdf. Accessed on 11 February 2009.

principles and standards established by Victoria's Public Sector Standards Commissioner. Appointment of CEOs in public sector bodies may require approval from relevant Ministers or Departmental Secretaries depending upon the requirements of the legislation under which the body operates.²²⁹

In respect of appointment and selection of Departmental Heads in the Victorian Public Service, the recruitment process varies according to the circumstances surrounding each vacancy. Usually, roles are advertised and on many occasions an independent search consultant is appointed to assist with the development of a competitive field. The Chairman of the State Services Authority (the SSA) and the Secretary of DPC provide assistance to the Premier in the selection process.²³⁰

Section 34(1) of the *Public Administration Act 2004* provides that the Premier may terminate the employment of a Secretary in accordance with the terms and conditions of the employment contract. Section 34(2) provides that the Governor-in-Council may, at any time, terminate the employment of a Departmental Secretary.²³¹ The Committee's understanding of this latter provision is that a Departmental Secretary may be removed at any time following a vote by the Cabinet.

(d) Queensland

The employment of public service CEOs in Queensland is provided for in the *Public Service Act 2008* (the PS Act (Qld)). The CEO of the Queensland Public Service Commission does not have a prescribed role in the selection and/or appointment of CEOs, although the office plays a role in the process if invited to take part by the Premier.²³² Generally, the recruitment of public service CEOs in Queensland involves:

- the advertisement of the vacancy in local and national publications;
- the provision of prospective applicants with a package that consists of a role description, and the annual report and strategic plan for the agency concerned;
- the use of a selection panel usually consisting of: the departmental Minister, who chairs the panel; the Director General, DPC; the Chief Executive of the Public Service Commission; and an independent member with knowledge of the functions and responsibilities of the agency;
- the preparation of psychological profiles of short-listed applicants; and
- selection decisions based on merit as required by the PS Act (Qld).²³³

²²⁹ Ms Karen Cleave, Chief Executive, State Services Authority of Victoria, letter, 30 March 2009.

²³⁰ *ibid.*

²³¹ *ibid.*

²³² Mr Bruce Wilson AM, Chief Executive of the Queensland Public Service Commission, letter, 11 March 2009, p1.

²³³ *ibid.*

A public service CEO's contract can be terminated by the Governor in Council on the recommendation of the Premier.

(e) South Australia

In South Australia, there is no requirement to advertise vacant CEO positions and advertisements are not always placed advising of a vacancy. Generally, the relevant Departmental Minister's chief of staff will participate on the selection panel along with the Commissioner for Public Employment, and a CEO from another agency. Candidates are usually interviewed by the panel and the Departmental Minister and/or Premier will often meet with candidates prior to a final decision being made.²³⁴ There is also scope for the Premier to make appointments without undertaking a selection process. In both cases (direct appointment and following a selection process) the endorsement of the Commissioner for Public Employment is required.²³⁵

(f) Tasmania

The processes associated with the appointment of public sector CEOs and other senior government positions in Tasmania have recently been the subject of a Parliamentary Inquiry that has recommended the adoption of a system of CEO selection and appointment similar to that used in WA.²³⁶ The existing legislative arrangements do not specify the processes to be used during the recruitment processes, although it does provide that all appointments be made on the basis of merit. A number of methods have been used to fill vacancies, including executive searches, assessment of applicants, expressions of interest, outsourced selection exercises and traditional processes of interviewing applicants who respond to media advertisements.²³⁷

(g) Australian Capital Territory

Section 65 of the Australian Capital Territory's (ACT's) *Public Sector Management Act 1994* requires that CEO selection be undertaken with a merit-based process. In practice, this has meant that CEOs are selected as a result of an executive search with short-listed applicants provided to the CEO of the Chief Minister's Department. The search is either undertaken by a private firm or conducted in house by the Chief Minister's Department. In both cases, the vacant position is advertised. Departmental Ministers are advised of the preferred applicant prior to a formal contract offer being issued.²³⁸

²³⁴ Ms Zoe King, Office for Ethical Standards and Professional Integrity, South Australian Department of the Premier and Cabinet, Electronic Mail, 7 April 2009.

²³⁵ Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 3: CEO recruitment and selection in the WA public sector*, Commissioner for Public Sector Standards, Perth, 21 November 2006, p76.

²³⁶ Tasmanian Legislative Council Select Committee on Public Sector Executive Appointments, *Interim Report*, Hobart, April 2009, p27.

²³⁷ Mr Rhys Edwards, Secretary, Tasmanian Department of Premier and Cabinet, letter, 30 March 2009.

²³⁸ Mr Kerry Gulliford, ACT Chief Minister's Department, Electronic Mail, 20 March 2009.

(h) Northern Territory

In the Northern Territory, public sector CEOs are employed under section 5 of the *Contracts Act 1984*, although they are appointed to their roles under section 19 of the *Public Sector Employment and Management Act 1993*. The Executive Remuneration Review Panel, consisting of the Commissioner for Public Employment, the Under Treasurer and the CEO of the Department of the Chief Minister oversees the CEO recruitment process. This panel makes recommendations to the relevant departmental Minister on the principles of merit, natural justice and other HR management policies. If the departmental Minister endorses the panel's recommendation, the recommended candidate's name is presented to the Chief Minister for final approval.²³⁹

Finding 19

Legislative frameworks in most Australian jurisdictions provide for significant political involvement in public sector Chief Executive Officer recruitment.

4.2 Chief Executive Officer selection in Western Australia

(a) Origins of Western Australia's public sector Chief Executive Officer selection process

The PSM Act is uniquely prescriptive amongst Australian public sector legislation as it establishes a process for the selection of public sector CEOs that is largely independent of the Minister for Public Sector Management (usually the Premier) and the relevant Minister of State. The PSM Act prescribes authority to the Standards Commissioner to make independent nominations to the Minister for Public Sector Management regarding those found suitable for appointment. Section 45 of the PSM Act details at some length the responsibilities of the Standards Commissioner, the Minister for Public Sector Management, and the responsible departmental Minister involved with the selection and recruitment of CEOs.

This independent process was a response to recommendations arising from the WA Inc Royal Commission given the perceived damage caused to the WA public sector as a result of the matters investigated by the Commission. In particular, the Commissioners identified the erosion of the merit principle and the 'parachuting' of individuals into the public service from contract positions.²⁴⁰

²³⁹ Mr Ken Simpson, Office of the Commissioner for Public Employment, Northern Territory Government, correspondence, 23 March 2009, pp1-3.

²⁴⁰ *Royal Commission into Commercial Activities of Government and Other Matters*, Report Two "The Administrative System", p6-6.

The Commissioners' commentary in relation to the selection of public sector CEOs is very clear, and deserves to be reproduced in full, as it subsequently served as the basis for much of what now comprises section 45 of the PSM Act:

The power to appoint [chief executive officers] is not, and cannot be allowed by covert means to become, a "spoil" in the gift of a government. We acknowledge that the minister/chief executive officer relationship is a distinctive one and that the minister's expectations of the qualities and qualifications of his or her chief executive officer should be taken into account if their working relationship is to be an effective one. But this said, chief executive officers are part of the Public Service, and they represent both to the Government and to their departmental subordinates alike, the purposes and values of the Public Service itself. Their appointment procedures must reflect this and must be so structured as to ensure integrity in the procedures themselves. In balancing the legitimate interest a minister has in the appointment of a chief executive officer, with the public service interests which must be safeguarded, the Commission considers that the appointment procedures for chief executive officers should embody the following features:

(a) the Commissioner for Public Sector Standards (or the Public Service Commissioner, if the former office is not created) should be responsible for nominating a proposed appointee to the minister;

(b) before taking steps to make a nomination, the Commissioner should invite the relevant minister to indicate any matters the minister wishes to be taken into account in making the appointment; and

(c) if the nomination is not accepted, the Governor in Council should be able to appoint another person to the position, but if it does so, the responsible minister must notify the Parliament that the person appointed is not the person nominated by the Commissioner.²⁴¹

In part 3 of the Ten Year Review undertaken by the OPSSC which considers the role of the Standards Commissioner in the recruitment and selection of public sector CEOs, Ms Maxine Murray observed that her Office's role in overseeing the selection and appointment of public sector CEOs was fundamental to protecting the political impartiality and neutrality of the WA public sector.²⁴²

As detailed in section 2.1, the Premier in his two cited media statements iterated his intention that the Public Sector Commissioner perform all his functions under the Act, including playing an 'independent role in the selection of public sector CEOs.'²⁴³ In other words, he was espousing a degree of independence from political influence in that process. It was envisaged this would be

²⁴¹ *ibid.*, pp6-7 & 6-8.

²⁴² Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 3: CEO recruitment and selection in the WA public sector*, Commissioner for Public Sector Standards, Perth, 21 November 2006, p8.

²⁴³ Hon. Colin Barnett, MLA, (Premier), *Establishment of the Public Sector Commission and position of Public Sector Commissioner*, Media Statement, Government Media Office, Perth, 30 September 2008 and Hon. Colin Barnett, MLA, (Premier), *Public Sector Commission to deliver better public service*, Media Statement, Government Media Office, Perth, 28 November 2008.

achieved through delegation by substituting the Minister for Public Sector Management with the Public Sector Commissioner.

(b) The process

The following provides a synopsis of the CEO selection process since delegation of the Minister for Public Sector Management's functions to the Public Sector Commissioner. That being said, it reflects on the process as it was under the Minister. This is necessary given the Minister's ongoing capacity to intercede in relation to those delegated functions but is also useful as a reference in relation to the selection and appointment process for the Director General, DPC which occurred prior to the establishment of the PSC.

The process to fill a vacancy (or impending vacancy) commences with a request from the Public Sector Commissioner (formerly delegated to the Director General, DPC), presumably after being informed by the relevant Minister responsible for the department in which the vacancy exists, to the Standards Commissioner to formally fill the vacancy. Section 45(4) requires that the Standards Commissioner then invite the relevant departmental minister to inform him or her of matters that he or she wishes the Standards Commissioner to take into account in nominating a person or persons as suitable for appointment to the vacancy.²⁴⁴ The Committee understands that in the past, where the Premier was the Minister responsible for the department where the vacancy existed, the Standards Commissioner would liaise with the Premier. The Standards Commissioner now liaises with the Public Sector Commissioner.

Section 45(5) requires the Standards Commissioner to 'notify the vacancy...in such a manner as the [Standards] Commissioner thinks sufficient to enable suitably qualified persons to apply.' Advertisements are generally placed in local and national media, although some highly specialised CEO positions (such as the former Department of Industry and Resources) have also been advertised internationally, including in the *Economist*.²⁴⁵ Executive searches are also available but are not a given under the current Standards Commissioner.²⁴⁶

The PSM Act gives discretion to the Standards Commissioner to conduct the selection process with the degree of flexibility that he or she feels is required.²⁴⁷ Section 45(6) requires the Standards Commissioner to examine applicants, but does not detail the manner of the examination and nor does it require that all applicants be examined. In practice, the nature of the examination has typically reflected standard recruitment practices involving the submission of applications, an interview conducted before a selection panel and a review of referee material.²⁴⁸

²⁴⁴ Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 3: CEO recruitment and selection in the WA public sector*, Commissioner for Public Sector Standards, Perth, 21 November 2006, p67.

²⁴⁵ Dr Ruth Shean, Commissioner of Public Sector Standards, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p4-5.

²⁴⁶ Submission No. 17 from Dr Ruth Shean, Public Sector Standards Commissioner, 7 April 2009, p3-6.

²⁴⁷ Submission No. 7 from Dr Ruth Shean, Public Sector Standards Commissioner, 23 January 2009, p9.

²⁴⁸ Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 3: CEO recruitment and selection in the WA public sector*, Commissioner for Public Sector Standards, Perth, 21 November 2006, pp67-68.

The Standards Commissioner is granted autonomy in selecting members of the recruitment panel. Once the panel has completed interviews and reference checks, it compiles a report detailing candidates found to be suitable. Under Section 45(8) the Standards Commissioner considers the nominees and if endorsed will present those nominations to the Public Sector Commissioner.²⁴⁹ Under the previous arrangements, those nominations were forwarded to the Minister for Public Sector Management.

Whereas previously the Minister for Public Sector Management would be required by section 45(9) to consult with the relevant portfolio minister and, following this consultation, make a decision regarding the appointment of one of the nominated candidates, this role now falls to the Public Sector Commissioner. Section 45(11) granted the Minister for Public Sector Management, now the Public Sector Commissioner the authority to reject the nominations submitted by the Standards Commissioner and to request that the Standards Commissioner nominate another person.

Section 45(12) allowed the Minister for Public Sector Management, now the Public Sector Commissioner to directly appoint a person to a CEO position in cases where a nomination or further nomination made by the Standards Commissioner is rejected. In these cases, there is a requirement to publish notice of the appointment in the *Government Gazette* detailing reasons for the appointment, as soon as is practicable. The Committee understands that, since the introduction of the PSM Act in 1994, no government has exercised this option of direct appointment.²⁵⁰

Finding 20

The Minister for Public Sector Management can presently appoint a person as a Chief Executive Officer who is not merit selected, but only after completion of the merit selection process. Such an appointment has the potential to attract political and public controversy.

Recommendation 4

The *Public Sector Management Act 1994* should be amended to provide the Minister for Public Sector Management, when appointing a Chief Executive Officer, the option of merit selection or direct appointment. In the case of direct appointment, the appointee's tenure should be limited to the term of government and the decision published in the *Government Gazette*.

²⁴⁹ *ibid.*, p68.

²⁵⁰ Hon. Gavin Fielding, *Transcript of Evidence*, 23 March 2009, p8.

(c) Dismissal of Chief Executive Officers

The level of protection afforded to CEOs in this state compares favourably with other Australian jurisdictions as is evidenced in section 3.2 (d) of this report.

4.3 The appointment of Mr Peter Conran

(a) Background

Section 1.1 detailed in brief the appointment process for the position of Director General, DPC. At the risk of duplication, it is not the Committee's intention to reiterate that information. A timeline has been provided at Appendix 5 of this report, the detail of which will become more apparent as related matters are discussed in this Chapter.

The State Opposition's contention that the appointment was political in nature and contrary to the government's intent to create an impartial and independent Public Service through public sector reform and removal of the Premier's involvement in the selection of CEOs, requires some attention as it is a matter central to debate in this Chapter.

It has been mentioned that the focus of Parliamentary debate has been on the purported politicisation of the CEO process involving Mr Conran, not on Mr Conran's credentials and capacity to fulfil his duties as Director General, DPC. This position is perhaps best captured in the following commentary by the Hon. Alannah MacTiernan, MLA, Shadow Minister for Regional Development; Strategic Infrastructure; and Climate Change during Hansard debates on the issue in November and December 2008:

*This is an issue about the Premier; it is not an issue about Peter Conran. We are not coming in here to attack Peter Conran. The Leader of the Opposition has never said that this fellow does not have ability. We understand why the Premier wants him in this position. We understand the Premier wants him because he is such a warlord and is a very capable person in advancing the Liberal Party's interest—a very, very capable person in advancing the Liberal Party's interest. However, what we have not received today is any clarification about the process that has gone on, because this ultimately is not about Mr Conran but about what the Premier has done to interfere with this very critical notion of the impartiality of the public sector... There are some critical questions that have not been answered.*²⁵¹

The Opposition accused the Premier of interfering in the appointment process enabling him to 'parachute' Mr Conran, whom they asserted was a 'Liberal operative', into the most senior position in government whilst purporting to create an independent and impartial public sector.²⁵²

²⁵¹ Hon. Alannah MacTiernan, MLA, Shadow Minister for Regional Development; Strategic Infrastructure and Climate Change, Perth, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p660.

²⁵² Hon. Eric Ripper, Leader of the Opposition, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 11 November 2008, pp81-82.

Under Part IV of the *Equal Opportunity Act 1984* it is unlawful to discriminate against a person on the basis of the person's political conviction, including in matters of employment. In discussing any political preferences that Mr Conran may have, it should not be inferred that he should not have been employed as a consequence of those preferences. It is about examining, given the likelihood of his views being highly acceptable to Government, whether extra focus should have been given to how the appointment process was conducted and the public's perception of the integrity of that process.

In November 2008, the Premier described Mr Conran as 'an outstanding career public servant,'²⁵³ 'a long-term employee of governments,' having 'worked under both Liberal and Labor administration.'²⁵⁴ The Opposition has strongly refuted the notion of Mr Conran being a 'career public servant,' viewing such a claim to be misleading in light of Mr Conran's prior appointments to political positions, external to the public service.²⁵⁵

Mr Conran's Curriculum Vitae, tabled in the Legislative Council on 25 November 2008 reveals an initial employment history of approximately 25 years as a career public servant in both the Northern Territory and for a lesser period in WA. This includes senior executive positions in policy, law and more specifically, DPC in this state and its equivalent in the Northern Territory. From 2001 to 2007, Mr Conran held the position of Senior Adviser and in turn, Secretary to Cabinet, in the Office of former Liberal Prime Minister John Howard.²⁵⁶ As previously detailed, on 24 September 2008, Mr Conran was awarded a Contract for Service under the supplier name, Concept Economics Pty Ltd (Peter Conran) for the provision of advice to the Liberal Government in this state on COAG, government administration and general policy issues.

