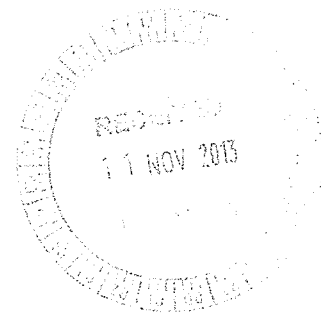


Legislative Assembly Committee Office

Level 1

11 Harvest Terrace

West Perth WA 6005



Personal Details

Unemployed

Name of Committee

Public Accounts Committee

Inquiry into Amendments to the Public Sector Management Act 1994

Willing to attend Committee to present case

Yes

Inquiry PSMA Act

Terms of reference

The Public Accounts Committee will examine the *Public Sector Management Act 1994 (WA)* in light of reforms to the Act passed in 2010 and consider the following issues:

1. The current functions and powers of the Public Sector Commissioner (the Commissioner) with a particular emphasis on:
 - a) the provisions relating to the appointment and management of Chief Executive Officers;
 - b) the establishment and monitoring of public sector standards, codes of ethics, and codes of conduct;
 - c) the application and operation of Commissioner's instructions;
 - d) the provisions relating to reviews and special inquiries; and
2. The respective roles of the Commissioner and relevant Ministers, and the reporting provisions and accountability framework applicable to the Commissioner, in the discharge of these functions and powers.

My response to the criteria;

A) The provisions relating to the appointment and management of Chief Executive Officers;

My personal observations are based on actual work place experience.

The concept that a CEO will be a responsible manager of his/her agency and will maintain appropriate standards of conduct and integrity among the employees of the agency is based on good intent, however there is no independent mechanism available to a subordinate to identify when the process is not functioning with the ability to be scrutinised or remains within the true spirit of parts of the Public Sector Management Act.

For example, I submitted a written grievance to my immediate workplace supervisor. He failed to act on the contents of the document and breached the confidentiality of the contents and complaint by showing it to others. When the due process of a grievance resolution at a local level (as described within the corporate policy) was not enacted, I submitted a copy to the CEO. It was sent via Registered Mail, requiring a signature upon its receipt.

I have never received a response from this submission.

There is no basic mechanism available for this "over-sight" to be brought to the attention of an independent scrutiniser, as all policies require an adherence to a liner form of governance within the agency. The Agency in question, legally prevents staff from speaking to external agencies without the written authority of their immediate supervisor.

22. Restrictions on conduct of prison officers

(1) Subject to sub regulation

(2) a prison officer shall not —

- (a) make any comment to any person, either orally or in writing concerning any officer, prison, or prisoner; or

(b) use for any purpose information gained by or conveyed to him through his service in the prison service, except in connection with the discharge of his duties or with the prior written approval of the superintendent.

This effectively ensure that if the should the CEO fails to act in a manner consistent with the attributes detailed within S45 of the Public Sector Management Act, there is no mechanism available to identify when the standards are not met nor have any observations or incidents been scrutinised. Therefore, this action within the department clearly undermines the intent expressed within S45 as stated below.

45. CEOs, appointment of

13) In deciding on a person to be recommended for appointment as a chief executive officer, the Commissioner shall have regard to the need for the appointment of a person who —

- (a) is able to discharge the specific responsibilities placed on the chief executive officer; and
- (b) will imbue the employees of his or her agency with a spirit of service to the community; and
- (c) will promote effectiveness and efficiency in his or her agency; and
- (d) will be a responsible manager of his or her agency; and
- (e) will maintain appropriate standards of conduct and integrity among the employees of his or her agency.

[Section 45 amended by No. 39 of 2010 s. 41, 67 and 70.]

The lack of accountability and scrutiny at all stages has a flow on effect to the Senior Executive Service which is charged with its own purpose as stated below.

Division 2 — Senior Executive Service

42. Purposes of Senior Executive Service

(1) The purposes of the Senior Executive Service are —

(a) to provide for a group of executive officers who are capable of —

- (i) furnishing high level policy advice and undertaking managerial responsibilities in agencies; and
 - (ii) being deployed within agencies, and between agencies, so as best to promote the efficiency of the Public Sector;
- and

(b) to promote the efficiency of individual agencies.

Therefore, there is no broad based criteria that reflects with accuracy and is able to withstand scrutiny to prove S57(a).

57. Contracts of employment of executive officers, content of

(1) The matters to be dealt with in a contract of employment

between an executive officer and his or her employing authority include —

(a) the functions of the office of the executive officer, including the meeting of performance criteria;

I firmly believe that all agencies would be more accountable if there was an independent body that dealt with all breaches of the Public Sector Management Act. This would ensure that all complaints were documented, acted upon and that there was open accountable solutions found to rectify the compliance failure.

