

Independent Review of the NSW Government Sector Employment Act 2013

Report to the Premier and Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts

30 November 2020

REPORT OF THE INDEPENDENT REVIEW OF THE NEW SOUTH WALES GOVERNMENT SECTOR EMPLOYMENT ACT 2013

This Report was written by the Hon Greg Pearce, Gabrielle Trainor AO and Jane Halton AO PSM with secretariat support from the Public Service Commission.

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1. Introduction

This Independent Review of the Government Sector Employment Act 2013 (**the GSE Act or the Act**) was commissioned on 26 August 2020 by The Honourable Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts, pursuant to section 89 of the Act.

The Review Panel consists of the Hon Greg Pearce (Chair), Ms Gabrielle Trainor AO and Ms Jane Halton AO PSM.

The Panel's Terms of Reference agreed by the Premier and Minister are to conduct the review having regard to:

- (a) Whether the policy objectives of the Act remain valid;
- (b) Whether the terms of the Act remain appropriate for securing those objectives;
- (c) Any legislative or regulatory issues or inconsistencies requiring amendment; and
- (d) Any other related matter.

The Panel invited comment from and interviewed a broad range of stakeholders including Ministers, senior executives from the NSW public sector, acknowledged experts, representatives of the workforce and the community.

The Panel found the submissions and discussions with stakeholders useful and constructive and thanks all those who made submissions or participated otherwise.

The Review has found that the GSE Act, as amended, and its objects have provided a sound basis for reform and modernisation of the New South Wales government sector.

The objectives of the Act set out aspirational values which are commendable, represent significant reform and modernisation of the previous legislation and practices and have allowed the public sector to quickly respond to the significant changes and challenges the State has faced particularly in the last two years since the 2019 State election.

The GSE Act places high-performance, customer service, effective and fair employment arrangements, management and leadership at the core, along with transparent governance and a clear ethical framework.¹

One significant aspect of the NSW public sector, direct service provision to the community, is extremely highly regarded, with the Customer Satisfaction Index for consumers having recently increased to 82 in 2020, and 80.6 in 2019 from 78.9 in 2018, exceeding the Premier's Priority Target of 79.02.² In general, the NSW public sector is regarded as high performing among peer services in Australia and overseas. In 2019, NSW ranked first on expectation amongst businesses, demonstrating higher expectation of NSW Government services compared to other jurisdictions.³ Its performance during the unprecedented drought, floods and bushfires and most recently the COVID crisis has been seen as exemplary.

Most stakeholders were complimentary of the flexibility of the GSE Act in equipping the service to deal with the multiple challenges faced in New South Wales. They and the Panel remain confident that the framework will continue to serve the State well as we address changes to society, the economy and jobs, the budget and the other structural changes ahead.

The Panel has concluded that the Act itself essentially serves its purpose well and its objectives remain valid. Neither require significant amendment.

The Review however also provides an opportunity to reflect on the implementation of the Act and practical issues that arise in public sector administration in NSW. Notwithstanding that in some cases

¹ *Government Sector Employment Act 2013* (NSW) s 4.

² NSW Customer Service Commission, *2019 Annual Customer Satisfaction Measurement Survey* (2019) 28.

³ *Ibid.*

the matters raised were not strictly within the Terms of Reference of this Review, the Panel has included in this Report observations which we considered worth making in the context of continuous improvement of the Public Service.

We particularly wish to note the suggestions in relation to improvement in diversity in the sector and other matters discussed in Chapter 9. These observations have been made with a view to assisting the Minister and the Public Service Commissioner in any further deliberations they may wish to make.

1.1 Acknowledgements

The Panel wishes to record its thanks to the Public Service Commission staff who provided secretariat assistance to the Review and in particular wishes to acknowledge the support of Ms Sarah Sandstad, General Counsel, and the Secretariat (Ms Sarah Bradshaw, Mr Jim Lloyd, Ms Kanchan Bakshi, Mr Paul Martin, Ms Suzie Wight) and the PSC GSE Act Review Working Group.

1.1 Background

The GSE Act was ambitious and far reaching. The objects of the Act are:

- (a) to develop a modern high performing government sector—
 - i. that is efficient and effective in serving the Government in the delivery of services to the people of New South Wales, and
 - ii. that has effective and fair employment arrangements, management and leadership,
- (b) to establish the Public Service as the general service within the government sector,
- (c) to provide transparent governance and employment arrangements for the Public Service, including providing for the employer functions and responsibilities of heads of Public Service agencies,
- (d) to establish an ethical framework for the government sector comprising core values and principles that guide their implementation,
- (e) to make provision for the objectives, functions and responsibilities of the Public Service Commissioner.

It embedded ethical and other core values for the New South Wales government sector, (including “merit-based, apolitical and professional”), made provision for modernising and streamlining the management of the public sector and removed existing constraints on the Public Service, including recruitment and promotion appeals in the Industrial Relations Commission, and removed the concept of ownership of a particular role.