There is considerable commentary regarding Mr Conran's political preferences, including from Mr Conran himself, that indicate strong leanings towards the Liberal Party. Whilst the Premier is more circumspect when he cites 'I suspect that Peter Conran is more inclined towards the Liberal Party than the Labor Party', Mr Conran admitted in evidence to the Committee '[l]ook, I am conservative but there is no use saying I am not.'²⁵⁷ Other statements and/or admissions by Mr Conran support his contention:

- that he has principally worked for conservative governments in senior positions;²⁵⁸

²⁵³ Hon. Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p643.

²⁵⁴ *ibid.*, p657.

²⁵⁵ Hon. Eric Ripper, MLA, Leader of the Opposition, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p652.

²⁵⁶ Parliament of Western Australia, *Employment History (Mr Peter Conran)*, Parl. Paper 368, Legislative Council, 25 November 2008, p2.

²⁵⁷ Mr Peter Conran, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 23 March 2009, p14.

²⁵⁸ *ibid.*, p12.

- that he ran Liberal Party policy at campaign headquarters for the 2001, 2004 and 2007 Federal elections;²⁵⁹
- that he has only worked for a Labor government in a senior executive position for two weeks in his career, although notes that he was ‘asked to leave’ following the election of the Gallop Labor Government;²⁶⁰ and
- that the Liberal Party paid for him to fly to WA between 6 and 21 September 2008 to discuss issues relating to the structure of government and COAG and that on that occasion the Premier asked him to consider applying for the position of Director General, DPC.²⁶¹

Media reference to Mr Conran as the probable successful candidate for the position of Director General, DPC also link Mr Conran to the Liberal Party and in particular references his position in the ‘inner sanctum’ of the former Howard Government.^{262 263}

(b) Media speculation on Mr Conran as a ‘front runner’ for the position of Director General, Department of the Premier and Cabinet

Previous sections of this report have noted media speculation at a state and national level, principally in print media, although also on ABC radio, prior to and during the conduct of the application process, touting Mr Conran as a ‘possibility’²⁶⁴ or a ‘shoe-in’²⁶⁵ for the position of Director General, DPC. Two articles in *The West Australian* newspaper, dated 1 October 2008 claim the Premier cites Mr Conran as a possibility for the job.^{266 267} In Parliamentary debate on 11 November 2008, the Leader of the Opposition makes the following related commentary on the issue:

*I support the idea of a public sector commission, but I wonder who will be the next Director General of the Department of the Premier and Cabinet. So do the journalists, and when they asked the Premier at a press conference he muttered that Peter Conran was doing some work. We know who Peter Conran is. We know that he is a long-time Liberal Party bureaucratic activist.*²⁶⁸

²⁵⁹ *ibid.*, p13.

²⁶⁰ *ibid.*, p9.

²⁶¹ *ibid.*, pp7-8.

²⁶² Mark Pownall, ‘Ticking the boxes on Conran’s role’, *WA Business News*, 23 October 2008, p7.

²⁶³ Media references are included in the timeline as appended.

²⁶⁴ Robert Taylor, ‘Barnett moves to depoliticise public service’, *The West Australian*, 1 October 2008, p12.

²⁶⁵ Mark Pownall, ‘Ticking the boxes on Conran’s role’, *WA Business News*, 23 October 2008, p7.

²⁶⁶ Robert Taylor, ‘Barnett moves to depoliticise public service’, *The West Australian*, 1 October 2008, p12.

²⁶⁷ *ibid.*

²⁶⁸ Hon. Eric Ripper. MLA, Leader of the Opposition, Parliament of Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 11 November 2008, p83.

An article in the *Business News* dated 23 October 2008 comments on the speculation within Liberal Party ranks over Mr Conran's likelihood for the position given his Liberal Party connections and experience, including knowledge of the WA public sector; his sound credentials; his experience as a former adviser to Prime Minister Howard; and the fact that such an appointment would be consistent with that of a number of other Howard advisers being employed by the WA Liberal National Government. The article clearly states senior government sources and Mr Conran as being unwilling to comment on the issue of appointment.²⁶⁹ A radio segment on 3 October 2008 which largely reflects commentary in the aforementioned article of 1 October 2008 also notes Mr Conran's contract with the Liberal National Government (under Concept Economics Pty Ltd (Peter Conran)) and his former experience as Deputy Director General, DPC in this state.²⁷⁰ The Committee, cognisant of journalists' privilege, sought clarification on the source of Mr Conran's name from relevant media personnel. Mr Peter Kennedy, ABC political reporter, advised the Committee that reference was made to Mr Conran's involvement with the Liberal National Government at a press conference conducted by the Premier after the new government's first Cabinet meeting. Specifically:

- that Mr Conran was providing advice on the restructuring of DPC; and
- that the position of Director General, DPC was due to be advertised nationally.

Mr Kennedy detailed that given Mr Conran's background both in this state and federally, he assumed that Mr Conran would be a strong contender for the position, a view that he claims was endorsed by both sides of politics.²⁷¹

In Section 1.3, section 105 of the PSM Act was discussed in the context of preventing individual Members of Parliament from interfering in a Public Sector CEO appointment process as it proceeds. This provision was not seen as a blanket ban on a Member's or a Committee's capacity to enquire. That said, the Clerk of the Legislative Assembly advised that it would be 'prudent' for a committee so enquiring to avoid 'releasing personal information or information about other candidates unless that was considered absolutely necessary.'²⁷² The premise therefore is about protecting an individual applicant's right to confidentiality and maintaining the integrity of the selection process, not to prohibiting a review of the conduct of that process at any time. In Parliamentary debates in the Legislative Assembly, the Premier attests to the right of an applicant to a public sector position to expect confidentiality:

He was the recommendation [Mr Conran], but I am not going to speculate on or nominate who applied. Is that what the Leader of the Opposition is suggesting should happen? Is the Leader of the Opposition suggesting that when people apply for public service positions

²⁶⁹ Mark Pownall, 'Ticking the boxes on Conran's role', *WA Business News*, 23 October 2008, p7.

²⁷⁰ *Week in Politics*, Breakfast 720 ABC, Perth, 3 October 2008.

²⁷¹ Mr Peter Kennedy, ABC Political Reporter, letter, received 19 May 2009.

²⁷² Mr Peter McHugh, Clerk of the Legislative Assembly, Parliament of Western Australia, letter, 4 March 2009, p3.

*their names can be handed around? Does the Leader of the Opposition want me to circulate curriculum vitae?*²⁷³

Media communication is the principal means by which the public becomes acquainted with politics and develops opinion on issues of the day. Those opinions are largely influenced by how the media frames that information. Professor Wood commented on what he perceived to be possible outcomes of the media speculation in relation to Mr Conran:

*Some might think, "Well, it looks like it is signed and sealed" and they will not put their name forward. The other is: "I want this government to know that I am a competent senior person and this is a job I can do, regardless of anything that has been in the press" and they will put their hat in the ring anyway. That can be helpful to someone's career. Let me expand a bit on the second step when other people in the public sector think they have a chance and want to have a go. That might be them expressing confidence in the integrity of the selection process. I know Premier Barnett mentioned Peter Conran's name in the press. They might have enough confidence to say, "I know that the process is going to be effective and fair; I'll have a go anyway." Without having been in the position myself, I can only speculate about those two possibilities. There could be a third effect post-appointment that could be difficult for the director general in that people would regard him as being appointed because he was named by the Premier. That could be another potentially damaging thing for the way the public service is perceived. The public service—not only the public service—is good at one-liners. Peter Conran was appointed by the Public Sector Standards Commissioner. But you have to remember that his name was in the ring early on from the Premier, so that made him a favourite, and that is not a good thing. Some people might find that those are imaginary quotes, and that can be damaging to the system if that the case. Eventually, though, I think the big test for appointments of this sort is the integrity and quality of the people appointed.*²⁷⁴

The CPSUCSA and IPAA were of a similar mindset to Professor Wood regarding early release of Mr Conran's name reducing opportunity for selection, or alternatively, a candidate independently assessing the believability of the media's claims and submitting an application regardless.²⁷⁵ Ms Saggars supported the notion of media speculation as a deterrent to application.²⁷⁶ The Standards Commissioner whilst of the same view also felt that it undermined the credibility of her role as an independent assessor:

There was speculation in the media. I get a bit irritated with that sort of speculation for a couple of reasons. One is that it makes the assumption that I am going to do as a range of people expect me to do, and as you would know, I do not do that. I do what is the right thing to do. The other thing is that when people start speculating on who is going to get a

²⁷³ Hon. Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 25 November 2008, p389.

²⁷⁴ Professor Mike Wood, Professor of Management, University of Notre Dame, Western Australia, *Transcript of Evidence*, 23 March 2009, p8.

²⁷⁵ Ms Toni Walkington, General Secretary, Civil Service Association, *Transcript of Evidence*, 18 March 2009, p9.

²⁷⁶ Ms Jan Saggars, Director, Nexus Strategic Solutions, *Transcript of Evidence*, 23 March 2009, p10.

*job, it probably discourages others from applying. We have certainly seen that with some other high-profile positions in recent years too.*²⁷⁷

The Standards Commissioner however noted in testimony that despite the media speculation, it did not cause her to form a view as to who would be the nominated candidate and therefore influence her conduct of the selection and appointment process.²⁷⁸

Mr Conran expressed anger in relation to information in the media about him as contender given that he had not made a decision at that time to apply for the position and nor did he consider it proper process. He iterated that as a consequence he thought about not applying for the position.²⁷⁹

The Committee was informed that three applications were received for the position, including one from Mr Conran.²⁸⁰

Finding 21

Ministers and senior executives in the public sector need to refrain from making comments that may fuel speculation regarding potential candidates or likely appointees to a position of public sector Chief Executive Officer as such public speculation may impact negatively on the selection process.

(c) Applications received

The Director General, DPC position is a Group 4 Maximum, which is the highest classification band under the *Salaries and Allowances Act 1975* for a Public Sector CEO. In evidence to the Inquiry, the Public Sector Commissioner cited that he ‘would have expected a lot of people to put their hands up’ for the role of Director General, DPC.²⁸¹

In a report tabled in 2006 examining CEO recruitment and selection in the WA Public Sector, Ms Maxine Murray, detailed that for the period 2004-05 there was an average of 12 applicants for each CEO vacancy, with a range of 7-17 applicants.²⁸² The Committee queried the current

²⁷⁷ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p7.

²⁷⁸ *ibid.*, p6.

²⁷⁹ Mr Peter Conran, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 23 March 2009, p15.

²⁸⁰ Submission No. 7 from Commissioner for Public Sector Standards, Office of the Commissioner for Public Sector Standards, 23 January 2009, p11.

²⁸¹ Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009, p8.

²⁸² Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 3: CEO recruitment and selection in the WA public sector*, Perth, November 2006, p33.

Standards Commissioner on the expected average number of applications for a position of Director General of a government department.

*...around the 10 mark. You need to keep in mind, though, that averages do not indicate quality. From time to time when some positions are advertised, and you see the names of people who have expressed an interest, you are able to mentally short-list 75 per cent of those out as people who perhaps were just interested in getting a copy of the package or who put in an application on the off-chance that nobody else applied. It was a small field; it was a field of three who applied. There had been a lot of media speculation about this time that the decision had been made, which was not the case, and I suspect that that discouraged some people from applying. Keep in mind that out of a field of three, two of the candidates were very strong candidates.*²⁸³

Ms Jan Saggars in her capacity as a recruitment consultant, contracted to undertake 6 CEO selection processes for the OPSSC, stated that generally she received between 8 and 22 applications per position, with interviews being conducted with 3 to 5 applicants. Two to three applicants were generally put forward as suitable for appointment.²⁸⁴ She further cited that she would have expected the number of applicants for a position of this nature to have been higher.²⁸⁵

The Committee requested that the Standards Commissioner provide data on the number of applications received for 14 recent Public Sector CEO appointments (excluding the Director General, DPC position). That data is available at Appendix 10. For comparative purposes, it has been categorised according to the SAT classification band.

Notably for the positions of CEO or its equivalent for the Department of Housing and Works, Department of Industry and Resources, Department for Planning and Infrastructure, and the Department of Education and Training (Group 4 classifications), an average of 14 applications were received.

Finding 22

The number of applications received for the Director General, Department of the Premier and Cabinet position was low compared with the average number received for comparable positions.

(d) Conduct of an executive search

There is a clear distinction between the use of a recruitment consultant to progress the employment process versus the conduct of an executive search, informally known as

²⁸³ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p5.

²⁸⁴ Ms Jan Saggars, Director, Nexus Strategic Solutions, *Transcript of Evidence*, 23 March 2009, p10.

²⁸⁵ *ibid.*, p11.

‘headhunting.’ The requirement to employ a recruitment firm for a selection and appointment process for a public sector CEO is dependent on the number of appointments being handled at any one time. The preference of the current Standards Commissioner is that the process occurs in house to enhance oversight. This is more with respect to timeliness rather than quality of the process, given the cited standard of consultants utilised. The OPSSC only had ‘one active [CEO selection] process’ at the time of the recruitment of the Director General, DPC, hence the matter was progressed internally.²⁸⁶

Under Section 45(5) of the PSM Act, the Standards Commissioner is required to ‘notify the vacancy or impending vacancy in such manner as the Commissioner thinks sufficient to enable suitably qualified persons to apply for the relevant office.’ Therefore, there is no requirement to conduct an executive search. In mid-2002, the former Standards Commissioner introduced executive searches as protocol to ‘broaden the size and diversity of applicant pools.’²⁸⁷ As indicated by the following commentary relating to the conduct of an executive search in relation to the Director General, DPC selection and appointment process, Dr Shean has chosen an alternative approach:

*On this particular occasion, we felt that there was no evidence to suggest that we would not get applicants. There was no express wish that we should have an executive search, so we placed the advertisements. We did not get a large field, but, to be fair, we did get two good candidates. There was no suggestion that we broaden that field.*²⁸⁸

The Committee asked Ms Saggars in the context of her experience in CEO recruitment to comment on the executive search process and its advantages and disadvantages as a recruitment tool. Ms Saggars responded with the following commentary:

*Time is a disadvantage, because it does involve a fair amount of phoning around, talking to people, chasing up leads that sometimes amount to nothing, having fairly extensive conversations with preferred candidates that, again, do not amount to anything in the end because it is a pretty big decision, particularly if people are from over east, to move west. Of course, there is also the investment of financial resources in an executive search. They are generally not cheap. The advantage is that you canvass more ideas about suitable candidates. That should be a big advantage, but in my experience, given that WA is not considered a desirable career destination for the bulk of Australians, the executive search process generally did not throw up too many real candidates.*²⁸⁹

Ms Saggars, whilst not suggesting that Mr Conran’s appointment was political, questioned the purposefulness of conducting an executive search in circumstances where the appointment is a

²⁸⁶ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p4.

²⁸⁷ Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 3: CEO recruitment and selection in the WA public sector*, Perth, November 2006, p33.

²⁸⁸ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p4.

²⁸⁹ Ms Jan Saggars, Director, Nexus Strategic Solutions, *Transcript of Evidence*, 23 March 2009, p8.

political one. She also questioned the capacity to undertake an executive search in the case of the Director General, DPC, given what she perceived to be, a short time-frame:

*It is a very short time frame if you want to conduct an executive search. Executive searches typically take two to four weeks to do well. That would be a short process, in my experience. However, if, ultimately, the decision around the appointment is going to be made at a political level, then you could argue that conducting an executive search—an extensive, fulsome selection process—is a waste of time and resources. If what the government wants to do is to create open, transparent selection processes, and if, ultimately, the decision is going to be the decision of the minister and cabinet, then I think it is a waste of resources to go through a long-winded selection process and executive search process that is not authentic. Perhaps this is one example of the situation where the outcome was clear; I do not know, I was not involved in it.*²⁹⁰

When the Committee questioned Ms Sagers on whether receipt of three applications would warrant further action to ascertain interest in the position, she replied:

*I think that if there were only three, I would be looking for other ways of supplementing the field. A quick executive search might be the way to go rather than a fulsome one. I would want to know what it was about the position that was so unattractive, so I might look at contacting a few people whom I would ordinarily expect to apply for such a position and find out what their rationale was for not submitting an application, and then perhaps develop an executive search response from that feedback.*²⁹¹

Ms Sagers did however caveat this information with commentary that none of the appointment processes that she had been involved in which had included an executive search had resulted in appointment of an executive search candidate who would not otherwise have applied for the position.²⁹² Dr Shean was similarly unsure of the value of an executive search and noted that, whilst on occasion it had turned up a good candidate, on other occasions the appointee had already applied.