In my case, the department stalled for over 18 months, mislead me as the outcome of an independent review and this effectively denied me access to the Ombudsman and Discrimination laws as my complaint was outdated by the constrictions on the time frame these agencies use to assess complaints to them (usually 12 months).

As the employing department had not acted, I had no proof other than the absence of paper work to validate the lack of action. Unsatisfactory on all levels.

Part of a review removed access to an external investigator at the complainants request unless it is approved by the CEO. At many levels, the process of fairness and accountability, along with actual compliance was being derailed and the CEO was not being held accountable by the systemic culture within his own department. This is contrary to the intent within the Act with regard to the employment of the CEO.

B) The establishment and monitoring of public sector standards, codes of ethics, and codes of conduct

Refer
S 7, 8, 9 of the Public Sector Management Act
Annual reports Department of Corrective Services

In 2002, I submitted a written grievance to the Superintendent when I was aware that due process was not being followed. I submitted my grievance directly to the CEO as a written registered letter which was signed for upon it being received by Head Office Staff. Within the Annual Report, there is nothing to show that my complaint was received or regarded as an active complaint.

The numbers reported with in the annual report do not accurately reflect the status of the grievances received, the progress nor did it identify the Breach that was found against the department in early 2007. Basically, the annual report was not reflecting the true state of the process or compliance with the adherence or breaching of the Public Sector Standards.

Once the Office of Public Sector Standards was aware of my grievance by me directly contacting them, answers were sought from the department and this was basically a process similar to extracting hens teeth. The level of co-operation was glaringly absent and many times had to deal with the department failing to respond within the times frames given.

Overall, a department that runs on a hierarchy system of governance is not best placed to act fairly when their actions are scrutinised. The promotional system within these departments is interlinked with building sound networks and relationships within your work area, your superiors and those who are in a position to support your career aspirations.

To uphold a complaint that a junior has been denied fairness or justice is seen to reflect on the next level of management did not do their job properly.

There is a strong work place “team” culture that ensures if you wish to be a beneficiary, you do not criticise those above you or your current managers actions.

The aims of the Public Sector Standards is to bring fairness and accountability to a work place, yet allowing a separate department that employs and promotes its staff to implement the management of these standards for itself is akin to vampires being in charge of the blood bank.

My recommendation is,

that the Office of Public Sector Standards become the only body which initially receives, process and deals with all facets of alleged breaches/non-compliance with the Public Sector Standards, Codes of Conduct and Codes of Ethics.

This gives the employee protection from victimisation and further harassment within the workplace, ensures confidentiality and compliance in a timely manner. By having independence and specialist staff, the OPSSC could ensure compliance at all stages and a fair real resolution.

In my case, the CEO was advising the Minister that he was willing to discuss and reach a resolution while he had ceased my pay and would not take my calls.

The Minister had been advised that a revamped policy against work place bullying had been put in place, yet I was never given access to the process within this new and improved policy.

Another overlooked factor is the stress and injuries caused to the individual arising out of each department being left to oversee their own complaints process.

A brief background of my case

I did not join an illegal walk out. My actions were based on,

Prison regulations

20. Restriction on entering prison or leaving area of duty

(1) An officer who is not on duty shall not enter a prison without the permission of the superintendent.

(2) A prison officer shall not leave his area of duty within a prison unless authorised to do so, or until relieved by another prison officer.

On that day, we did not vote to go on strike or withdraw any services.

After the strike I (and others) received a commendation from the Minister for our actions. Over the next 6 weeks I was bullied, physically and indecently assaulted, isolated at work and prevented from doing my job.

My first verbal complaint to the Superintendent resulted in him saying; “what did you expect, you worked”.

I ended up deeply depressed and at the insistence of a friend, sought advice from the local General Practitioner. She put me off work and activated a workers compensation claim. I required medical intervention to deal with the subsequent depression, suicidal ideation and attempts. While the Workers Compensation was used by the department to treat my situation as a work based stress claim, it failed at all levels to address the causative factors and the role they had played in it.

The worker compensation case manager allocated to me continually pressured me to return to work, often against specialist advice and never addressing the underlying outstanding grievance. Many times I was threatened by her that if I continued to not comply with her instructions, she would stop my pay (financial blackmail).

I finally asked her what her qualifications were, her response was “I am just a clerk”. Her replacement used to ring me up to tell me I was a liar.