The 2013 reforms were intended to modernise and streamline the NSW Public Service, building upon the streamlining and efficiencies sought through the Cluster system and accompanied by reformed ICT, procurement, training and other systems.

The general approach was to maximise flexibility to deal with future change by including objects, values and powers in the GSE Act itself and to remove details and variables to the Regulations and to a system of Rules and Directions, and to influence through the reform leadership provided by the independent Public Service Commission (PSC).

The Public Service leadership was to become one strong leadership group, with movement to different roles the norm, building leaders understanding of the whole sector and utilising their capabilities in different roles. Exposure to the sector was designed to build an adaptable, innovative and flexible cohort, capable of implementing and delivering the government’s policies and programs efficiently and effectively, in the time envisioned by the government, and on budget, in the interests of the people of New South Wales.

A key feature of our constitutional framework, embodied in section 21 of the GSE Act, highlights the consistency with the Westminster principles in having the most senior appointments made by the Governor, the Premier or the Minister, and providing for appointments to roles in the government service to be based on a merit system and managed by the relevant Public Service leader.

The GSE Act aimed to simplify the Public Service by reducing the number of categories in the government sector. However, whilst certain entities must be independent, such as the judiciary, the Judicial Commission, the Audit Office and the ICAC, a number of specialist employers (Health, Police, Transport and Teaching) remained within the government sector but largely responsible for their own employment arrangements.

A single executive structure of four bands replaced the overlapping Senior Officer and Senior Executive Service structures, creating clear lines of authority, faster decision making and better reporting lines. The Cluster system was used to structure the Public Service and structurally connect agencies with the relevant Department, with leadership provided by the new Secretaries of Departments. “Clusters” are not defined in the Act but are relationships between Departments and other Public Service agencies authorised and created under administrative orders and utilising Schedule 1 to the Act.

Flexibility and adaptability in the NSW Public Service were addressed by a focus on capabilities as provided in a new sector-wide capability framework rather than limited inquiry into qualifications and experience. Job role descriptions are based on capabilities with more general capacity to take on management roles, rather than narrowly defined roles, which were said to impede transfers and addressing change and new priorities and policies.

Recruitment and promotions were realigned to reflect the Capability Framework, and appointments were simplified. Remuneration was simplified for senior executives by replacing the eight narrow Senior Executive Levels with four broad bands.

2. Executive Summary - Findings and Recommendations

2.1 Term of Reference (a)

The Panel has found that the objectives of the Government Sector Employment Act 2013 remain valid.

2.2 Term of Reference (b)

The Panel considers that the terms of the Act remain appropriate for securing the objectives of the Act.

Comment

The Panel considers that the GSE Act has been an effective framework for reform and modernisation of the New South Wales government sector. The Act has facilitated a streamlined restructuring of much of the government sector into Clusters, clearer lines of authority and accountability and the development of more capable public servants.

The flexibility and agility of the Act has been tested through the implementation of significant machinery of government changes following the 2019 election, drought, bushfires and most recently, the COVID-19 pandemic, and has provided a sound basis from which the public sector has responded.

The Panel notes the central role of the PSC as a leader of reform and standards setting authority which has performed a key role in the reforms to date.

We note and approve the principles-based approach taken in the Act and lack of prescriptive and lengthy provisions. The Rules and other Directions add to the capacity for agility and to meet change provided there are active channels for review of these Rules and Directions.

The approach taken by agencies has been to take the Rules and “customise” them to suit particular requirements.

The Panel heard concerns as to the adequacy and effectiveness of professional development strategies and initiatives across the public sector, particularly in innovation and digital skills, and noted some concerns as to underfunding for professional development. In addition, there is no central reporting by agencies, nor central analysis of the strategies and spending that agencies undertake.

Recommendations:

1. Having regard to the objectives relating to a modern high performing government sector, and the workplace experiences of the COVID-19 pandemic, including the widespread use of digital technology, the Premier and Minister together with the Secretaries develop strategies for a whole of government approach to public sector workplace locations and practices with a view to taking the opportunity to locate jobs and pursue economic development in rural and regional New South Wales while maximising safety and health. The Panel understands that the Government is already working on some initiatives concerning regional employment for the government sector.
2. That the Premier and Minister consider further reforms to employment structures for the government sector, including opportunities for recruitment from other jurisdictions, with an objective that the number of different employer arrangements is reduced consistent with the rationale that the GSE Act forms the basis for wider government sector employment.
3. Having regard to the object of the GSE Act to create an ethical framework for the government sector, including the core government sector value of accountability, the Premier, the Minister and the Secretary of Premier and Cabinet examine the mechanisms and effectiveness of current arrangements for the implementation of government policies by the Public Service senior executives responsible for implementing those policies.
4. Noting the responsibilities of Ministers and senior public servants in the Westminster system, the Premier, Minister and Secretaries consider appropriate arrangements to ensure that any views of portfolio Ministers are included in appointments and in 360 degree performance reviews of senior executives in relation to their portfolio areas.
5. The PSC should take the lead in requiring agencies to report on professional development activities and investment within their agencies and should analyse, benchmark and report on such activities. This is particularly desirable in the development of skills and innovation in digital delivery of services and cyber security.