While acknowledging the likely damage to the process of Mr Conran's name being released as a prospective candidate prior to advertising of the position, Professor Mike Wood felt there were two considerations regarding whether or not to pursue an executive search. One being timeliness and the second being whether an executive search is likely to attract stronger candidates:

I think there are a few things you have to consider. One is timeliness. New governments want to get things done and you need to take that into account. If two of the three [candidates] are appointable, the risk of there being a failure in the CEO's performance is lower, especially if it is coming up to a point—as this was; it was butting up towards the Christmas break—when people take leave and so on. I think the other thing you have to consider—usually you want to do this—is whether the executive search would lead to any candidates who are likely to be stronger. If one has been in the job for a time as the Public

²⁹⁰ *ibid.*

²⁹¹ *ibid.*, p9.

²⁹² *ibid.*

*Sector Commissioner, you have reasonably regular contacts with executive search firms and you get a feeling for what is possible and what is in the field or what is not. Sometimes, executive search firms might be under, for example, a contract retainer, so getting advice from them can happen fairly quickly.*²⁹³

On the issue of whether an executive search should have been conducted, Dr Shean provided the Committee with the following explanations:

- prospective candidates would probably not have been interested in applying because of the specialised nature of the position and the fact that media speculation was likely to deter people from doing so;²⁹⁴
- that the quality of candidates who submitted applications was sufficient, although the number was small;²⁹⁵ and
- that it was not communicated to her to conduct an executive search.²⁹⁶

In the context of the statement in the third dot point above, it is important to reflect on the scope that Section 45(4) gives Ministers to comment on matters central to the nomination of a person(s) suitable for appointment to office. In Mr Fielding's review of the PSM Act in 1996 he stated that '[o]rdinarily this requires settlement of a position description form and position specifications.'²⁹⁷ Dr Shean considers otherwise, citing that she seeks the Minister's 'wishes with respect to searching and advertising [for example, the need to search or advertise overseas].'²⁹⁸

Finding 23

The media speculation as to who would get the position, the short time-frame, and the small number of applications had the potential to undermine public confidence in the independence of the merit selection process.

²⁹³ Professor Mike Wood, Professor of Management, Notre Dame University, *Transcript of Evidence*, 23 March 2009, p9.

²⁹⁴ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p10.

²⁹⁵ *ibid.*

²⁹⁶ *ibid.*

²⁹⁷ Hon. Gavin Fielding, *Review of the Public Sector Management Act*, Department of the Premier and Cabinet, 1996, p78. Available at: <http://www.dpc.wa.gov.au/PSMD/SiteCollectionDocuments/Machinery%20of%20Government/Machinery%20of%20Government%20-%20Commissioner%20G%20L%20Fielding%20-%202004%20Chief%20Executive%20Officers%20and%20Chief%20Employees.pdf>. Accessed on 7 May 2009.

²⁹⁸ Submission No. 7 from Dr Ruth Shean, Commissioner for Public Sector Standards, 23 January 2009, p5.

Recommendation 5

Where internal and external factors may cause the integrity of the Chief Executive Officer selection and appointment process to be called into question, the Public Sector Standards Commissioner must take all reasonable steps to ensure maintenance of the integrity of that process.

(e) Composition of the selection panel

The PSM Act grants freedom to the Standards Commissioner to form a CEO selection panel in the manner that he or she sees fit giving due regard to the requirements of the position. The Standards Commissioner is free to seek guidance from the relevant Minister regarding the types of people (i.e. their experience, professional background or community involvement) that he or she views should be on the selection panel.²⁹⁹

In the case of the recruitment process for the Director General, DPC, the panel was in the first instance comprised of Ms Cheryl Gwilliam, the Director General of the Department of the Attorney General, Mr John Langoulant, former State Under Treasurer and a previous Chief Executive of the Chamber of Commerce and Industry WA, and Mr Peter Browne, a former senior public servant, Chief of Staff to Hon. Norman Moore, MLC during the Court government³⁰⁰ and previously a senior office holder in the Liberal Party. Due to a change in schedules at short notice, Ms Gwilliam and Mr Langoulant were not available to attend interviews scheduled to take place on 5 November 2008. Ms Gwilliam was unavailable due to a meeting of the Standing Committee of Attorneys General in Queensland,³⁰¹ while Mr Langoulant was unavailable due to a previously arranged meeting in Sydney that he had failed to take account of when accepting the invitation to sit on the panel.³⁰²

The Standards Commissioner indicated that the availability of panel members was a main contributor to lengthy selection processes associated with the selection of public sector CEOs:

*People will agree to go on a panel—this happened regarding a position we had recently—we advertise the job stating that we will be interviewing on this date and, to my dismay, I then find that the panel members are not available. That is our single biggest frustration.*³⁰³

²⁹⁹ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p13.

³⁰⁰ Hon. Eric Ripper MLA, Leader of the Opposition, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p653.

³⁰¹ Submission No. 12 from The Office of the Public Sector Standards Commissioner, 16 March 2009, p2.

³⁰² *ibid.*

³⁰³ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p14.

As a consequence of panel members not being available for the predetermined dates, the Standards Commissioner decided to alter the composition of the panel in order to deliver a timely result for the government and meet pre-scheduled dates for interview. The Standards Commissioner appointed Ms Jenny Mathews, the Director General of the Department of Local Government and Regional Development in order to maintain some level of gender balance on the panel and due to her experience as a Commonwealth public servant.³⁰⁴ The government had previously indicated to Dr Shean that an important component of the new Director General's work would be managing Commonwealth-State relationships.³⁰⁵ Dr Shean replaced Mr Langoulant with Mr Barry McKinnon, a former Parliamentary leader of the WA Liberal Party, and an individual that she believed was held in wide respect by members of both major political parties.³⁰⁶

The Committee notes from evidence provided by the Standards Commissioner and tendered at Appendix 10 that in the case of selection processes used in the appointment of the 14 previous Directors General, selection panels were not changed, despite the threat of lengthy delays.³⁰⁷ Nor was there evidence of inclusion of panel members with publicly recognised links to political parties. The Standards Commissioner cited that her actions in this case were in response to Government's commitment to establish the PSC within its first 100 days of office.

*[Filling the position as quickly as possible] was important. There was a political promise. It was the will of the government of the day and it was our responsibility to see that we did it.*³⁰⁸

In evidence, the IPAA noted the important impact of panel composition on the outcome of a selection process:

*...the person responsible for the conduct of any appointment process usually has the key decision on who is on the recruitment panel. I think that is the critical decision in any recruitment—who you get on the panel will pretty well decide where the panel ends up.*³⁰⁹

In a recent report tabled in Parliament by the Standards Commissioner on management of public sector recruitment, the Standards Commissioner found that central to 'a process which is free from bias and patronage' was a well-balanced panel.³¹⁰ Elaborating on this concept in relation to second tier positions, the Standards Commissioner observed:

³⁰⁴ *ibid.*, p9.

³⁰⁵ Hon. Colin Barnett MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p660.

³⁰⁶ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p9.

³⁰⁷ Submission No. 17 from Office of the Public Sector Standards Commissioner, 7 April 2009.

³⁰⁸ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p6.

³⁰⁹ Mr Christopher Williams, Mr Christopher Williams, President, Institute of Public Administration Australia, *Transcript of Evidence*, 18 March 2009, p8.

³¹⁰ Office of the Public Sector Standards Commissioner, *Parliamentary Series Report Four: Management of Recruitment*, Perth, May 2009, p19.

*In recruiting to second tier position within the public sector, particularly when those appointments may result in public scrutiny, it is imperative that the panel composition is carefully considered to ensure impartiality, avoid any perception of bias and build public confidence in the process.*³¹¹

Mr John Palfrey, a recruitment consultant from Active Employment Services, noted that the selection processes in which he was involved contained panels that were, from his view:

*...the result of considerable thought as to Panel Members' credibility, reasonableness and the ability to bring a relevant point of view to the process. Always differing points of view are counterbalanced within the process through robust discussion.*³¹²

Implicit in Mr Palfrey's commentary is that panel members are not purely decided on the basis of qualifications but on broader considerations, especially where appointment decisions are being made in regard to prominent public sector positions.

Whether 'credibility, reasonableness and the ability to bring a relevant point of view to the process' extends to 'political' representation on the panel was subject to discussion.

Mr Fielding commenting on this issue noted the following:

*... had I been asked to advise [the standards Commissioner], I would have suggested that it would be better, from a perception point of view, if there were no political people who are former politicians on [the selection panel].*³¹³

Notably Mr Fielding cited in evidence that many of his professional colleagues viewed Mr Conran as 'parachuted' into the role, although when challenged on the assertion, provided the following response:³¹⁴

Mr J.M. FRANCIS: I am just curious that if you are unaware of the process and who was on the panel how you can assert that he was parachuted in.

*MR FIELDING: I accept that criticism.*³¹⁵

The IPAA were not as firm on the idea of no political representation on the panel but viewed that it should be balanced, that is, membership drawn from both sides of the political divide:

If a job is likely to be the focus of media attention, such as the appointment of the head of the Department of the Premier and Cabinet, clearly there will be some political interest in that appointment. It seems to me that it is perhaps more important in that case that the

³¹¹ *ibid.*

³¹² Submission No. 1 from Mr John Palfrey, Senior Consultant, Active Employment Services, 9 January 2009, p2.

³¹³ Hon. Gavin Fielding, *Transcript of Evidence*, 23 March 2009, p9.

³¹⁴ *ibid.*, p7.

³¹⁵ Mr Joe Francis, MLA and Mr Gavin Fielding, *Transcript of Evidence*, 23 March 2009, p7.

*people who are on the panel are seen to be independent and authoritative in the area. In that way it may well be appropriate that former members of Parliament are seen to have the necessary competence. As ministers they might have worked with chief executives and would be in a very good position to make an appropriate decision in that matter. If I were the relevant minister, I would try to get some balance in the representation of that panel, such as you on your committee, from all sides of politics.*³¹⁶

There was considerable debate about the alleged political nature of the panel and whether the Premier interfered to bring about the final panel composition.

In the case of the appointment of Mr Conran, Dr Shean advised the Committee that she had not sought advice from the Premier about the nature of the individuals he wished to have serving on the selection panel.³¹⁷ The Committee notes that the Premier contradicts Dr Shean's assertion in the Legislative Assembly:

*The Commissioner for Public Sector Standards wanted to know what sorts of qualities members of the selection panel should have.*³¹⁸

And then later:

*I suggested the sorts of qualities I would look for and the experience I would want on the selection panel.*³¹⁹

That said, reading these comments in the context of the Hansard debates on 4 December 2008 revealed that the Premier specifically referenced the fact that he was recalling the issue from memory, perhaps indicating some confusion about whether or not that conversation occurred.³²⁰

Finding 24

The Committee is unable to reconcile the conflicting statements by the Premier and the Commissioner for Public Sector Standards as to whether they had discussed the qualities of the people to form the selection panel.

³¹⁶ Mr Christopher Williams, President, Institute of Public Administration Australia (Western Australian Division), *Transcript of Evidence*, 18 March 2009, p9.

³¹⁷ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p13.

³¹⁸ Hon. Colin Barnett MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 4 December 2008, p956.

³¹⁹ *ibid.*, p957.

³²⁰ *ibid.*, p956.

Finding 25

There was no evidence of interference by the Premier in the composition of the selection panel for the Director General, Department of the Premier and Cabinet.

Finding 26

The appointment of Mr Barry McKinnon and Mr Peter Browne to the selection panel had the potential to undermine the perception of the panel's impartiality and engender accusations that Mr Conran was a political appointment.

Recommendation 6

That the Public Sector Standards Commissioner give greater consideration to the panel composition for public sector Chief Executive Officer selection in order to avoid any perception of bias, ensure impartiality and retain public confidence in the process.

(f) Timeliness

As indicated above, the change in panel composition in relation to the Director General, DPC appointment to ensure compliance with government timelines has lent itself to discussion of how quickly that process was expedited by the OPSSC and the Minister. Perhaps more importantly, it has raised concerns regarding whether in improving the efficiency of that process, due regard was given to maintaining its integrity. The short time-frame in which the Mr Conran was appointed to the position of Director General, DPC, needs to be considered in the context of the CEO appointment process more generally.

(i) Timeframes for CEO selection prior to the Conran appointment

According to information provided by the OPSSC, the average time for the past two financial years to complete the CEO recruitment process for a vacancy was 12 weeks which is fairly consistent with other Australian states regardless of jurisdiction. This includes allowance being made for shorter or longer periods depending on the processes adopted. There are no best practise benchmarks applied in any of those states or in WA, although as referenced previously the processes are subject to considerable variation in the manner in which they are applied.³²¹

³²¹

Submission No. 7 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 23 January 2009, p4.

The Committee has attached information at Appendix 10 on the time taken from vacancy to the point of nomination being forwarded to the Minister for approval for the 14 other Directors General appointments prior to the Director General, DPC. The Committee has on the basis of that data determined the average time for those appointments to be approximately 117 days. Whilst this amounts to approximately 4 months, the above figure of 12 weeks relates to all the selection activities undertaken by the Standards Commissioner during that period.

In a submission, Ms Saggars commented on her perception of the timeliness and efficiency of the CEO selection process:

*It is my view that the components of the process within the OPSSC's control are generally managed in a timely and efficient fashion. As soon as the panel is formed, interview dates and a time-frame for a decision are set and the OPSSC monitors the panel's progress closely. Any delays are generally outside the control of the panel or the OPSSC (eg. unavailability of applicants for immediate interview or unavailability of crucial referees). It was my observation that most delays occur at the Ministerial level where it is not uncommon for the Commissioner's selection report to sit for several weeks, often months before being acted upon. Also, negotiations with the recommended candidate on remuneration can take a fair amount of time towards the end of the process.*³²²

The CPSUCSA viewed the length of time taken to select CEOs as detrimental to attracting quality candidates:

*We are concerned at the length of time that it can take to select and appoint a CEO. At times it has been a very long period of time. We think that then acts as a detriment to prospective applicants who, during that period, may well have found alternative offers because of the length of time.*³²³

The CPSUCSA viewed that the process would be enhanced through the separation of the public sector management functions from DPC.³²⁴

Professor Wood viewed the process as too long, noting that it could lead to delays in implementation of government initiatives; loss of quality candidates to alternative appointments; and 'loss of direction and purpose in agencies awaiting a new leader.'³²⁵ Professor Wood perceived that timeliness could be enhanced through use of external executive search firms to assist prior to closure of applications; advice being tendered to the responsible Minister to ascertain obstacles to appointment of any of the candidates; and advice being given to referees as to date of contact (usually at the time the panel met).³²⁶

³²² Submission No. 4 from Ms Jan Saggars, 20 January 2009, p6.

³²³ Ms Toni Walkington, General Secretary, Civil Service Association, *Transcript of Evidence*, 18 March 2009, p8.

³²⁴ *ibid.*

³²⁵ Submission No. 11 from Professor Wood, Professor of Management, Notre Dame University, 5 March 2009, p4.

³²⁶ *ibid.*, p5.

Mr John Palfrey cites involvement in the selection and recruitment process for more than 40 CEO positions, seven of those in the last two years and made significant commentary on the issue of timeliness. He views that the process by its very nature ‘requires time’ including: convening of a panel of senior executives to shortlist and interview; reference checking; documentation of the process; and the time taken by the Minister to consider the panel’s recommendations:

Whilst some operational aspects of the process could be more timely it is usually a combination of particular circumstances of a selection process that are responsible for delays rather than a systemic issue. Often people see delays in filling roles as taken from the time the position is vacant or proposed to be vacant e.g. retirement to when it is finally filled. Sometimes the period between an announcement of a vacancy and its advertising can be unhealthily lengthy. There are some advantages to this in that a person asked to act in the role has an opportunity to impress. However it can be counterproductive in that there are perceptions that it is futile to apply when this is the case and there is extreme difficulty in finding suitable people through a search process. (The circumstances of a previous incumbent’s departure can also have a marked effect on the ability to attract candidates through a search process).

Public confidence can be maintained in the process if time delays can be minimised, particularly by advertising as soon as a position is known to become vacant. This will ensure that the strongest field possible can be gathered and allow the Selection Panel to hopefully recommend a number of people who are suitable for appointment. The final choice will always be a political one but people will understand that the process of providing the choice of candidates is sound, fair and objective.³²⁷

Ms April Bentley, Principal Consultant from Beilby Corporation, was involved in one CEO selection process in 2008, both in terms of recruitment support and the conduct of an executive search. In the context of her submission being received in January 2009, she elaborates on her observations as follows:

It was my observation that the announcement of the outcome of this process took a very long time and the updating of the OPSSC website has still not been actioned as it lists the process as awaiting nomination from the Minister (the selection report and panel recommendation was concluded in May 2008). I was contacted by a candidate almost 4 months after we had completed interviews and I was informed that no advice had been provided. There seemed to be a long gap between the process itself and the final approvals component. However, as I am not involved in the ‘back end’ part of the process I am unable to comment on how it would be improved.³²⁸

Ms Bentley viewed that some of the ideas in *Rethinking Recruitment: Streamlining the Recruitment Process*, a project undertaken by DPC to attract appropriate candidates to the public

³²⁷ Submission No. 1 from Mr John Palfrey, Senior Consultant, Active Employment Services, 9 January 2009, pp2-3.