It took 5 years to get to a finding of a Breach of Public Sector Standards against the employer. The department, I believe, used the Workers Compensation process as a way to impose a finite term on my grievance and despite the CEO telling a conciliatory meeting at the OPSSC that he would continue to pay me until a resolution was reached, once he was notified that I was requesting a formal review, he advised me he was stopping my pay.

It was my legal right to request the Review and I was further penalised by doing so.

I believe the Minister was lead to think that the CEO was open and willing to resolve the issues with me, yet all the CEO did was make any offer conditional to me submitting my resignation. When this was not accepted by me, he refused to discuss or take my calls.

To this day, eleven years later, I still have not yet had my original grievance dealt with or resolved.

Given that I was (in 2007) a 56 year old woman, facing an employment market that discriminates against older workers, left with on going depression, major depressive episodes and then factor the adverse impact on my son and his future (he is now my career due to the major depressive episodes), I am now existing on Newstart, in rental accommodation waiting (another ? 4 years for Homeswest) all because I did my job.

There must be an independent, external agency that deals with the compliance issues as required within the Public Sector Standards.

Departments should not be left with such influence over their employees complaints.

C) The application and operation of Commissioner's instructions;

Under the current system, the Commissioner is reliant upon the agency to provide much of the information it uses to formulate decisions. Given my personal experience, I believe that the creation of an independent unit that receives, investigates and ensures compliance with the intent of the Public Sector Management Act would ensure credible compliance and guarantee accurate information is passed to the Commissioner.

I have sought many times, including recently, to have my case reviewed. The outcome not to do so is always based on documentation that was, in the first review, identified as incomplete and unable to withstand scrutiny.

No one has requested or sighted the documentation I have access to. The reliance on departmental only documentation has always failed to give the Commissioner access to all documentation and therefore justice is still denied.

The ethical question to be asked is;

Do I hold the department responsible for its failure to keep records or do I hold the Commissioner to account for basing the findings on documentation that can not (by the OPSSC) withstand scrutiny?

Some one needs to break the cycle of ongoing damage to myself and my son. The Commissioner must seek input from all sources, then make an informed decision.

D) The provisions relating to reviews and special inquiries;

Again, I can only repeat, that if the Commissioner is denied or does not access all relevant information, how can a decision to review be instigated?

The flow of information must be set out along the same lines as evidence, clear, concise, documented and able to be held to account. All parties involved should be able to verify that all relevant documentation, from their perspective, is submitted and assessed as part of the overall process that results in the decision to hold a Review, further investigation or special inquiry.

Had this been applied to the Department of Corrective Services, the entrenched bullying culture would not be as influential, nor that adverse work practices that have arisen from the formation of tribal cliques within the work place.

2. The respective roles of the Commissioner and relevant Ministers, and the reporting provisions and accountability framework applicable to the Commissioner, in the discharge of these functions and powers.

The biggest problem I have experienced in this area is;

When I wrote to a Minister, the Minister did not appear to receive the letter. The correspondence was passed directly to the Agency named and the response I was given from the Ministers Office was in fact, constructed by an employee of the agency the complaint was against. The reply appeared to be constructed in such a manner as to reflect well on the agency and did not substantiate

real progress or compliance was actually being achieved.

Writing to a Minister was ineffective because the Agency responded and the Minister, as with the Commissioner, was left ignorant of all relevant facts. The willingness to credit an agency with greater integrity than the individual is not a balanced stage on which an informed opinion can be built.

Recommendations I seek

That agencies are stripped of the ability to receive, investigate or influence any complaint an employee has under the terms of the Public Sector Management Act.

That an independent unit is set up to deal with all complaints.

That all parties involved have equal rights to submit and review documentation placed before the Unit as part of the complaint.

That the Workers Compensation is not used to cover injuries received arising from a complaint based on non compliance with the Public Sector Management Act.

That all Breaches found against an Agency have a real resolution that reflects the damage done and repairs the situation to individuals disadvantaged by the agency failing to comply with the Public Service Management Act.

Personally, I seek an Inquiry into my case based on the failure of all Agencies to note that when the Breach against the Department of Corrective Services was found, the documentation the Department had was incomplete and unable to withstand scrutiny.

I do not believe that fairness and justice were considered in the way I was treated when I submitted a Grievance. No one should lose their job, their future, their health and all they had worked for as a price to pay for submitting a Grievance. That my son is now included and his prospects are so diminished by the actions of a few at a government agency is totally unacceptable.

I can not attach supportive documentation because it is contained within 13 (thirteen) A4 files but am willing to allow scrutiny of any part of it should any member of or for the Committee request to see any part of it.

Signed Hard copy to be posted
6th November 2013