2.3 Term of Reference (c)

The Panel notes that the PSC conducted an internal review of the GSE Act in 2019 in consultation with the Department of Premier and Cabinet and proposed a number of amendments to the Act.

Recommendation:

6. The Panel supports the adoption of the majority of those recommendations, as follows:

Section 16; (Recommendation 1 of the PSC Review):

That in the course of the Public Service Commissioner obtaining a report or information under section 16, the amendment should expressly authorise the exchange of personal information and/or health information between the Commissioner and a government sector agency.

Sections 38/46; (Recommendation 2):

That these sections should be amended to provide specifically for the assignment of Public Service employees (both senior executives and non-executives) to a lower band or classification with the consent of the employee concerned.

Sections 41(3) and 78(7) and 41(5) and 78(8); (Recommendations 3 & 4):

That these sections be amended to clarify that sections 41(3) and 78(7) apply to ensure it is clear that refunds of compensation for termination or removal are required in the event a public sector senior executive or statutory officer is employed in the public sector during the relevant compensation period. The related amendments are required to clarify the definition of “employment” in these circumstances.

Section 66; (Recommendation 6):

That this section be amended to clarify the justification for secondments from government to non-government agencies and align their duration.

Section 83; (Recommendation 7):

That the section be amended to expressly authorise in the course of a section 83 inquiry, the exchange of personal and/or health information between the Public Service Commissioner, the Secretary of the Department of Premier and Cabinet or their appointee who is conducting the inquiry (on one hand) and a government sector agency (on the other hand).

Comment

The PSC Report is discussed in Chapter 8.

Suggestions for amendments and for changes to the Rules around complexity relating to employment by different agencies, delegation of powers, secondments and other matters are contained in the submissions which have been provided to the Public Service Commission. Given the concerns that have been raised by a number of agencies and Departments, the Panel suggests they should be further considered.

A significant concern in a number of submissions and consultations related to the interaction of section 67 and 68 of the GSE Act relating to performance management systems and particularly management of unsatisfactory performance of government sector employees, and section 39 which requires appointment under contracts of employment, which may be terminated under section 41 at any time for any or no stated reason and without notice. The Panel notes that these contractual and termination provisions provide a significant tool for senior management in ensuring efficient, effective and accountable exercise of Public Service responsibilities. Issues concerned the complexity and delay in carrying out a performance management process for unsatisfactory performance, the potential for abuse of the section 41 termination power (although we did not receive any evidence to that effect) and the equity of the methods of calculation of termination payments.

Recommendation:

7. Suggestions for amendment to the Act, the GSE Rules, Regulations and any other Act proposed in submissions to this review should be considered by the PSC in the course of its ongoing reviews and administration of regulatory and legislative matters.
8. The PSC should review the management of the processes under sections 39, 41, 67, 68 and 69 of the GSE Act to determine whether Departments and agencies require any further assistance in relation to the management of and understanding of these provisions.

2.4 Term of Reference (d)

The panel considered a number of related matters as worth including in this Review.

Comment

A number of submissions and consultations raise issues concerning the increased use of contractors in the public sector.

It was suggested that contractors are used because agencies cannot hire staff with the requisite expertise and experience largely because New South Wales remuneration rates are uncompetitive, or where agencies need to deliver projects, without increasing headcounts, such as infrastructure projects which are complex and take multiple years to complete.

There are issues which arise from long-term use of contractors, including at common law, which may find that such persons are deemed employees (with superannuation and other consequential benefits and entitlements).

Further issues arise as to the long-term implications if there are such gaps in expertise in the service – particularly in commercial areas such as project services procurement where there is a need for the NSW Government to be an “informed client”.

The term “contractor” is not defined in the GSE Act and it is unclear whether there is any whole of government sector monitoring of the duration, costs and other characteristics of contractor engagement.

A second often mentioned concern relates to the perceived competency and complexity of the recruitment process utilising the capability framework, panels, head-hunter firms and the costs and delays inherent in the process, particularly where management wishes to select a candidate who is particularly suited to the role. The proposition was put that, in the private sector and in some governments senior positions, appointments are made in some situations with a more truncated process where leadership makes clear selections, reports the bases upon which they are made and is held accountable for those selections.