³²⁸ Submission No. 3 from Ms April Bentley, Principal Consultant, Beilby Corporation, 21 January 2009, p1.

sector in the context of an ageing population and shrinking labour pool, could be applied to public sector CEO recruitment processes.³²⁹

Dr Ricki Hewitt, Director, Management Projects who has been involved in 15 CEO selection processes in recruitment support and executive search noted that processes can be slowed by the volume of CEO appointments dealt with by the OPSSC at any given time, despite using contracted resources to assist in progressing the latter. She also suggests that there is room for the Minister for Public Sector Management to improve his or her processes in relation to CEO appointment particularly to minimise loss of a good candidate to another appointment.³³⁰ Dr Hewitt also suggests reviewing the APS model.

The IPAA viewed that the timeliness of the process could be enhanced through adopting the Commonwealth model which involves considerable use of consultants in the process including in chairing, sitting on, advising or observing the panel; writing reports; and contacting referees, because they are generally freer to be more dedicated to the task. Advertising and receipt of applications and other 'up front' work would be handled by the HR department of the particular agency.³³¹

It is notable that two of the firms involved in significant recruitment activity at a CEO level in WA viewed delays often to be outside the control of the OPSSC; that is, caused by particular circumstances of that CEO recruitment process. The majority concern by those tendering evidence on the issue related to delays in Ministerial sign off on a recommendation of the Standards Commissioner.

In summary, delays in the CEO selection process prior to delegation to the Public Sector Commissioner were seen to be attributable to:

- volume of CEO appointments being dealt with by the OPSSC at any given time;
- delays in advertising of a position once announced;
- matters outside the control of the OPSSC such as availability of applicants for interviews and referees;
- significant delays at the Ministerial level; and
- negotiations of the successful candidate around remuneration.

³²⁹ Department of the Premier and Cabinet, *Rethinking Recruitment: Streamlining Your Recruitment Process*, 2008,. Available at: <http://www.dpc.wa.gov.au/PSMD/SiteCollectionDocuments/Rethinking%20Recruitment/Rethinking%20Recruitment%20-%20Streamlining%20Your%20Recruitment%20Process.pdf>. Accessed on 11 May 2009.

³³⁰ Submission No. 8 from Dr Ricki Hewitt, Director, Management Projects, 27 January 2009, pp3-4.

³³¹ Mr Christopher Williams, President, Institute of Public Administration (WA Division), *Transcript of Evidence*, 18 March 2009, pp10-11.

The impact of delays was primarily noted as loss of applicants to alternative positions; delay in implementation of government initiatives; and loss of agency direction pending arrival of a CEO.

It was perceived that the process could be enhanced through:

- use of executive search firms to assist prior to closure of applications;
- determining from the Minister at the point of short-listing for interview whether there are obstacles to the appointment of a candidate;
- early advice to prospective candidates regarding the date of interview;
- advertising as soon as a position becomes vacant;
- applying some of the tools in the *Rethinking Recruitment: Streamlining the Recruitment Process*;
- improvement by the Minister in his/her processes; and
- adopting the APS model.

(ii) The process for the Director General, DPC

In the case of the Director General, DPC, the selection process resulting in Mr Conran's appointment took 36 days given government's expectation that the position be filled quickly.

The process adopted by the Standards Commissioner is discussed in the following excerpt of evidence and is outlined in the attached timeline at Appendix 5:

We received a formal request to fill on 13 October but were aware informally for some time prior to that that there would be a request to fill. I had given quite some thought prior to that to how I might go about this process. On 18 October, I advertised in The West Australian newspaper and The Weekend Australian. Prior to that, I put the information on the OPSSC website. We closed the applications a fortnight after that on 31 October 2008. We short-listed. I might say that, because we did this in-house, we did our best practice, as we do for our own appointments and as we recommend all agencies do, in that when we advertised and put the information on the website, we said that we anticipated interviewing on 5 November and we asked that all candidates ensure that they were available to be interviewed on 5 November. We had the report completed by 7 November and the announcement was made on 18 November by the minister.³³²

According to the Standards Commissioner, the selection process 'adhered to [the] standard process' with some exceptions:

³³²

Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p4.

- ‘OPSSC endeavoured to undertake this process in the least amount of time possible (without compromising the merit or integrity of the process);’³³³
- a date was agreed for interviews prior to advertising the position and applicants were advised that referees needed to be contactable;
- no executive search was perceived to be required; and
- a limited number of applications, which allowed for completion of the process in a lesser time-frame.³³⁴

The Committee also notes that the process was also expedited given:

- that preliminary discussions with the Public Sector Commissioner had occurred prior to formal notification of vacancy of the Director General, DPC position on 13 October 2008 which enabled the Standards Commissioner to commence preliminary work on the timeline and panel composition;³³⁵ and
- the Standards Commissioner altered the panel composition to progress the selection process within prescribed timelines.³³⁶

Two of the three applicants were determined suitable for interview.³³⁷

The Committee queried the Standards Commissioner on how the integrity of the selection process could be maintained and an appropriate talent pool attracted in the event that a shorter process such as that achieved in the case of the Director General, DPC appointment, was to become the norm. The Standards Commissioner responded:

*...a fast process does not mean a process where quality has not been fundamental to every stage in the same way that a slow process does not mean the opposite. I can see that there may be some concern if it was felt that a fast process meant that corners were cut. On this occasion it was certainly not the case. I think that those of you who have worked with me on these processes would know that we are scrupulous in the way that we go about this.*³³⁸

³³³ Submission No. 7 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 23 January 2009, p10.

³³⁴ *ibid.*

³³⁵ *ibid.*, p1.

³³⁶ Submission No. 12 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 16 March 2009, pp1-2.

³³⁷ Submission No. 7 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 23 January 2009, p11.

³³⁸ Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, *Transcript of Evidence*, 11 March 2009, p5.

When questioned as to whether the Standards Commissioner was satisfied that the process was not compromised by the 36 day period in which it was undertaken, Dr Shean replied:

*Absolutely. Everything in that process was done correctly. I understand that it has been the subject of political speculation. It has been done aside from political processes by an individual who reports to Parliament. There is a process which is set out, which has been followed scrupulously.*³³⁹

In evidence, the CPSUCSA expressed concern about the speed with which the process was conducted:

*It would seem to us that the turnaround time for this particular appointment was extremely quick in comparison with many other appointments for senior executive and CEO positions. We have had whole concerns about whether that did provide an appropriate executive search for applicants and whether the selection process was comprehensive. The difficulty is that there is not a process by which that can be reviewed, unlike with other officers in the public service where there can be a breach of appointment if another applicant or prospective applicant feels that the process has not been properly conducted.*³⁴⁰

Professor Wood, however, did not see it as unreasonable noting that he put a proposal to the Standards Commissioner after he left the former Public Service Commission citing a similar time line. He acknowledged that there are occasions though when there are hitches in the time-frame such as the availability of referees and the sequence of government business, such as the scheduling of Executive Council meetings.³⁴¹ Both Professor Wood³⁴² and the IPAA³⁴³ indicated that the turnaround time of 2 weeks for advertising of a CEO position, the time prescribed for the Director General, DPC selection, was also not unreasonable.

Finding 27

The requirement to appoint a new Director General, Department of the Premier and Cabinet within a significantly shortened time-frame compromised the Public Sector Standards Commissioner's capacity to maintain the integrity and independence of the process.

³³⁹ *ibid.*

³⁴⁰ Ms Toni Walkington, General Secretary, Civil Service Association, *Transcript of Evidence*, 18 March 2009, p8.

³⁴¹ Professor Mike Wood, Professor of Management, Notre Dame University, *Transcript of Evidence*, 23 March 2009, p7.

³⁴² *ibid.*

³⁴³ Mr Christopher Williams, President, Institute of Public Administration (WA Division), *Transcript of Evidence*, 18 March 2009, p11.

Finding 28

The capacity exists for reducing the average time taken for the Chief Executive Officer selection and appointment process and enhancing public sector governance.

Recommendation 7

That the Public Sector Standards Commissioner ensures that selection and appointment processes for public sector Chief Executive Officers are not compromised by inflexible timelines.

Recommendation 8

That the Commissioner for Public Sector Standards report to Parliament on how the selection and appointment process for public sector Chief Executive Officers can be completed in a more timely way, whilst maintaining the integrity of, and public confidence in, the process.

(g) Section 73 of the *Public Sector Management Act 1994*

The *Public Sector Management Act 1994* was enacted following recommendations of the WA Inc. Royal Commission arising from actions of governments in relation to the public sector in the 1980s. The Royal Commission identified instances where some individuals were ‘parachuted’ into the Public Service from positions of contract employment.³⁴⁴ It was alleged that these individuals, who were not appointed on merit, used ‘their position of influence and advantage’ in those Ministerial offices to ‘gain entry to a position in the public sector.’³⁴⁵ To protect the public sector from a practice which subverts the established processes for employment and promotion, section 73 of the PSM Act specifically excludes ministerial officers and people who work for a minister on a contract for services from applying for or being appointed to employment in a public sector agency.

Section 73, Restriction on subsequent employment in departments or organisations,

³⁴⁴ Royal Commission into Commercial Activities of Government and Other Matters, Report Two “The Administrative System”, p6-6

³⁴⁵ Committee Notes Public Sector Management Bill 1995 p.84; File 2086 94 FO, Ministry of the Premier and Cabinet (Ministry of the Premier and Cabinet) in Hon. Gavin Fielding, *Review of the Public Sector Management Act*, Department of the Premier and Cabinet, 1996, p145.

Notwithstanding anything in any other Act, a person who —

- (a) immediately before his or her employment as a ministerial officer, was not employed in a department or organisation; or*
- (b) is engaged under a contract for services under section 100(1) to assist a political office holder,*

is not, while he or she remains employed as a ministerial officer or so engaged under a contract for services, eligible to apply for, or to be appointed to, any office, post or position in any department or organisation.

During the consideration in detail stage of the *Public Sector Management Bill 1994*, the former Premier, Hon. Richard Court MLA, who as Minister for Public Sector Management had carriage of the Bill through the Legislative Assembly, explained the section in responding to questions:

DR GALLOP: This clause deals with the question of whether a political appointee within a ministerial office can take up a position with the Public Service. I seek some clarification. I can obviously see its intent, but is it not a fact that the officer could resign from his position and then apply for a position in the Public Service?

MR COURT: Yes, that person would have to resign and then go through the process of applying for a position in the Public Service; in other words, the person would leave his job and then wait to see whether he obtained a position in the Public Service. A person cannot go through that process while working in a ministerial office. The clause arises from concern about ways in which the Public Service has been politicised. There were a number of ways of doing that. People could enter the Public Service at a low level and be quickly parachuted to a high position or take advantage of their position in a ministerial office to eventually become permanent. We want it to be clear that a Minister's office cannot be used as a stepping stone into the Public Service.

MR D.L. SMITH: If the Approved Procedures allowed for it, a person could resign one day and be appointed to a position in the public sector the next day.

*MR COURT: No, a person cannot even apply for a job while working in a Minister's office.*³⁴⁶

It is necessary to clarify whether or not Mr Peter Conran was caught by the restriction imposed by section 73 of the PSM Act, given he was working for the Premier on a contract at the time he applied for the position of Director General, DPC.

It has been noted that Mr Conran flew to Perth between 6 and 21 September 2008 at the behest of the Liberal Party and that the Premier suggested to Mr Conran that he apply for the position of Director General, DPC.³⁴⁷

³⁴⁶

Hon. Geoff Gallop MLA, Hon. Richard Court, MLA, Premier, Western Australia, and Mr David Smith, Legislative Assembly, *Parliamentary Debates* (Hansard), 9 June 1994, p1471.

Then on 26 September 2008, Mr Conran signed a Contract for Service with Mr Malcolm Wauchope, who was then Director General, DPC. The contract was not subject to a competitive tender process. According to Government's Gem Tendering database, it was awarded under the supplier name, 'Concept Economics Pty Ltd (Peter Conran).'³⁴⁸ The contract stipulated that the 'Consultant will provide the services of Mr Peter Conran to and as required by the Premier of the State of Western Australia on matters associated with transition to Government and the Council of Australian Governments.'³⁴⁹

In a submission to the Inquiry, Mr Greg Moore, Assistant Director General, DPC provided the following commentary regarding the basis on which the contract was awarded:

Concept Economics Pty Ltd was engaged under the Ministerial Contracts for Service Engagement Process. The Ministerial Contract for Service Engagement Process is a Cabinet approved process used to facilitate the direct engagement of a Ministerial Consultants, and incorporates a mechanism for review of certain proposals by the Ministerial Merit Panel of the Department of the Premier and Cabinet.

*The process recognises that on occasions Ministers have a requirement to access the specific expertise, experience and skills of particular individuals. For reasons such as confidentiality, personal preference or limited time-frames, and as they would be effectively providing services direct to the Minister or on the Minister's behalf, the formal tendering process may not be appropriate.*³⁵⁰

On 29 October 2008, Mr Conran submitted his application for the position of Director General, DPC. At the time of application, he was still under a contract working for the Premier. The contract was terminated on 31 October 2008, in the hours prior to closure of applications for the Director General, DPC position. While the appointment to Director General, DPC was made after the termination of the contract for service, the application for the position was made at a time when it could be caught by Section 73.

The Committee sought legal advice on the nature of the contract between Mr Conran and the Government. In a letter dated 12 May 2009, the State Solicitor's Office provided advice on the effect of section 73. That advice is reproduced at some length below:

By way of letter dated 26th of September, 2008, and supporting Conditions of Engagement, Concept Economics Pty Ltd, was engaged as a consultant to the Honourable Premier for the period between the 24th of September, 2008 and the 23rd December, 2008. By clause 1 of the Conditions, Concept Economics Pty Ltd was required to provide the services of "Mr Peter Conran to and as required by the Premier of the State of Western Australia on

³⁴⁷ Mr Peter Conran, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 23 March 2009, pp7-8.

³⁴⁸ Historical Tender Details, GEM Tendering Database, Tender No. DPC1446.

³⁴⁹ Submission No. 18 from Mr Greg Moore, Assistant Director General, Department of the Premier and Cabinet, Attachment 3, 9 April 2009, p1.

³⁵⁰ Submission No. 18 from Mr Greg Moore, Assistant Director General, Department of the Premier and Cabinet, 9 April 2009, p1.

matters associated with transition to Government and the Council of Australian Governments.”

It is clear that the agreement is intended to have legal effect only between the then Director General of the Department of the Premier and Cabinet and Concept Economics Pty Ltd. Neither party intended there would be a direct legal relationship between Mr Conran and the then Director General.

While a statement of the intended relationship is not determinative, it is a factor to be taken into consideration, when seeking to ascertain the true legal relationship, or whether there is a legal relationship between persons.

Clause 14.5 of the Conditions of Engagement states:

- “(a) The consultant is an independent contractor with the principal, and nothing contained in the contract will constitute the relationship of employment, agency or partnership between the Consultant and the Principal and any such relationships are expressly concluded.*
- (b) The consultant must not, and must ensure that its personnel do not, represent that the consultant or any of its personnel are employees, agents or partners of the Principal.”*

The Agreement as evidenced by the Letter of Appointment and Conditions of Engagement is not novel, either in the private or the public sector.

If there was an engagement under section 100(1) of the Public Sector Management Act, in the absence of any further evidence, the engagement was of Concept Economics Pty Ltd, not Mr Conran.

Section 73 of the Public Sector Management Act states, relevantly, a person who -

- (a) immediately before his or her employment as a ministerial officer, was not employed in a department or organisation; or*
- (b) is engaged under a contract for services under section 100(1) to assist a political office holder,*

is not while he or she remains employed as a ministerial officer or so engaged under a contract for services, eligible to apply for, or to be appointed to, any office, post or position in any department or organisation.

You will note that section 73 has in mind natural persons engaged directly to assist a ministerial officer, but not natural persons employed by a company that is engaged to provide assistance to a political office holder. Mr Conran was not contracted to assist the Premier, Concept Economics was as an independent contractor.³⁵¹

³⁵¹

Mr Raymond Andretich, Senior Assistant State Solicitor, State Solicitor's Office, letter, 12 May 2009, pp1-2.

Subsequent legal advice elaborated on whether Mr Conran would have been ineligible to apply for the position of Director General, DPC if he had been directly engaged rather than through Concept Economics:

If Mr Conran had been directly engaged under a contract for service, to assist the Premier, under section 100(1), he would have been while so engaged ineligible to apply for or be appointed Director General of the department of the Premier and Cabinet.³⁵²

Although the contract for service stipulated that Mr Conran was engaged to work directly for the Premier, legal advice from the State Solicitor's office details that engagement of Mr Conran under the supplier name Concept Economics Pty Ltd (Peter Conran), a corporate entity, rather than as a 'natural person', meant the contract fell outside the scope of section 73.

Recommendation 9

That the technical loophole that allows political appointees to circumvent the restriction of Section 73 of the *Public Sector Management Act 1994* be closed by legislative amendment.

³⁵²

Mr Raymond Andretich, Senior Assistant State Solicitor, State Solicitor's Office, letter, 26 May 2009.

APPENDIX ONE

SUBMISSIONS RECEIVED

Date	Name	Position	Organisation
12 January 2009	Mr John Palfrey	Senior Consultant	Active Employment Services
13 February 2009	Mr Christopher Williams	President	Institute of Public Administration Australia (WA Division)
21 January 2009	Ms April Bentley	Principal Consultant - Government	Beilby Corporation
21 January 2009	Ms Jan Saggars	Director/Chair	Nexus Strategic Solutions
23 January 2009	Ms Toni Walkington	General Secretary	Community and Public Sector Union Civil Service Association of WA
23 January 2009	Mr Mal Wauchope	Public Sector Commissioner	Public Sector Commission
23 January 2009	Dr Ruth Shean	Commissioner	Office of the Public Sector Standards Commissioner
27 January 2009	Dr Ricki Hewitt	Director	Management Projects
27 January 2009	Mr Peter Conran	Director General	Department of the Premier and Cabinet
3 March 2009	Mr Gavin Fielding	Retired Industrial Relations Commissioner	
5 March 2009	Professor Mike Wood	Former Public Service Commissioner	
16 March 2009	Dr Ruth Shean	Commissioner	Office of the Public Sector Standards Commissioner

PUBLIC ACCOUNTS COMMITTEE

Date	Name	Position	Organisation
23 March 2009	Mr Malcolm Wauchope	Public Sector Commissioner	Public Sector Commission
25 March 2009	Mr Christopher Williams	President	Institute of Public Administration Australia (WA Division)
1 April 2009	Mr Peter Conran	Director General	Department of the Premier and Cabinet
6 April 2009	Ms Jan Saggars	Director/Chair	Nexus Strategic Solutions
7 April 2009	Dr Ruth Shean	Commissioner	Office of the Public Sector Standards Commissioner
9 April 2009	Mr Greg Moore	Assistant Director General	Department of the Premier and Cabinet
8 May 2009	Dr Ruth Shean	Commissioner	Office of the Public Sector Standards Commissioner
11 May 2009	Malcolm Wauchope	Public Sector Commissioner	Public Sector Commission
27 May 2009	Dr Ruth Shean	Commissioner	Office of the Public Sector Standards Commissioner

APPENDIX TWO

HEARINGS

Date	Name	Position	Organisation
11 March 2009	Dr Ruth Shean	Commissioner for Public Sector Standards	Office of the Commissioner for Public Sector Standards
	Mr Malcolm Wauchope	Public Sector Commissioner	Public Sector Commission
18 March 2009	Mr Christopher Williams	President	Institute of Public Administration Australia (WA Division)
	Dr Garrick Stanley	Councillor	Institute of Public Administration Australia (WA Division)
	Ms Toni Walkington	General Secretary	Community and Public Sector Union Civil Service Association of WA
23 March 2009	Ms Jan Saggars	Director	Nexus Strategic Solutions
	Mr Peter Conran	Director General	Department of the Premier and Cabinet
	Professor Michael Wood	Former Public Service Commissioner	
	Hon. Gavin Fielding	Retired Industrial Relations Commissioner	

APPENDIX THREE

LEGISLATION

Legislation	State (or Country)
<i>Public Sector Management Act 1994</i>	Western Australia
<i>Interpretation Act 1984</i>	Western Australia
<i>Equal Opportunity Act 1984</i>	Western Australia
<i>Salaries and Allowances Act 1975</i>	Western Australia
<i>Public Sector Management Act 1994</i>	Australian Capital Territory
<i>Public Service Act 1999</i>	Commonwealth
<i>Public Sector Employment and Management Act 2002</i>	New South Wales
<i>Contracts Act 1984</i>	Northern Territory
<i>Public Sector Employment and Management Act 1993</i>	Northern Territory
<i>Public Service Act 2008</i>	Queensland
<i>Public Administration Act 2004</i>	Victoria

APPENDIX FOUR

REQUEST FOR CONDUCT OF INQUIRY

LEADER OF THE OPPOSITION



LEADER OF THE OPPOSITION

Parliament House, PERTH WA 6000

Telephone (08) 9222 7351 Facsimile (08) 9226 2015

Email: leader@loop.wa.gov.au

2 December, 2008



Hon John Kobelke
Chair
Public Accounts Committee
Parliament House, Harvest Tce
PERTH WA 6000

Dear Mr Kobelke

PUBLIC ACCOUNTS COMMITTEE INQUIRY

I seek to nominate an inquiry for the Legislative Assembly Public Accounts Committee into an issue I believe to be of serious public interest. The current restructuring of the Western Australian public service to create a Public Sector Commission independent of the Department of Premier and Cabinet may have far reaching ramifications for the operation and independence of the sector.

The Opposition supports public sector reform which is designed to enhance and strengthen the professionalism, independence and productivity of Western Australia's public service. However, in light of the magnitude of the structural reform proposed, it is incumbent on the Government to clearly articulate the aims and statutory basis of the reforms.

I believe it would be appropriate for an independent body to investigate and seek clarity as to the intent and content of any proposed statutory changes and the adequacy of the transitional arrangements to ensure compliance with the legislation impacting on the Commission's activity including the Public Sector Management Act (1994), the Financial Management Act (2006), the State Records Act (2000) and the Freedom of Information Act (1992).

I attach a copy of suggested Terms of Reference for your consideration but understand that any decision to pursue this matter will be made at the discretion of your committee.

Yours sincerely

**ERIC RIPPER MLA
LEADER OF THE OPPOSITION**

TERMS OF REFERENCE

1. The extent to which the Public Sector Management Act 1994, in its present form, allows for the structural reform of the Department of Premier and Cabinet and the creation of the Public Sector Commission.
2. The proposed structure and functions of the Department of Premier and Cabinet, the proposed structure and functions of the Public Sector Commission and the proposed roles and statutory responsibilities of the bodies respective CEOs.
3. The need for statutory changes to provide for the structural reform and the legal and administrative consequences of commencing the operation of the new entities in the absence of statutory and regulatory changes.
4. The consistency of the proposed structural changes with the reforms recommended in the Auditor General's Help Wanted: Public Sector Workforce Management Review, (June 2006).
5. The adequacy and propriety of the selection process for the Director General of the Department of Premier and Cabinet and the Public Sector Commissioner and the subsequent legal standing of all decisions, directives and appointments as made by these appointees.
6. Any possible breaches of the standards set out in the Public Sector Management Act arising from the Government's actions or failure to act in the structural reform implementation process.
7. Other matters deemed relevant by the Committee.

APPENDIX FIVE

TIMELINE - PUBLIC SECTOR COMMISSION AND APPOINTMENT AND SELECTION PROCESS FOR THE DIRECTOR GENERAL, DEPARTMENT OF THE PREMIER AND CABINET

29 August 2008	Hon. Colin Barnett MLA, announces Liberal Party policy to establish the 'Public Sector Management and Standards Commissioner' to head the public sector. ³⁵³
~1 September 2008	Liberal Party '2008 Election Commitments' released. The Public Sector Management and Standards Commissioner is said to restore independence and confidence in the public sector. ³⁵⁴
6 September 2008	Polling Day 2008 State Election.
10-11 September 2008	Mr Peter Conran speaks to the Premier on two occasions over this two day period. ³⁵⁵
6-21 September 2008	<p>The Liberal Party paid for Mr Conran to fly to WA to discuss issues relating to the structure of government and Council of Australian Governments (COAG).</p> <p>It was on the occasion of one of these flights that the Premier asked Mr Conran to consider applying for the position of Director General, DPC.³⁵⁶</p>

³⁵³ Barnett, MLA, Hon. Colin, (Liberal Leader), *Liberals' accountability shake up to improve public service*, Media Statement, Liberal Party, Perth, 29 August 2008.

³⁵⁴ Liberal Party of Western Australia, *Government Accountability and Public Sector Management*, 1 September 2008, p1. Available at: http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 31 March 2009.

³⁵⁵ Submission No. 15 from Mr Peter Conran, Director General, Department of the Premier and Cabinet, 1 April 2009, p2.

³⁵⁶ Mr Peter Conran, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 23 March 2009, pp7-8.

18 September 2008	An article in <i>The West Australian</i> announces that ‘...approaches are believed to have been made to former Howard government policy director Peter Conran for a move west.’ ³⁵⁷
23 September 2008	Liberal National Government sworn into office. ³⁵⁸ Mr Conran flies from Canberra to Perth, funded by the new government. ³⁵⁹
24 September 2008	Contract awarded to Concept Economics Pty Ltd (Peter Conran) under the Ministerial Contracts for Service Engagement Process for provision of ‘advice to incoming government on COAG, government administration and general policy issues.’ ³⁶⁰
30 September 2008	The Premier announces the establishment of the Public Sector Commission and the transfer of Mr Malcolm Wauchope, Director General, DPC to position of Public Sector Commissioner. ³⁶¹ Dr Ruth Shean, Commissioner for Public Sector Standards becomes aware through the media of the impending vacancy for Director General, DPC. ³⁶²
30 Sept – 1 Oct 2008	Mr Conran provides advice to government on COAG and related policy matters. ³⁶³
1 October 2008	Articles in <i>The West Australian</i> cite the Premier as mentioning Mr Peter Conran, former adviser to the Howard Government, as a possibility for Director General, DPC. ^{364 365}

³⁵⁷ Robert Taylor, ‘Cautious Colin takes his time in transition’, *The West Australian*, Perth, 18 September 2008, p7.

³⁵⁸ *Western Australian Government Gazette*, Government Printer, Perth, Tuesday 23 September 2008, No.163.

³⁵⁹ Submission No. 18 from Mr Greg Moore, Assistant Director General, Department of the Premier and Cabinet, Attachment 6 ‘Tax Invoice’, 9 April 2009, p2.

³⁶⁰ *ibid.*

³⁶¹ Barnett, MLA, Hon. Colin (Premier of Western Australia), Media Statement, Government Media Office, Perth, 30 September 2008.

³⁶² Submission No. 12 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 16 March 2009, p1.

³⁶³ Submission No. 18 from Mr Greg Moore, Assistant Director General, Department of the Premier and Cabinet, Attachment 6 ‘Tax Invoice’, 9 April 2009, p2.

³⁶⁴ Robert Taylor, ‘Barnett moves to depoliticise public service’, *The West Australian*, Perth, 1 October 2008, p12.

³⁶⁵ Robert Taylor, ‘Barnett Returns to Public Service Commissioner’, *The West Australian*, Perth, 1 October 2008, p12.

2 October 2008	<p>COAG meeting held in Perth.</p> <p>Last recorded entry for work charged under contract for Mr Conran.³⁶⁶</p>
6-10 October 2008	<p>Dr Shean contacts Mr Wauchope regarding informal advice on the timing of the appointment of the Director General, DPC.</p> <p>Dr Shean commences work on the timeline and formation of the initial panel.</p>
~ 8 October 2008	<p>Dr Shean telephones Mr Peter Browne, a former senior public servant and Chief of Staff to Hon. Norman Moore, MLC during the Court government, and Ms Cheryl Gwilliam, Director General, Department of the Attorney General, regarding their membership of the panel. The pair confirms availability for short-listing on 3 November and for interviews on 5 November 2008.</p> <p>Message left by Dr Shean for Mr John Langoulant, former State Under Treasurer and a previous Chief Executive of the Chamber of Commerce and Industry WA.³⁶⁷</p>
9 October 2008	<p>Dr Shean advises Mr Wauchope via email of the 'proposed arrangements' and in particular, the 'proposed timeframe' for the selection process.³⁶⁸</p> <p>Dr Shean informs Ms Deirdre Wilmott, the Premier's Chief of Staff, of the panel and timeline.³⁶⁹</p>
10 October 2008	<p>Mr John Langoulant returns Dr Shean's call and confirms his availability for the panel.³⁷⁰</p> <p>Mr Wauchope replies to Dr Shean's email of the previous day advising that her proposal is acceptable.³⁷¹</p>

³⁶⁶ Submission No. 18 from Mr Greg Moore, Assistant Director General, Department of the Premier and Cabinet, Attachment 6 'Tax Invoice', 9 April 2009, p2.

³⁶⁷ Submission No. 12 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 16 March 2009, p1.

³⁶⁸ *ibid.*, p2.

³⁶⁹ *ibid.*

³⁷⁰ *ibid.*, p1.

³⁷¹ *ibid.*, p2.

13 October 2008	Formal request pursuant to section 45(3) of the PSM Act received by Dr Shean from Mr Wauchope to fill the position of Director General, DPC. ³⁷²
13-14 October 2008	<p>Mr Langoulant telephones Dr Shean and informs that he has a conference to attend in the Eastern States during the week scheduled for interviews and will not be available for membership on the interview panel.</p> <p>Dr Shean approaches and confirms Mr Barry McKinnon, a former Parliamentary leader of the WA Liberal Party, as a replacement for Mr Langoulant on the panel.³⁷³</p>
14 October 2008	<p>OPSSC completes drafting of position advertisement. Dr Shean:</p> <ul style="list-style-type: none">• informs Mr Wauchope of new composition of panel as Ms Cheryl Gwilliam, Mr Peter Browne and Mr Barry McKinnon; and• telephones Ms Willmott regarding the status of the process; provides updated information on the composition of the panel; and emails draft advertisement and candidate information [including duties, selection criteria, guidelines for applicants and salary information but no mention of panel]. <p>Premier's office makes slight change to syntax in advertisement but no change to applicant information.³⁷⁴</p>
15-16 October 2008	<p>Ms Gwilliam reports her unavailability to Dr Shean due to a meeting of Attorneys General in Queensland.</p> <p>Dr Shean approaches and confirms Ms Jenny Mathews, Director General, Department of Local Government and Regional Development, as a replacement panel member.³⁷⁵</p>
16 October 2008	Dr Shean informs Mr Wauchope of panel changes and requests that he inform Ms Wilmott. ³⁷⁶

³⁷² *ibid.*

³⁷³ *ibid.*

³⁷⁴ *ibid.*

³⁷⁵ *ibid.*

³⁷⁶ *ibid.*

17 October 2008	Documents pertaining to the Director General, DPC selection and appointment process are placed on the website, including information relating to the panel. ³⁷⁷
18 October 2008	<p>Position for Director General, DPC advertised in <i>The West Australian</i> and <i>The Australian</i> newspapers.³⁷⁸</p> <p>An article in <i>The Australian</i> mentions that unofficially it claimed that Mr Conran has been approached to apply.³⁷⁹</p> <p>First application received by Standards Commissioner at 12.33pm.³⁸⁰</p>
23 October 2008	<i>Business News</i> article cites Mr Conran, as tipped to be winner of the Director General appointment, although notes reluctance on the part of Liberal insiders to confirm the latter. ³⁸¹
28 October 2008	Dr Shean meets with the Premier pursuant to section 45(4) of the PSM Act for the purpose of discussing the Premier's priorities for the position. The Premier is informed by Dr Shean of the composition of the selection panel although no further discussion of the panel occurs. Ms Willmott is present at the meeting. ³⁸²
29 October 2008	Mr Conran's application is received by the Standards Commissioner at 12.17pm. ³⁸³
30 October 2008	An article in the <i>WA Business News</i> mentions the likelihood of Mr Conran's appointment following his work under the supplier name of Concept Economics Pty Ltd (Peter Conran). ³⁸⁴

³⁷⁷ *ibid.*, p3.

³⁷⁸ *ibid.*

³⁷⁹ Peter Van Onselen, 'Jobs rush quelled as flacks swap aides', *The Australian*, 18 October 2008, p30.

³⁸⁰ Submission No. 17 from Dr Ruth Shean, Commissioner for Public Sector Standards, Office of the Commissioner for Public Sector Standards, 7 April 2009, p1.

³⁸¹ Mark Pownall, 'Ticking the Boxes on Conran's Role', *WA Business News*, Perth, 23 October 2008, p7.

³⁸² Submission No. 12 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Public Sector Standards Commissioner, 16 March 2009, p3.

³⁸³ Submission No. 17 from Dr Ruth Shean, Commissioner for Public Sector Standards, Office of the Commissioner for Public Sector Standards, 7 April 2009, p1.

³⁸⁴ Mark Pownall, 'Advisers gather where power resides', *WA Business News*, Perth, 30 October 2008, p2.