Recommendation:

9. The PSC should consider, from a policy perspective, whether contractors should be subject to some elements of the GSE Act and whether the definition of government sector employee should be amended to clarify whether it includes contractors or not. Further the PSC should collect data from Departments and Agencies on contractor hires and monitor whether the mix is optimal and appropriate and whether there are longer term issues in relation to gaps in expertise.
10. The PSC should consider the validity of concerns expressed to the Panel in relation to the complexity, cost and delays in the recruitment process for senior executives.
11. The Capability Framework as adopted is well understood by the public sector leadership and human resources teams however we found that there was still some misunderstanding and confusion in parts of the Public Service and that there was still some reluctance to use the Capability Framework where roles were considered to be technical or expert. We also heard concerns about potential bias in the system through the practices in relation to appointments to acting positions, the lack of independent members on selection panels and imprecise role descriptions. The Public Service Commissioner should continue to refine and educate in relation to the Capability Framework.
12. The Premier and the Minister should consider whether the GSE Act provides sufficient flexibility in relation to contractual terms and remuneration to recruit the most experienced and expert applicants to agencies which operate in competitive environments with the private sector or other state and local governments including agencies requiring technical, scientific and other specialist skills and in the entertainment, convention, sporting and cultural institutions, and should benchmark remuneration against the market. In so doing, consideration should also be given to community expectations about the terms and remuneration of personnel in government agencies.

Independent Panel of the Review of the Government Sector Employment Act 2013

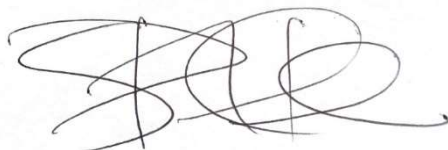
30 November 2020

A handwritten signature in blue ink, appearing to read 'Greg Pearce'.

The Hon Greg Pearce

A handwritten signature in blue ink, appearing to read 'Gabrielle Trainor'.

Gabrielle Trainor AO

A handwritten signature in blue ink, appearing to read 'Jane Halton'.

Jane Halton AO PSM

3. Independent GSE Act Review

3.1 Statutory review of the GSE Act

The GSE Act establishes the Public Service and defines the broader government sector. The GSE Act sets out, among other things:

- the ethical framework for the government sector
- the office of Public Service Commissioner (**Commissioner**) and the establishment of the Public Service Commission Advisory Board
- the statutory framework for the Public Service, including matters relating to the employment of Secretaries and other heads of agencies, Public Service senior executives and Public Service non-executive employees
- matters relating to Government sector employees, including workforce diversity, transfers and secondments, performance-related matters, including misconduct and unsatisfactory performance and excess employees.

The GSE Act commenced on 24 February 2014. Section 89 of the GSE Act requires that, as soon as possible after the period of five years from the commencement of the Act, the responsible Minister is to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

3.2 Terms of Reference

The Terms of Reference for the Review (**Terms of Reference**) require the Review Panel to have regard to:

- a. whether the policy objectives of the GSE Act remain valid;
- b. whether the terms of the GSE Act remain appropriate for securing those objectives;
- c. any legislative or regulatory issues or inconsistencies requiring amendment; and
- d. any other related matter.

The Review Panel was appointed and commenced its Review in September 2020 and is required to provide its report to the Minister by 30 November 2020.

3.3 Review Panel

The Hon Greg Pearce, BA LLB, Chair



Following a successful career as a commercial lawyer and environmental specialist, Greg Pearce served in the NSW Parliament and became a senior member of NSW Government as NSW Minister for Finance and Services and Minister for the Illawarra.

Greg has experience advising on a broad range of projects including:

- Strategic advice for NSW Government agencies covering payroll tax, mining charges for mine rehabilitation, water and strategic planning, budgeting and finance for a significant cultural institution.
- Government Property and Infrastructure projects including East Circular Quay Bennelong Project, Federal Government Parramatta Precinct, M2, Sydney Water projects, Federal Airport Sales, State Rail debt for equity swap.

- In the private sector, strategic advice and mentoring for a major international technology company, establishing a new point to point transport option, planning issues, defence and environmental law policy and international trends.

Ms Gabrielle Trainor AO



Gabrielle Trainor is a non-executive director and advisor whose experience covers twenty-five years on boards in the public and private sectors ranging from infrastructure, urban development, public transport, tourism, construction and mining contracting and hospitality to sports, arts and culture and the empowerment of Aboriginal and Torres Strait Islander peoples. Her background is as a lawyer, newspaper journalist, public sector executive and a long career as a consultant in issues management and public policy.

Ms Jane Halton AO PSM



Jane Halton is a former Secretary of the Australian Department of Finance, and has extensive experience in finance, insurance, risk management, information technology, human resources, health and ageing, sport, and public policy, as well as significant international experience. Ms Halton's previous roles include Secretary of the Australian Department of Health, Secretary for the Department of Health and Ageing, and Executive Co-ordinator (Deputy Secretary) of the Department of the Prime Minister and Cabinet.

To facilitate the Review, the NSW Public Service Commission (**PSC**) provided secretariat support to the Review Panel.