31 October 2008	Email sent by Mr Conran to Mr Wauchope at 5.57am EDT in relation to Ministerial Contract for Service citing completion of work and appropriateness of concluding engagement. ³⁸⁵
	Email sent by Mr Wauchope to Mr Conran at 7.40am WDT terminating the contract by mutual agreement. ^{386 387}
	Third application received by the Standards Commissioner at 8.12am. ³⁸⁸
	Applications for the position closed at noon.
3 November 2008	Consensus shortlist compiled. ³⁸⁹
5 November 2008	Interviews of two short-listed applicants held. ³⁹⁰
6 November 2008	Premier informs that he believes Mr Peter Conran to be an applicant for the position of Director General, DPC. ³⁹¹
7 November 2008	Report of the Director General, DPC selection panel completed and submitted to the Standards Commissioner. Report and nomination subsequently forwarded by the Standards Commissioner to the Minister for Public Sector Management. ³⁹²
18 November 2008	Successful applicant (Mr Peter Conran) announced by the Premier. ³⁹³
21 November 2008	Gazettal of establishment and designation of Public Sector Commission with effect on, and from, 28 November 2008. ³⁹⁴

³⁸⁵ Submission No. 18 from Mr Greg Moore, Assistant Director General, Department of the Premier and Cabinet, 9 April 2009, Attachment 5.

³⁸⁶ *ibid.*

³⁸⁷ Submission No. 13 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 9 April 2009, 23 March 2009, p2.

³⁸⁸ Submission No. 17 from Dr Ruth Shean, Commissioner for Public Sector Standards, Office of the Commissioner for Public Sector Standards, 7 April 2009, p1.

³⁸⁹ Submission No. 1 from Dr Ruth Shean, Public Sector Standards Commissioner, Office of the Commissioner for Public Sector Standards, 23 January 2009, p10.

³⁹⁰ *ibid.*

³⁹¹ Hon. Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 6 November 2008, p24.

³⁹² Submission No. 1 from Commissioner for Public Sector Standards, Office of the Commissioner for Public Sector Standards, 23 January 2009, p10

³⁹³ *ibid.*

The Premier (date unknown) effected the disposition of offices and public service officers (and other consequential changes) to the Public Sector Commission under Section 36(4) of the PSM Act 1994, effective on, and from, 28 November 2008.³⁹⁵

25 November - 9 December Parliamentary debate on the appointment of Mr Conran.

28 November 2008 The Premier announces commencement of the Public Sector Commission.³⁹⁶

The Premier delegates under Section 15 of the PSM Act powers and duties to the Public Sector Commissioner.

³⁹⁴ *Western Australian Government Gazette*, Government Printer, Perth, Friday 21 November 2008, No.195, p4943.

³⁹⁵ Submission No. 6 from Mr Malcolm Wauchope, Public Sector Commissioner, Public Sector Commission, 23 January 2009, Attachment 2.

³⁹⁶ Barnett, MLA, Hon. Colin (Premier of Western Australia), Media Statement, Government Media Office, Perth, 28 November 2008.

APPENDIX SIX

DELEGATIONS



Government of Western Australia
Public Sector Management Division

Delegations

Section 15 of the Public Sector Management Act 1994 provides for the Premier, in his capacity as the Minister for Public Sector Management, to delegate to a person any of his powers or his duties conferred upon him by the Act.

- Delegation of powers and duties to the Public Sector Commissioner
- Management of redeployment and redundancy
- Determination of remuneration matters principally involving Government Boards and Committees (various Acts)
- Employment of ministerial officers
- Privatisation, contracting out, voluntary severance and other payments
- Appointment of acting chief executive officers

Delegation of powers and duties to the Public Sector Commissioner

PUBLIC SECTOR MANAGEMENT ACT 1994 (SECTION 15)

INSTRUMENT OF DELEGATION

Pursuant to section 15 of the Public Sector Management Act 1994 ("the Act") I, Colin James Barnett, Premier, hereby delegate to the person from time to time holding or performing the duties of the office of Public Sector Commissioner, the powers and duties conferred or imposed upon me under the Act, other than –

- a) this power of delegation; or
- b) the power of direction conferred upon me by section 11(1) of the Act to direct holding of special inquiry into a matter relating to the Public Sector; or
- c) section 93(1) of the Act and by the following provisions of the Public Sector Management (Redeployment and Redundancy) Regulations 1994:
 - (i) Part 3;
 - (ii) Sub-regulation 20(5) to the extent that the powers and duties conferred or imposed under that sub-regulation relate to voluntary severance effected pursuant to Part 2; and
 - (iii) Sub-regulation 20(6); or
- (d) Part 4 – Assistance for political office holders; or
- (e) The power conferred by section 51 to direct an employee to act where an office of a Chief Executive Officer is vacant or a Chief Executive Officer is absent from duty or for any reason unable to perform his or her functions where the period does not exceed 3 months.

DATED the 28th day of November 2008

Management of redeployment and redundancy

PUBLIC SECTOR MANAGEMENT ACT 1994 (SECTION 15 and 93(4))

INSTRUMENT OF DELEGATION

Pursuant to sections 15 and 93(4) of the Public Sector Management Act 1994 ("the Act") I, Colin James Barnett, Premier, hereby delegate to the person from time to time holding or performing the duties of the office of Public Sector Commissioner, the powers and duties conferred or imposed upon me by the following provisions of the Public Sector Management (Redeployment and Redundancy) Regulations 1994:

- a) Part 2;
- b) Part 4;
- c) Sub-regulation 20(5) to the extent that the powers and duties conferred or imposed under that sub-regulation relate to voluntary severance effected pursuant to Part 4;
- d) Sub-regulation 22(2); and
- e) Part 6.

DATED the 28th day of November 2008

Determination of remuneration matters principally involving Government Boards and Committees (various Acts)

PUBLIC SECTOR MANAGEMENT ACT 1994 (SECTION 15)

INSTRUMENT OF DELEGATION

Pursuant to section 15 of the Public Sector Management Act 1994 ("the Act") I, Colin James Barnett, Premier, hereby delegate to the person from time to time holding or performing the duties of the office of Public Sector Commissioner, the powers and duties conferred or imposed upon me by those provisions of any Act other than the Act wherein there is a requirement or discretion for:

- a) the Minister for Public Sector Management to fix or determine; or
 - b) any person to –
 - i) consult with;
 - ii) act upon the recommendation of;
 - iii) act upon arrangement with;
 - iv) obtain the approval, agreement, consent or concurrence of, the Minister for Public Sector Management for the purposes of fixing or determining,
- any matter relating to –
- 1. terms and/or conditions of service;

2. classification; or
3. fees/remuneration and allowances.

DATED the 28th day of November 2008

Employment of ministerial officers

PUBLIC SECTOR MANAGEMENT ACT 1994 (SECTION 15)

INSTRUMENT OF DELEGATION

Pursuant to section 15 of the Public Sector Management Act 1994 ("the Act") I, Colin James Barnett, Premier, hereby delegate to the person from time to time holding or performing the duties of the office of Director General of the Department of the Premier and Cabinet, the powers and duties conferred or imposed upon me under Part 4 of the Act, and all the powers and duties conferred or imposed upon me under the Act in relation to ministerial officers.

DATED the 28th day of November 2008

Privatisation, contracting out, voluntary severance and other payments

PUBLIC SECTOR MANAGEMENT ACT 1994 (SECTION 15)

INSTRUMENT OF DELEGATION

Pursuant to section 15 of the Public Sector Management Act 1994 ("the Act") I, Colin James Barnett, Premier, hereby delegate to the person from time to time holding or performing the duties of the office of Minister for Commerce, the powers and duties conferred or imposed upon me by section 93(1) of the Act and by the following provisions of the Public Sector Management (Redeployment and Redundancy) Regulations 1994:

- (a) Part 3;
- (b) Sub-regulation 20(5) to the extent that the powers and duties conferred or imposed under that sub-regulation relate to voluntary severance effected pursuant to Part 2; and
- (c) Sub-regulation 20(6).

DATED the 28th day of November 2008

Appointment of acting chief executive officers

PUBLIC SECTOR MANAGEMENT ACT 1994 (SECTION 15)

INSTRUMENT OF DELEGATION

Pursuant to section 15 of the Public Sector Management Act 1994 ("the Act") I, Colin James Barnett, Premier, hereby delegate to each chief executive officer the powers and duties conferred or imposed upon me by section 51 of the Act to the extent as follows, namely, in

any case in which the chief executive officer is absent from duty from his or her department or organisation or for any reason unable to perform his or her functions, the power to direct an employee in his or her department or organisation to act for a period not exceeding three months in the office of that chief executive officer during that absence or period of inability.

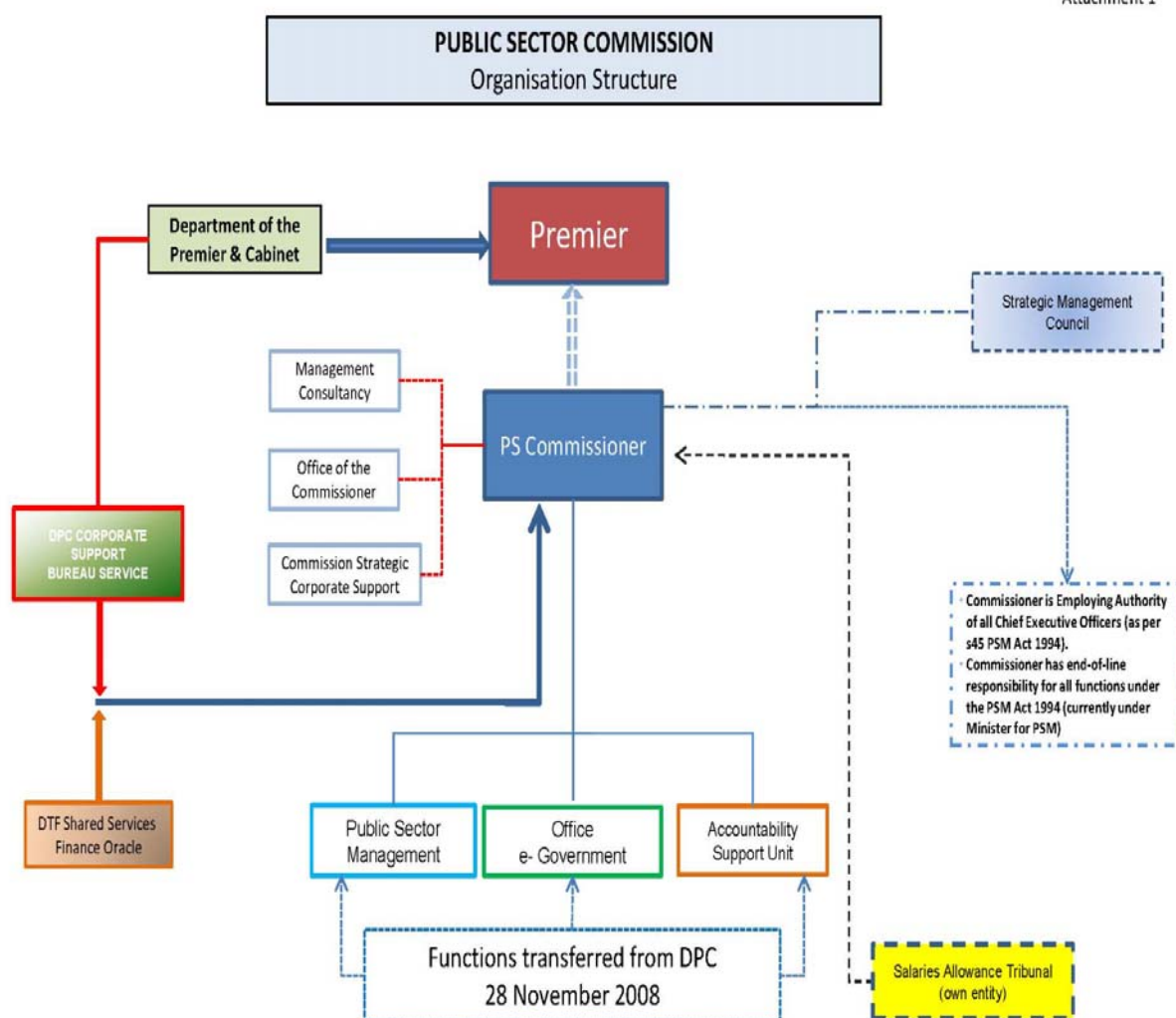
This delegation is subject to the provisions of section 51 of the Act. Further, each delegate shall, before exercising this delegated power, obtain the approval of the responsible authority of the agency concerned and, if that responsible authority is not the Minister of the Crown responsible for that agency, the approval of the Minister of the Crown.

DATED the 28th day of November 2008

APPENDIX SEVEN

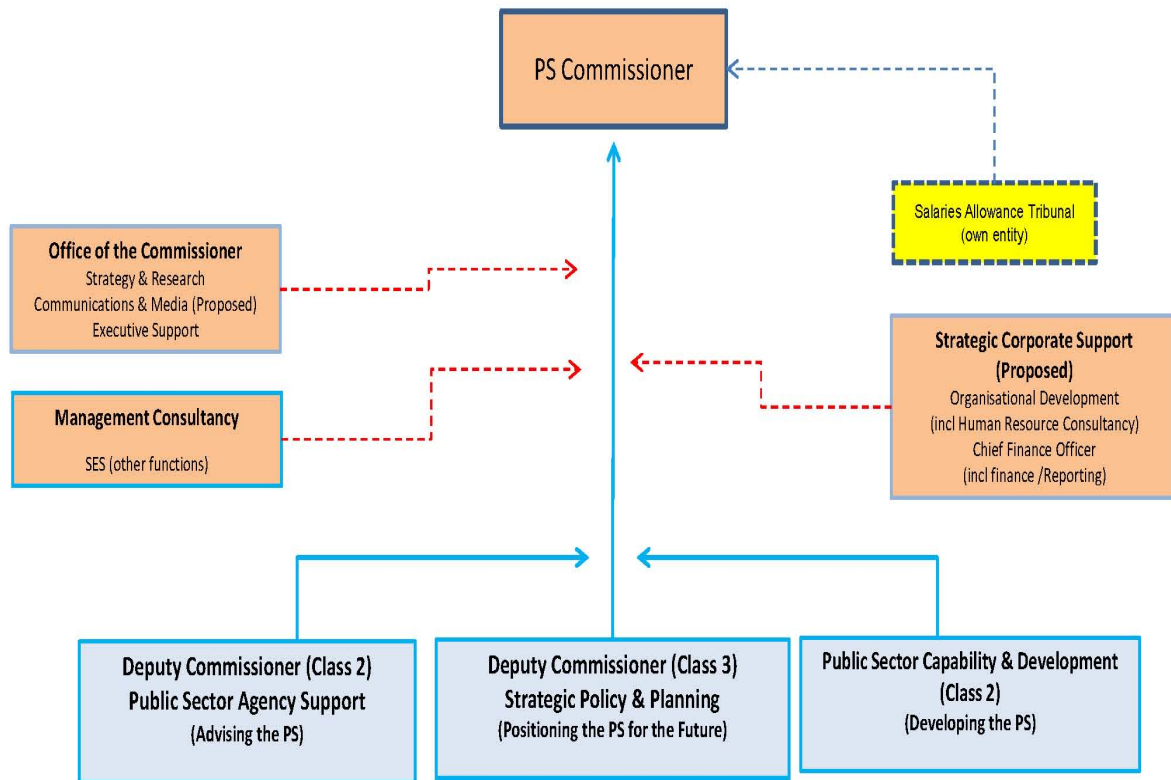
DRAFT ORGANISATIONAL STRUCTURE- PUBLIC SECTOR COMMISSION

Attachment 1



March 2009

Attachment 2

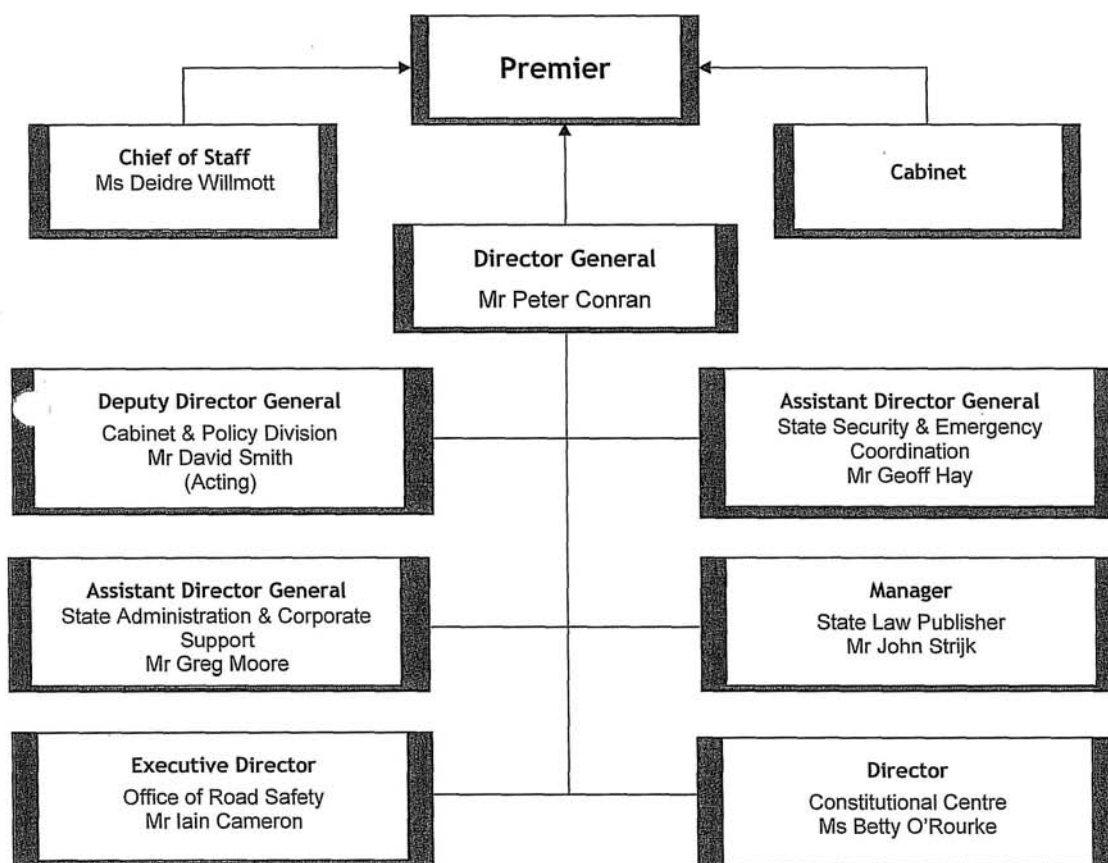


Proposed (draft) Structure
March 2009

APPENDIX EIGHT

DRAFT ORGANISATIONAL STRUCTURE - DEPARTMENT OF THE PREMIER AND CABINET

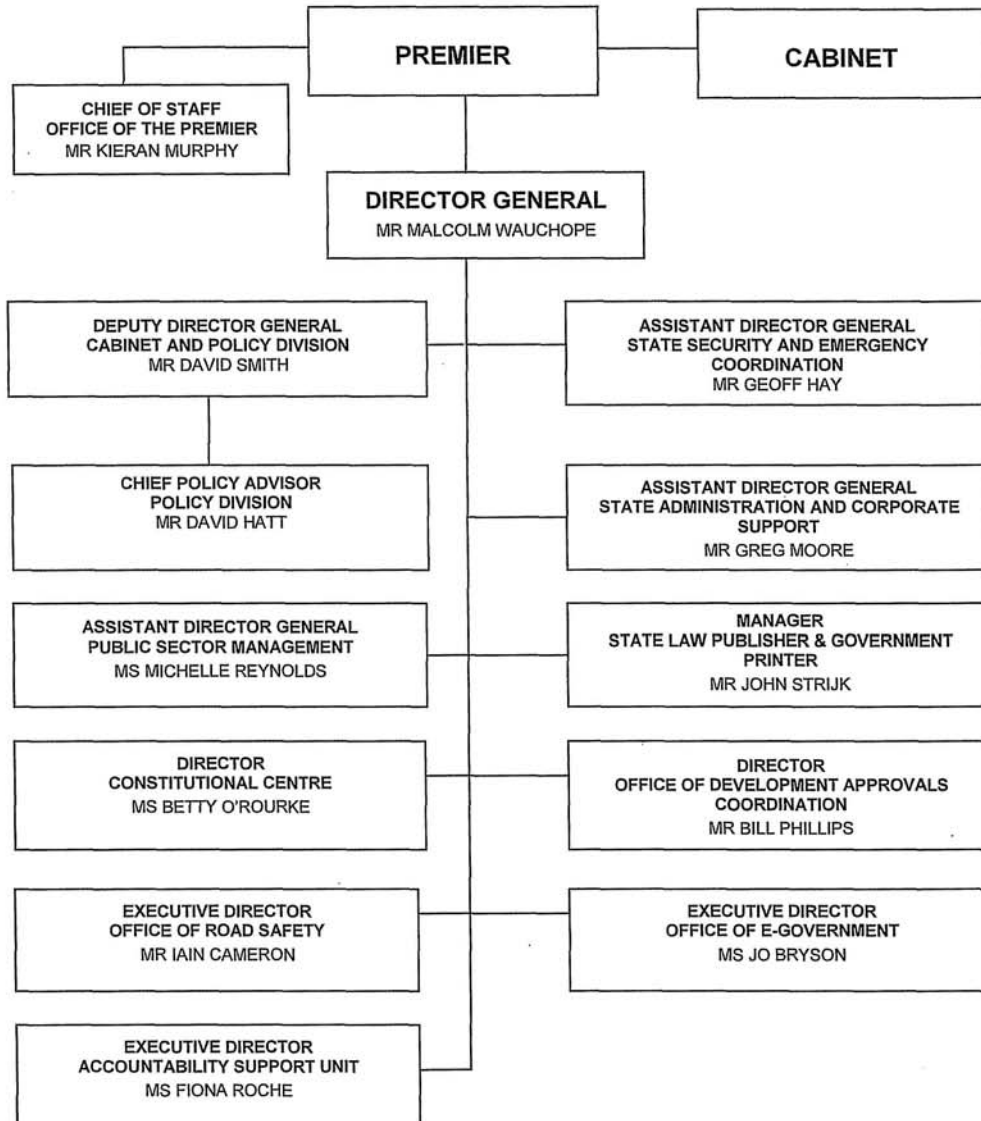
Department of the Premier and Cabinet



Current as at 25 March 2009

**DEPARTMENT OF THE PREMIER AND CABINET
ORGANISATIONAL STRUCTURE**

As at 6 September 2008



APPENDIX NINE

PUBLIC SECTOR MANAGEMENT ARRANGEMENTS IN SELECT AUSTRALIAN JURISDICTIONS

(i) The Commonwealth Government

The Australian Public Service Commissioner (APSC) is established under section 40 of the *Public Service Act 1999* (the PS Act). When introduced in 1999, the PS Act brought about a number of changes to the way that the Australian Public Service (APS) is run including, most significantly, the devolution of staffing powers previously assigned to the Public Service Commissioner to the heads of the public service agencies.³⁹⁷ Agency heads are now afforded all of the rights, duties and powers of an employer in respect of their employees, with the authority to engage, terminate and determine their employment terms and conditions.³⁹⁸

Despite the extent of the employment powers devolved to the various agencies, the APSC retains a critical role in public sector management, including:

- developing, promoting, reviewing and evaluating APS employment policies and practices;
- coordinating training and career development for staff members across the APS; and
- fostering leadership across the APS.

The APSC also promotes the APS Values, which are established in the PS Act, and the code of conduct, and evaluates the extent to which agencies incorporate and uphold these values in their management practices.³⁹⁹ Section 42 of the PS Act also allows the Commissioner to issue ‘directions’, which cover a number of employment issues including the minimum requirements for meeting the APS values.⁴⁰⁰ Although the Commissioner’s Directions cannot create offences or impose penalties, section 42(2) of the PS Act requires Agency Heads and APS employees to comply with them.

Section 43 of the PS Act grants the Commissioner the ability, among other matters, to hold special inquiries in circumstances where breaches to the code of conduct have occurred or to inquire more generally into the extent to which agencies incorporate and uphold the APS Values.

³⁹⁷ Australian Public Service Commission, *Occasional Paper Two: The Australian Experience of Public Sector Reform*, Australian Public Service Commission, Canberra, 2003, p35.

³⁹⁸ *ibid*, p36.

³⁹⁹ *ibid*.

⁴⁰⁰ *ibid.*, p37.

The Australian Public Service Commissioner is appointed for a period of 5 years by the Governor General upon recommendation of the Prime Minister. The Commissioner may only be removed after both Houses of Parliament, in the same session, pass a resolution asking the Governor General to remove the Commissioner from office. The legislation also provides for the removal of the Commissioner by the Governor General for reasons of bankruptcy, misbehaviour or mental incapacity.

(ii) New South Wales

Unlike most other jurisdictions in Australia, NSW does not have a public sector management body independent of the political environment of the Premier's Department. Instead, this function is run from within the structure of the Department of the Premier and Cabinet (NSWDPC). Among its major responsibilities is the requirement to review and reform public sector performance (including delivery of services to residents) and to improve the NSW government workforce capability.⁴⁰¹

Through its Public Sector Workforce Office (PSWO), the NSWDPC monitors the *Public Sector Employment and Management Act 2002* (NSW). It covers most employees working in public service departments and includes members of the chief and senior executive services; and provides disciplinary schemes for staff misconduct and the management of poor performance.⁴⁰²

The Director General of NSWDPC holds the statutory position of Director of Public Employment and is the employer of public servants (excluding CEOs - public sector CEOs are employed by the Premier) for industrial relations purposes. Through the PSWO, NSWDPC is responsible for developing and negotiating conditions of employment for NSW public servants.

Additionally, the PSWO is the lead agency for the development of codes on the conduct of public officials working for NSW public agencies.⁴⁰³ The model code of conduct promoted by the PSWO was compiled with input from the NSW Independent Commission Against Corruption (ICAC).

(iii) Victoria

Victoria's 2004 legislation, the *Public Administration Act 2004* (Vic) (the PA Act), saw the disbandment of both the Office of, and the Commissioner for, Public Employment and the removal of the functions of the Office for Workforce Development from DPC. In their places a new body, the State Services Authority (the SSA), and a new role, the Public Sector Standards Commissioner, were introduced.

⁴⁰¹ New South Wales Department of Premier and Cabinet, 'What we do', 4th December 2007. Available at: http://www.dpc.nsw.gov.au/about_us/what_we_do. Accessed on 19 February 2009.

⁴⁰² New South Wales Department of Premier and Cabinet, *Circular 36, Public Sector Employment and Management Act 2002*, 8/07/2002, Available at: http://www.dpc.nsw.gov.au/publications/memos_and_circulars/circulars/2002/c2002-36 Accessed on 11 February 2009.

⁴⁰³ New South Wales Department of Premier and Cabinet, 'Conduct of Public Officials', 16/01/2008. Available at: http://www.dpc.nsw.gov.au/publications/service_principles_and_obligations/conduct_of_public_officials. Accessed on 11 February 2009.

In common with other jurisdictions' stated catalysts for introducing reforms to the Public Sector, Victoria's Premier at the time, Hon. Steve Bracks MP, detailed that the aims of the new arrangements were to ensure the provision of impartial advice to government and to protect public employment from politicisation.⁴⁰⁴

According to the Victorian Government, the PA Act establishes the values on which the Victorian Public Service (and the broader public sector) is envisioned to undertake its roles. These values include responsiveness, integrity, impartiality, accountability, respect and leadership. The Act provides the Public Sector Standards Commissioner with a range of responsibilities to ensure that these values are adhered to.⁴⁰⁵

The Commissioner:

- has the power to issue codes of conduct that are binding on specific classes of public officials in the Victorian Public Sector;
- can issue standards, in relation to the employment principles, to all public sector bodies;
- has authority to review grievance processes affecting public sector employees; and
- is able to define what a 'career public service' means.⁴⁰⁶

The SSA acts as an internal advisor to government by providing an independent and whole of government perspective. The Authority reports directly to the Premier and operates separately from other departments and agencies.⁴⁰⁷ It comprises a Chair, the position of the Public Sector Standards Commissioner and as many Commissioners as the Premier may appoint. All members are appointed by the Governor-in-Council on the recommendation of the Premier. Its principal roles include:

- identification of opportunities to improve the delivery and integration of government services and report on service delivery outcomes and standards;
- promotion of high standards of integrity and conduct in the public sector;
- strengthening the professionalism and adaptability of the public sector; and
- promoting high standards of governance, accountability and performance for public entities.

⁴⁰⁴ Hon. Steve Bracks MP, Premier, Victoria, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 November 2004, p1549.

⁴⁰⁵ Victorian State Services Authority, *Annual Report 2004-05*, Melbourne, 2005, p1:4.

⁴⁰⁶ *ibid.*, p1:8

⁴⁰⁷ *ibid.*, p1:6

The Public Sector Standards Commissioner can only be removed by the Governor in Council if both Houses of Parliament, within seven days, pass a resolution asking the Governor to remove the Commissioner from office.

(iv) Queensland

In 2008, the Queensland government introduced new legislation, the *Public Sector Act 2008 (Qld)* (the PS Act (Qld)), in order to reform the management of the public sector in that state. The Premier, Hon. Anna Bligh, suggested that the new legislation would be a ‘vital step’ in:

- providing responsive, effective and efficient services to the community and government;
- maintaining impartiality and integrity in informing, advising and assisting the government;
- promoting collaboration between government and non-government sectors;
- continuous improvement in public service administration, performance management and service delivery;
- promoting the government as an employer of choice; and
- promoting equality of employment opportunity.⁴⁰⁸

One of the main features of the legislation is the creation of a new-look Public Service Commission (Queensland already had such a Commission; however, the Queensland government took the opportunity to combine its role with the Service Delivery and Performance Commission).

Section 46 of the PS Act 2008 (Qld) establishes the Commission’s increased role, which includes reviewing, advising and reporting to the government on the efficiency and effectiveness of the Queensland Public Service.⁴⁰⁹ The legislation also makes provision for the Commission to ‘facilitate the purposes of the chief executive and senior executive services and the position of senior officer.’

One unique aspect of the Queensland legislation is the creation of a board of commissioners, comprised of members from the private sector, academia and the public sector, which is intended to provide the vision and strategic guidance to deliver solutions to public service workforce and performance issues.

⁴⁰⁸ Hon. AM Bligh, Premier, Queensland, Legislative Assembly, *Parliamentary Debates* (Hansard), 14 May 2008, p1616-1617.

⁴⁰⁹ *ibid.*

APPENDIX TEN

TABLE OF DATA RELEVANT TO 14 CEO APPOINTMENTS PRIOR TO DIRECTOR GENERAL, DPC SELECTION PROCESS

Agency	Notification of Vacancy	Name of Panel Member	Position of Panel Member	Changes to Panel	Executive Search Conducted	Commissioner's Nomination sent to Minister	No. of Applicants	Group Classification at Date Advertised
Department of Housing and Works (Appointed: Mr Grahame Searle)	19/03/2008	Mr Eric Lumsden	Director General Department of Planning and Infrastructure	No	Yes	10/07/2008 Time taken - 114 days	16	Group 4 Minimum
		Mr Brian Bradley	Director General Department of Consumer and Employment Protection					
		Professor Colleen Haywood	Associate Professor & Manager Kulunga Research Network Telethon Institute for Child Health Research					
Department of Health (Appointed: Dr Peter Flett)	29/04/2008	Mr Mal Wauchope	Director General Department of the Premier and Cabinet	No	No	23/07/2008 Time taken - 86 days	7	Not determined at advertised date
		Dr Tony Sherbon	Chief Executive Department of Health South Australia					
		Dr David Roberts	Doctor Joondalup Health Campus					
		Ms Susan Rooney	Chief Executive Officer Cancer Council Western Australia					
Department of Indigenous Affairs (Appointed: Mr Patrick Walker)	6/01/2008	Mr Mal Wauchope	Director General Department of the Premier and Cabinet	No	No	9/04/2008 Time taken - 95 days	11	Group 2 Minimum
		Professor Colleen Haywood	Associate Professor & Manager Kulunga Research Network Telethon Institute for Child Health Research					
		Mr Terry Murphy	Director General Department for Child Protection					
Department of Industry and Resources (Appointed: Ms Anne Nolan)	8/11/2007	Ms Cheryl Gwilliam	Director General Department of the Attorney General	No	Yes	7/04/2008 Time taken - 152 days	15	Group 4 Minimum
		Ms Kerry Sanderson	Chief Executive Officer Fremantle Ports					
		Mr Tim Marney	Under Treasurer Department of Treasury and Finance					
		Mr Tim Shanahan	Director Energy and Minerals Initiative University of Western Australia					
Department of Communities (Appointed: Ms Susan Barrera)	21/01/2008	Mr Bob Mitchell	Director General Department of Housing and Works	No	Yes	8/05/2008 Time taken - 109 days	14	Group 2 Maximum
		Professor Colleen Haywood	Associate Professor & Manager Kulunga Research Network Telethon Institute for Child Health Research					
		Mr Francis Lynch	Chief Executive Officer Ruah Communities Services					
Department of Culture and the Arts (Appointed: Ms Allanah Lucas)	2/10/2007	Professor Margaret Seares	Senior Deputy Vice Chancellor University of Western Australia	No	Yes	29/02/2008 Time taken - 151 days	9	Group 2 Minimum
		Mr Peter McCaffrey	Deputy Director General Finance and Administration Department of Education and Training					
		Mr Greg Mackie OAM	Executive Director of Arts South Australia					
Department of Water (Appointed: Mr Kim Taylor)	18/05/2007	Mr Mal Wauchope	Director General Department of the Premier and Cabinet	No	No	19/02/2008 Time taken - 278 days	17	Group 2 Minimum
		Mr Tim Shanahan	Director Energy and Minerals Initiative University of Western Australia					
		Ms Verity Allan	now deceased					
Department of Local Government and Regional Development (Appointed: Ms Jennifer Mathews)	14/09/2007	Mr Bob Mitchell	Director General Department of Housing and Works	No	No	30/11/2007 Time taken - 78 days	30	Group 2 Maximum
		Professor Margaret Seares	Senior Deputy Vice Chancellor University of Western Australia					
		Mr Rob Vitenbergs	Past President Shire of Roebourne					
		Mr Eric Lumsden	Chief Executive Officer City of Melville					