3.4 Consultation with stakeholders

A broad range of stakeholders were invited to make written submissions to the Review Panel in response to the Terms of Reference, including:

- The Public Service Commission Advisory Board (**PSC Advisory Board**)
- The Public Service Commissioner
- Secretaries of each Public Service Department and Agency Heads of Executive and Separate Agencies⁴
- The NSW Ombudsman
- The NSW Auditor General
- The NSW Crown Solicitor
- The Parliamentary Counsel's Office
- The Independent Commission Against Corruption
- The NSW Anti-Discrimination Board
- Dr Kerry Schott AO and Mr David Gonski AC (as members of the former NSW Commission of Audit Advisory Board)

⁴ Given limited timeframes, Public Service Departments were asked to collate any submissions to the Review Panel on behalf of any Executive and Separate Agencies within their Cluster.

- The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (PSA)
- The Public Accountability Committee of the NSW Parliament
- The Leader of the Opposition
- Mr Kim Garling, former Workers Compensation Independent Review Officer
- Professor Gary Banks AO
- Professor Peter Shergold AC
- The Business Council of Australia
- The Australian Chamber of Commerce and Industry
- Institute of Public Administration Australia (NSW)
- NSW Council of Social Services
- Centre for Independent Studies.

Twelve of these stakeholders responded with comments or submissions and some supplementary submissions or materials.

Stakeholders and a number of Ministers were also offered the opportunity to meet the Review Panel to discuss their submissions and key themes raised by stakeholders. A further approximately 16 such consultations took place including meetings with the PSC Advisory Board and Public Service Commissioner.

The Panel also sought data and materials to test and validate progress in the implementation of the objects of the GSE Act including support from the PSC.

Key themes raised by stakeholders are discussed in Chapter 9 of this Report.

4. Overview of the Act

4.1 Introduction to the GSE Act

In 2014, the GSE Act repealed and replaced the *Public Sector Employment and Management Act 2002* (**PSEM Act**).

The NSW Commission of Audit had earlier conducted a detailed review of the NSW public sector led by Dr Kerry Schott AO and released its *Interim Report: Public Sector Management* on 24 January 2012 (**Schott Report**). The Schott Report made extensive recommendations on reforming, modernising and improving the public sector workforce and recommended that “immediate priority” be given to four particular actions, including “fixing the structures of Government” and “managing people”.

The NSW Government responded to the Schott Report in August 2012 advising that it supported the substance of the Schott Report’s findings and would be pursuing the recommendations as it moved to reform NSW public administration.⁵

In February 2013, the Government formally accepted the recommendations of the Public Service Commissioner to rewrite the PSEM Act and modernise the public service, building on Schott Report’s recommendations, and announced substantial public sector reform.⁶

The *Government Sector Employment Bill 2013* (**GSE Bill**) was introduced to Parliament in May 2013 and received assent on 25 June 2013.

4.2 Underlying objectives

Then Premier O’Farrell outlined the government’s fundamental objectives in relation to public sector reform in his second reading speech for the GSE Bill, the context for which he described in the following manner:

“... the legislation that governs the New South Wales public sector workplaces was largely written before we had heard of the internet. Over the last 30 years, in our fast-moving global economy, private and non-government workplaces have adapted to make the most of change. In the public sector, the way we interact with customers, stakeholders and each other is fundamentally different from the way it used to be.”⁷

The Premier referred to the Schott Report and noted that in January 2012 the Commission of Audit:

“... found that the structure of government employment required fundamental overhaul, with many recommendations specifically going to improving its executive’s performance. The commission’s report identifies areas for reform in just about all parts of government employment, including lack of transparent leadership responsibility; too many employment divisions and controlled entities; need for greater flexibility in staff deployment; overly layered middle management; insufficient responsibility devolved to the highest levels; managers’ spans of control should increase and the pressing need for a capability framework. Recommendation 45 specifically focused on the need for comprehensive review and reform of executive structures.”⁸

⁵ NSW Government Response to the Final Report of the Commission of Audit (August 2012) 1.

⁶ NSW Public Service Commission, *State of the NSW Public Sector Report 2013* (2013) Chapter 1: Path to Reform.

⁷ New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 May 2013, 54 (Barry O’Farrell, Premier), Second Reading Speech for the *Government Sector Employment Bill 2013* <<https://www.parliament.nsw.gov.au/bill/files/642/2R%20Government%20Sector.pdf>>.

⁸ New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 May 2013, 55 (Barry O’Farrell), Second Reading Speech of the *Government Sector Employment Bill 2013*.

Accordingly, the government accepted recommendations of the Public Service Commissioner to:

“...rewrite the Public Sector Employment and Management Act and to modernise our public service ... to create an outward looking, customer-focused organisation with resources shifted to the front line to assist in the delivery of those services that people rely upon each day. We are determined to deliver on our election commitments, a key one of which was to establish a New South Wales Public Service Commissioner to be the independent leader of reform to restore the integrity, performance and accountability of the State’s public sector.”⁹

The Public Service Commissioner was delivering reforms and recommendations to Government which:

“... will ensure New South Wales has the best-qualified and most professional public service in the nation; restore the highest levels of impartiality, ability, accountability and leadership in the New South Wales Public Service; ensure public service positions are filled on the basis of merit and qualifications, not patronage or favouritism; promote a public sector culture in which initiative, the achievement of results and individual responsibility are strongly valued; build a new customer service culture; and strengthen the public’s confidence and trust in the New South Wales Public Service. The proposals set out in the bill here today will provide for a government sector that is responsive and adaptive...”¹⁰

In summary, the Premier said:

“The reforms in the two bills¹¹ will create a more professional public service, operating along best practice lines, such as one would find in the most innovative, effective public sector, private sector and non-government organisation anywhere in the world. It also will equip our New South Wales public service to meet the needs and expectations of individuals, businesses, families, customers and taxpayers in an increasingly competitive global economy.

... We want an innovative, professional and accountable public sector that encourages and rewards performance, delivers the best possible front-line services for local communities across the State and creates the most competitive landscape for investors, economic growth and job creation in New South Wales.”¹²

4.3 Structure of the government sector under the GSE Act

The GSE Act recognises the Westminster system which is characterised by a separation of the legislature in the form of the Parliament, executive government in the form of the Ministers and the public service, and a separate and independent judiciary. The GSE Act recognises that appointments to the public service (in the broader sense) are made for a variety of historical and practical reasons by the Governor,¹³ the Minister and Public Service agency heads, and by employment pursuant to legislation.

Section 21 specifically notes that public servant employees under the GSE Act are engaged to enable Ministers and statutory bodies or statutory officers to perform their functions.

⁹ Ibid 54.

¹⁰ Ibid.

¹¹ The two Bills referred to by the then Premier were the *Government Sector Employment Bill 2013* and the *Members of Parliament Staff Bill 2013*.

¹² New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 May 2013, 58 (Barry O’Farrell), Second Reading Speech of the *Government Sector Employment Bill 2013*.

¹³ As noted earlier, the Public Service Commissioner is appointed by the Governor on the recommendation of the PSC Advisory Board – *Government Sector Employment Act 2013* (NSW) s 9. *Government Sector Employment Act 2013* (NSW) Part 6 also confers functions on the Governor with respect to removal of certain statutory officers.

The GSE Act simplified the NSW Government's employment structures under the PSEM Act, creating two employment structures: the Public Service and the broader "government sector".

Public Service

The Public Service comprises Departments, Public Service executive agencies related to Departments, and separate Public Service agencies. These bodies are listed in Schedule 1 of the GSE Act.

Pursuant to section 25 of the GSE Act, Secretaries of Departments are responsible to Ministers for the general conduct and management of the functions and activities of their Departments in accordance with the core values contained in the GSE Act. Similarly, pursuant to section 30 of the GSE Act, the head of a Public Service agency (other than a Department) is responsible to the Minister or Ministers to whom the agency is responsible for the general conduct and management of the functions and activities of the agency in accordance with government sector core values.

Under the GSE Act, all Public Service employees, including senior executives, are employed at a classification of work (or band) and assigned to a role within their agencies. Non-executive staff can be assigned to any role in their classification of work and agency. Senior Executives can be assigned to any role in their band across the Public Service.

Departmental Secretaries hold the employer functions for their Departments and related executive agency senior executive staff, including, in most cases, executive agency heads (section 26). Related executive agency heads are the employers for their non-executive staff (section 31).

Separate agency heads are placed in a different position from executive agency heads, in that they are appointed by the Minister (section 28), and exercise the employer functions of the Government with respect to both their senior executive and non-executive staff (section 31).

Government sector

The GSE Act's "government sector" encompasses most New South Wales government employees, comprising:

- The Public Service
- The Teaching Service
- The NSW Police Force
- The NSW Health Service
- The Transport Service of the New South Wales
- Any other service of the Crown (including the service of any NSW government agency)
- The service of any other person or body constituted by or under an Act or exercising public functions (such as a State-owned corporation) prescribed by the regulations.¹⁴

The location of the Teaching, Police, Health, Transport Services within the government sector (but not the Public Service), means that the GSE Act does not regulate the internal governance or employment arrangements of these Services. This largely reflects the autonomy those other Services have historically had in their employment relationships, and their need to maintain a degree of operational independence from the central government and Ministers. Those Services remain subject to separate Acts that regulate employment. However, relevant provisions of the GSE Act apply to them as government sector agencies where specifically provided for.

Exclusions from the GSE Act

The GSE Act does not apply to:

- judicial officers within the meaning of the *Judicial Officers Act 1986*;
- officers or employees of either of the Houses of Parliament;
- any officer or employee under the separate control of the President or Speaker or under their joint control;

¹⁴ *Government Sector Employment Act 2013* (NSW) s 3.

- persons employed under the *Members of Parliament Staff Act 2013*;
- staff of the Independent Commission Against Corruption employed under the *Independent Commission Against Corruption Act 1988*;
- staff of the Audit Office employed under the *Public Finance and Audit Act 1983*; or
- staff of the Judicial Commission of New South Wales employed under the *Judicial Officers Act 1986* (see s.5).