PUBLIC ACCOUNTS COMMITTEE

Agency	Notification of Vacancy	Name of Panel Member	Position of Panel Member	Changes to Panel	Executive Search Conducted	Commissioner's Nomination sent to Minister	No. of Applicants	Group Classification at Date Advertised
Disability Services Commission (Appointed: Dr Ron Chalmers)	2/07/2007	Ms Cheryl Gwilliam	Director General Department of the Attorney General	No	No	20/09/2007 Time taken - 81 days	14	Group 3 Minimum
		Mr Bruce Langoulant	Chairman Disability Services Commission					
		Mr Michael Woodhouse	Director - Aged and Disabilities Department of Health and Community Services					
		Ms Heather D'Antoine	Research Officer Kulunga Research Network Telethon Institute for Child Health Research					
Department for Child Protection (Mr Terry Murphy)	18/04/2007	Mr Bob Mitchell	Director General Department of Housing and Works	No	Yes	7/08/2007 Time taken - 112 days	16	Group 3 Minimum
		Dr Dawn Casey	Chief Executive Officer Western Australian Museum					
		Mr Chris Dawson	Deputy Commissioner (Operations) Western Australian Police					
		Ms Trish McGowan	Coordinator Pat Thomas Memorial Community House					
Department for Planning and Infrastructure (Appointed: Mr Eric Lumsden)	17/04/2007	Mr Stuart Hicks	Chairman John Curtin Institute of Public Policy	No	Yes	25/07/2007 Time taken - 100 days	14	Group 4 Minimum
		Professor Margaret Seares	Senior Deputy Vice Chancellor University of Western Australia					
		Mr Gary Prattley	National Planning Director Macropian Australia					
Department of the Attorney General (Appointed: Ms Cheryl Gwilliam)	14/02/2007	Professor Colleen Haywood	Associate Professor & Manager Kulunga Research Network Telethon Institute for Child Health Research	No	Yes	27/06/2007 Time taken - 134 days	8	Group 3 Minimum
		Mr Stuart Hicks	Chairman John Curtin Institute of Public Policy					
		Mr John Langoulant	Chief Executive Officer Western Australian Chamber of Commerce and Industry					
		Mr Gary Thompson	State Courts Administrator Courts Administration Authority (South Australia)					
Department of Education and Training (Appointed: Ms Sharyn O'Neill)	9/02/2007	Ms Maxine Murray	Commissioner Office of the Public Sector Standards Commissioner	No	Yes	14/05/2007 Time taken - 95 days	12	Group 4 Maximum
		Mr Stuart Hicks	Chairman John Curtin Institute of Public Policy					
		Professor Colleen Haywood	Associate Professor & Manager Kulunga Research Network Telethon Institute for Child Health Research					
		Professor Margaret Seares	Senior Deputy Vice Chancellor University of Western Australia					
Department of Housing and Works (Appointed: Mr Robert Mitchell)	23/05/2006	Ms Maxine Murray	Commissioner Office of the Public Sector Standards Commissioner	No	Yes	18/07/2006 Time taken - 57 days	5	Group 3 Maximum
		Mr Peter Yu	Board Member State Housing Commission					
		Mr Tim Marney	Under Treasurer Department of Treasury and Finance					

REFERENCES

Andretich, Raymond, Senior Assistant State Solicitor, State Solicitor's Office, letter, 13 March 2009.

Andretich, Raymond, Senior Assistant State Solicitor, State Solicitor's Office, letter, 12 May 2009.

Andretich, Raymond, Senior Assistant State Solicitor, State Solicitor's Office, letter, 26 May 2009.

Auditor General for Western Australia, *Help Wanted: Public Service Workforce Management*, Report 6, June 2006. Available at: http://www.audit.wa.gov.au/reports/report2006_06.pdf.

Australian Development Gateway, 'Chaos and Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems', December 2005. Available at: http://www.transparency.org.au/documents/nisa_final.pdf.

Australian Public Service Commission, 'APS Values and Code of Conduct in practice,' May 2009. Available at: <http://www.apsc.gov.au/values/conductguidelines4.htm>.

Australian Public Service Commission, *Managing and Sustaining the APS Workforce: Paying particular attention to graduate recruitment and career development*, Australian Public Service Commission, Canberra, 2005.

Australian Public Service Commission, *Managing the interface with ministers and the Parliament*, April 2004. Available at: <http://www.apsc.gov.au/media/podger230404.htm>.

Australian Public Service Commission, *Merit and Transparency: Merit-based selection of APS agency heads and APS statutory office holders*, Australian Public Service Commission, Canberra, February 2009.

Australian Public Service Commission, *Occasional Paper Two: The Australian Experience of Public Sector Reform*, Australian Public Service Commission, Canberra, 2003.

Barnett MLA, Hon. Colin, Member for Cottesloe, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 28 February 2008, pp522b-533a.

Barnett MLA, Hon. Colin, Premier and Minister for Public Sector Management, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 6 November 2008, p24.

Barnett MLA, Hon. Colin, Premier, letter, 6 May 2009.

Barnett MLA, Hon. Colin, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p660.

Barnett MLA, Hon. Colin, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 4 December 2008, pp949b-964a.

Barnett MLA, Hon. Colin, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 25 November 2008, p389.

Barnett MLA, Hon. Colin, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 4 December 2008, pp956-957.

Barnett, MLA, Hon. Colin (Premier of Western Australia), *Establishment of the Public Sector Commission and the position of Public Sector Commissioner*, Media Statement, Government Media Office, Perth, 30 September 2008.

Barnett, MLA, Hon. Colin (Premier of Western Australia), *Public Sector Commission to deliver better public service*, Media Statement, Government Media Office, Perth, 28 November 2008.

Barnett, MLA, Hon. Colin, (Liberal Leader), *Liberals' accountability shake up to improve public service*, Media Statement, Liberal Party, Perth, 29 August 2008.

Bligh, Hon. AM, Premier, Queensland, Legislative Assembly, *Parliamentary Debates* (Hansard), 14 May 2008, pp1616-1617.

Bracks MP, Hon. Steve, Premier, Victoria, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 November 2004, p1549.

Briggs, Lynelle, Australian Public Service Commissioner, Australian Public Service Commission, letter, 29 March 2009.

Cleave, Karen, Chief Executive, State Services Authority of Victoria, letter, 30 March 2009.

Commission on Government Western Australia, *Report No. 1*, Perth, Western Australia, August 1995.

Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*, London, April 2003.

Conran, Peter, Director General, Department of the Premier and Cabinet, Western Australia, *Transcript of Evidence*, 23 March 2009.

Department of the Premier and Cabinet, 'Departmental Role', 24 April 2009. Available at: <http://www.dpc.wa.gov.au/AboutUs/Pages/DepartmentalRole.aspx>.

Department of the Premier and Cabinet, 'Organisational Chart', March 2009. Available at: <http://www.dpc.wa.gov.au/AboutUs/Pages/OrganisationalChart.aspx>.

Department of the Premier and Cabinet, 'The Public Sector Commission', May 2009. Available at: <http://ww2.dpc.wa.gov.au/index.cfm?event=accountabilitySupport>.

Department of the Premier and Cabinet, *Rethinking Recruitment: Streamlining Your Recruitment Process*, 2008. Available at:

<http://www.dpc.wa.gov.au/PSMD/SiteCollectionDocuments/Rethinking%20Recruitment/Rethinking%20Recruitment%20-%20Streamlining%20Your%20Recruitment%20Process.pdf>. Accessed on 11 May 2009.

Edwards, Rhys, Secretary, Tasmanian Department of Premier and Cabinet, letter, 30 March 2009.

Fielding, Hon. Gavin, Review of the Public Sector Management Act, Department of the Premier and Cabinet, 1996. Available at:

<http://www.dpc.wa.gov.au/PSMD/SiteCollectionDocuments/Machinery%20of%20Government/Machinery%20of%20Government%20-%20Commissioner%20G%20L%20Fielding%20-%202001%20Introduction.pdf>. Accessed on 29 April 2009.

Fielding, Hon. Gavin, *Transcript of Evidence*, 23 March 2009.

Francis MLA, Joe and Fielding, Gavin, *Transcript of Evidence*, 23 March 2009, p7.

Gallop, MLA, Hon. Geoff, Court, MLA, Hon. Richard and Smith MLA, David, Legislative Assembly, *Parliamentary Debates* (Hansard), 9 June 1994, p1471.

Gulliford, Kerry, Chief Minister's Department, Australian Capital Territory, Electronic Mail, 20 March 2009.

Historical Tender Details, GEM Tendering Database, Tender No. DPC1446.

Howard MP, Hon. John 1998, 'A healthy Public Service is a vital part of Australia's democratic system of government', The Sir Robert Garran Oration, 19 November 1997, *Australian Journal of Public Administration*, vol. 57, no. 1, March.

Joint Standing Committee on the Corruption and Crime Commission, Public Hearing with the Integrity Coordinating Group on 13 September 2006, Legislative Assembly, Perth, 13 September 2006.

Kennedy, Peter (ABC Reporter), *Week in Politics*, Breakfast 720 ABC, Perth, 3 October 2008.

Kennedy, Peter, ABC Political Reporter, letter, received 19 May 2009.

King, Zoe, Office for Ethical Standards and Professional Integrity, South Australian Department of the Premier and Cabinet, Electronic Mail, 7 April 2009.

Lee, John, Director General, New South Wales Department of the Premier and Cabinet, Letter, 9 April 2009.

Liberal Party of Western Australia, 'Government Accountability and Public Sector Management', 1 September 2008. Available at:

http://www.wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 29 April 2009.

Liberal Party of Western Australia, 'Liberal Party Plan for First 100 Days of Government', 1 September 2008. Available at: http://wa.liberal.org.au/index.php?option=com_docman&Itemid=141. Accessed on 1 May 2009.

MacTiernan, MLA, Hon. Alannah, Shadow Minister for Regional Development; Strategic Infrastructure and Climate Change, Perth, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p660.

McHugh, Peter, Clerk of the Legislative Assembly, Parliament of Western Australia, letter, 4 March 2009.

Morton, MLC, Hon. Helen, Shadow Minister for Public Sector Management, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 4 April 2007, p1138.

New South Wales Department of Premier and Cabinet, 'Conduct of Public Officials', 16 January 2008. Available at: http://www.dpc.nsw.gov.au/publications/service_principles_and_obligations/conduct_of_public_officials. Accessed on 11 February 2009.

New South Wales Department of Premier and Cabinet, 'What we do', 4th December 2007. Available at: http://www.dpc.nsw.gov.au/about_us/what_we_do. Accessed on 19 February 2009.

New South Wales Department of Premier and Cabinet, Circular 36, Public Sector Employment and Management Act 2002, 8 July 2002. Available at: http://www.dpc.nsw.gov.au/publications/memos_and_circulars/circulars/2002/c2002-36 Accessed on 11 February 2009.

New South Wales Department of the Premier and Cabinet, Employment Guidelines for the Chief and Senior Executive Service in the NSW Public service, November 2008. Available at: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0010/1027/2008_SES_Guidelines.pdf. Accessed on 11 February 2009.

O'Brien, Amanda, 'Premier acts to 'restore integrity'', *The Australian*, 1 October 2008, p10.

Office of e-Government. Available at: <http://www.egov.dpc.wa.gov.au/AboutUs/Pages/Default.aspx>. Accessed on 24 April 2009.

Office of the Public Sector Standards Commissioner, 'Public Sector Code of Ethics', December 2008. Available at: <http://www.opssc.wa.gov.au/ethics/codeofethics/index.htm>. Accessed on 24 April 2009.

Office of the Public Sector Standards Commissioner, *Parliamentary Series Report Four: Management of Recruitment*, Perth, May 2009.

Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 4: The principle of integrity in official conduct*, Perth, May 2007.

Office of the Public Sector Standards Commissioner, *Ten Year Review Vol 3: CEO recruitment and selection in the WA public sector*, Commissioner for Public Sector Standards, Perth, 21 November 2006.

Parliament of Western Australia, Employment History (Mr Peter Conran), Parl. Paper 368, Legislative Council, 25 November 2008.

Pittard, M. & Weeks, P, 'Public Sector Employment in the Twenty-First Century: Themes and Introduction', in Pittard, M. & Weeks, P (ed.), *Public Sector Employment in the Twenty-First Century: Themes and Introduction*, Australian National University E Press, Canberra, 2007.

Pownall, Mark, 'Advisers gather where power resides', *WA Business News*, Perth, 30 October 2008, p2.

Pownall, Mark, 'Ticking the boxes on Conran's role', *WA Business News*, 23 October 2008, p7.

Public Sector Management Division, 'Our Structure', 24 September 2008. Available at: <http://www.dpc.wa.gov.au/PSMD/AboutPSMD/Pages/OurStructure.aspx>. Accessed on 24 April 2009.

Report on the Organisation of the Permanent Civil Service, 1854. Available at: <http://www.civilservant.org.uk/northcotetrevelyan.pdf>.

Ripper MLA, Hon. Eric, Leader of the Opposition, Parliament of Western Australia, letter, 2 December 2008.

Ripper MLA, Hon. Eric, Leader of the Opposition, Parliament of Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 11 November 2008, p83.

Ripper MLA, Hon. Eric, Leader of the Opposition, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 11 November 2008, pp81-82.

Ripper MLA, Hon. Eric, Leader of the Opposition, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 27 November 2008, p652.

Royal Commission into Commercial Activities of Government and Other Matters, Report Two "The Administrative System", Perth, Western Australia, November 1992.

Saggers, Jan, Director, Nexus Strategic Solutions, *Transcript of Evidence*, 23 March 2009.

Senate Standing Committee on Constitutional and Legal Affairs, *Commonwealth Law Making Power and the Privilege of Freedom of Speech in State Parliaments*, Parliament of Australia, Canberra, 30 May 1985, and *CJC & Ors v Dick* [2000] QSC 272.

Shean, Dr Ruth, Commissioner for Public Sector Standards, Office of the Commissioner for Public Sector Standards, *Transcript of Evidence*, 11 March 2009.

Simpson, Ken, Office of the Commissioner for Public Employment, Northern Territory Government, letter, 23 March 2009.

Standing Order 285, Standing Orders of the Legislative Assembly of the Parliament of Western Australia.

Standing Order 287, Standing Orders of the Legislative Assembly of the Parliament of Western Australia.

Tasmanian Legislative Council Select Committee on Public Sector Executive Appointments, *Interim Report*, Hobart, April 2009.

Taylor, Robert 'Barnett moves to depoliticise the public service', *The West Australian*, 1 October 2008, p12.

Taylor, Robert, 'Barnett Returns to Public Service Commissioner', *The West Australian*, Perth, 1 October 2008, p12.

Taylor, Robert, 'Cautious Colin takes his time in transition', *The West Australian*, Perth, 18 September 2008, p7.

Tenders WA, 'Consultant', 24 September 2008. Available at: <https://www.tenders.wa.gov.au/> Accessed on 31 March 2009.

Van Onselen, Mr Peter (Professor, Politics and Government, Edith Cowan University), 'Jobs rush quelled as flacks swap aides', *The Australian*, 18 October 2008, p30.

Victorian State Services Authority, *Annual Report 2004-05*, Melbourne, 2005.

Victorian State Services Authority, *The future of the public sector in 2025*, Victorian Government, Melbourne, 2006.

Walkington, Toni, General Secretary, Community and Public Sector Union Civil Service Association (WA Branch), *Transcript of Evidence*, 18 March 2009.

Wauchope, Malcolm, Public Sector Commissioner, Public Sector Commission, *Transcript of Evidence*, 11 March 2009.

Western Australian Government Gazette, Government Printer, Perth, Friday 21 November 2008, No.195.

Western Australian Government Gazette, Government Printer, Perth, Tuesday 23 September 2008, No.163.

Western Australian Industrial Relations Commission, 'Public Service General Agreement 2008'. Available at: <http://www.wairc.wa.gov.au/Agreements/Agrmnt2008/PUB006.doc>.

Western Australian Public Sector Commission, Public Sector Commissioner's Circulars. Available at: <http://www.publicsector.wa.gov.au/Pages/PSCCirculars.aspx>.

Williams, Christopher, President, Institute of Public Administration Australia, *Transcript of Evidence*, 18 March 2009.

Wilson AM, Bruce, Chief Executive of the Queensland Public Service Commission, letter, 11 March 2009.

Wood, Mike, Professor of Management, Notre Dame University, *Transcript of Evidence*, 23 March 2009.

Woodhams, MLA, Hon. Grant, Speaker of the Legislative Assembly, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 11 November 2008, pp73-74.

Young, Ruth, Principal Policy Officer, Public Sector Commission, Electronic Mail, 30 April 2009.

Young, Ruth, Principal Policy Officer, Public Sector Commission, Electronic Mail, 13 May 2009.

Young, Ruth, Principal Policy Officer, Public Sector Commission, Electronic Mail, 19 May 2009.