This group of officers and employees is excluded from the scope of the GSE Act due to the need to preserve their perceived and actual independence in the discharge of their official duties. This reflects the separation of powers in the case of the legislature and the judiciary, and the unique position of independent statutory office holders. Arrangements for the appointment or employment of those officers and employees is prescribed by or under distinct legislation.

Comment

Notwithstanding this definition of government sector, significant groups of employees are employed under different legislation including the Teaching Service,¹⁵ NSW Police Force,¹⁶ Transport Service of New South Wales,¹⁷ and NSW Health Service employees.¹⁸ These arrangements reflect historical organisation of the public sector, industrial arrangements in relation to particular employees or groups of employees, the preference of management, operational independence and separate legal status of the bodies these Services are employed within.

It is not clear to the Panel whether these separate arrangements add to the attainment of the objectives underlying the GSE Act and whether the Premier, the Minister and PSC should consider simplifying the employment arrangements by bringing these employees under the GSE Act for employment provisions.

Any amendments to give effect to this kind of arrangement would require consultation with those respective Services.

Public Sector

The GSE Act also recognises the “NSW Public Sector”, which encompasses the broadest range of NSW Government staff.¹⁹ The Public Sector generally comprises both the government sector and the following Government services which are not included in the government sector and outside the scope of the GSE Act for most purposes:

- State owned corporations (or subsidiaries) such as energy and water corporations which largely have their own employment provisions in enabling legislation
- Judicial Officers and staff of the Parliament, the Independent Commission Against Corruption, the Audit Office and the Judicial Commission, which are excluded by s.5 from the application of the GSE Act except to the extent expressly provided.

A further complexity in relation to employment arises from the existence of numerous executive bodies which may have independent functions and leaders who are appointed by the Governor or Ministers directly and are not subject to the GSE Act, but perform their functions through GSE Act employees engaged by the Department Secretary or indeed the agency leader. Complications arising from these arrangements are considered in Chapter 5.2 below and in relation to submissions in Chapter 9.

¹⁵ *Teaching Service Act 1980* (NSW).

¹⁶ *Police Act 1990* (NSW).

¹⁷ *Transport Administration Act 1988* (NSW).

¹⁸ *Health Services Act 1997* (NSW).

¹⁹ See *Government Sector Employment Act 2013* (NSW) ss 41, 78; *Government Sector Employment Regulation 2014* (NSW) cl 24.

At this broadest sense, the NSW Public Sector employs around 408,000 people.²⁰ The NSW government sector is slightly smaller, employing almost 400,000 and the Public Service employs just over 76,000 people.

The Public Service Commissioner is a key functionary in the GSE Act framework which relies upon the development of detailed regulations, rules and directions to facilitate the implementation of the objectives under the GSE Act.

The GSE Act also facilitates flexibility in the structure and administration of the executive government, authorising the creation of Public Service Departments and other agencies through the use of administrative orders which have facilitated the current cluster system.

4.4 Key amendments made to GSE Act since its introduction

A second “phase” of the reforms introduced by the GSE Act was implemented in 2016, with the enactment of the *Government Sector Employment Legislation Amendment Act 2016* (GSELA Act).

The Amendment Act further implemented the Schott Report’s recommendations, making amendments to various Acts, including the GSE Act, in order to:

- (a) align employment arrangements for executive employees of the NSW Health Service, the NSW Police Force and the Transport Services of NSW generally with the employment arrangements for Public Service senior executives under the GSE Act,
- (b) align employment arrangements for employees of the NSW Police Force who are not police officers (i.e. administrative employees) generally with the new employment arrangements for non-executive employees of the Public Service under the GSE Act,
- (c) make further provision with respect to misconduct and other matters, and
- (d) make other amendments of a minor or inconsequential nature.

As a result of these harmonised legislative provisions, government sector senior executives are largely employed on common conditions, with some minor variations. The harmonised legislation also means that any senior executive may easily be assigned to a role in the same band in another Service.

Further harmonisation has recently occurred, with the introduction of GSE Act style merit appointment for the promotion of non-executive NSW Police Force staff – see amendments to the *Police Act 1990* by the *Police Amendment (Promotions) Act 2020*.

The GSE Act has been regularly amended since its introduction through various Administrative Arrangements (Administrative Changes) Orders and other legislative amendments, reflecting changes to Public Service agencies and how the Public Service is arranged. Extensive machinery of government changes were introduced in April 2019. Most recently, new Public Service agencies, Regional NSW, the Office of the Independent Planning Commission and Resilience NSW, were added in April 2020.

²⁰ NSW Public Service Commission, *State of the NSW Public Sector Report 2019* (2019) 7. According to the Workforce Profile 2019, as at 30 June 2019, the total NSW public sector comprised 407,999 ongoing, temporary and casual employees (census headcount), equating to 337,787 full-time equivalent (FTE) employees; the total government sector comprised 398,756 census headcount and 328,900 FTEs while the Public Service comprised 76,721 census headcount and 64,834 FTEs.

5. Policy objectives of the GSE Act

5.1 Overview of GSE Act objects

Section 4 of the GSE Act sets out its objects:

“4 Objects

The objects of this Act are as follows:

- (a) to develop a modern high performing government sector:
 - (i) that is efficient and effective in serving the Government in the delivery of services to the people of New South Wales, and
 - (ii) that has effective and fair employment arrangements, management and leadership,
- (b) to establish the Public Service as the general service within the government sector,
- (c) to provide transparent governance and employment arrangements for the Public Service, including providing for the employer functions and responsibilities of heads of Public Service agencies,
- (d) to establish an ethical framework for the government sector comprising core values and principles that guide their implementation,
- (e) to make provision for the objectives, functions and responsibilities of the Public Service Commissioner.”

The GSE Act represented significant once in a generation reform to the administration, performance and management of the NSW Government sector and public service.²¹ The GSE Act places high performance, customer service, fair and transparent employment arrangements, management and leadership, transparent governance, a clear ethical framework and the establishment of the Public Service Commissioner at the core of the GSE Act.

As discussed in Chapter 7 in more detail, the GSE Act’s objects largely reflect the recommendations of the NSW Commission of Audit’s Schott Report.

Stakeholders commented that such extensive reform to the NSW Government sector takes time and faces various cultural and other barriers. The size, complexity, breadth and range of operations and services of the NSW Government sector mean that it can take time for significant changes to become part of the way Government agencies manage their staff and conduct their operations.

The independent *Review of the NSW Public Service Recruitment Reforms* commissioned by the Public Service Commission and delivered by Ms Lynelle Briggs AO in June 2018 (**Briggs Report**) commented:

“The recruitment reforms introduced by the GSE Act were leading edge and ambitious, and have provided sound employment architecture for the future. They have given discipline to capability assessment and established a service-wide assessment framework that was needed in NSW. The reforms are overwhelmingly regarded as a success by NSW government agencies. ...However, the full potential of the recruitment arrangements and the flexibilities they provide has not yet been realised.”²²

The Briggs Report made a series of recommendations, directed at measures to support implementation of the GSE Act rather than amendment to the GSE Act itself, in order to produce lasting changes to deliver the full potential of the reforms.

The GSE Act has now been operational for almost seven years. On balance, there has been significant progress in achieving the objects of the GSE Act.

As discussed in Chapter 9, most stakeholders consulted consider the policy objectives of the Act remain valid.

²¹ NSW Public Service Commission, *State of the NSW Public Sector Report 2013* (2013) 13.

²² Lynelle Briggs AO, *Review of the NSW Public Service Recruitment Reforms* (June 2018) 5 <<https://www.psc.nsw.gov.au/reports---data/other-publications>>.

5.2 Development of a modern high performing government sector

Object 4(a)(i): High performing, efficient and effective delivery of services

The GSE Act seeks to achieve a modern high performing government sector that is efficient and effective in serving the Government in the delivery of services through a range of provisions which have as their foundation the ethical framework for the government sector in Part 2.

Section 7 of the GSE Act prescribes the government sector's core values, namely integrity, trust, service and accountability. Guiding principles are set out for each core value.

The following principles are prescribed for the core value of Accountability:

- "(a) Recruit and promote employees on merit.
- (b) Take responsibility for decisions and actions.
- (c) Provide transparency to enable public scrutiny.
- (d) Observe standards for safety.
- (e) Be fiscally responsible and focus on efficient, effective and prudent use of resources."

The Public Service Commissioner has the function of promoting the government sector core values (section 8). Part 3 sets out the Public Service Commissioner's principal objectives, which include to improve the capability of the government sector, to attract and retain a high calibre professional government sector workforce, to foster a public service culture in which customer service, initiative, individual responsibility and the performance of results are strongly valued.

Part 5 establishes the Public Service Commission Advisory Board whose functions include advising the Premier on any matter relating to the management and performance of the government sector.

The GSE Act also includes extensive provisions which address performance and accountability including:

Government Sector employees – Performance management systems: Section 67 provides that the head of a government sector agency is responsible for developing and implementing a performance management system with respect to employees of the agency. By section 67, the government sector employment rules may deal with the core requirements of any such performance management. Section 68 deals with management of unsatisfactory performance of government sector employees (whether PSSEs or non-executives).

Government sector employees may be terminated for unsatisfactory performance under section 68 or for misconduct under section 69 of the GSE Act.

Public Service senior executives (PSSEs)- Performance management systems: The GSE Act requires that PSSEs be appointed under a contract of employment which deals with the senior executive's performance obligations and reviews of performance of the executive, and progression in the total remuneration package of the executive based on performance (section 39(4)). The employment of a PSSE may be terminated under section 41 at any time for any or no stated reason and without notice. Termination under section 41 is an additional method for termination to those in section 68 (for unsatisfactory performance) and section 69 (for misconduct).

Comment

A number of stakeholders commented upon these provisions and their interaction. Some suggested that the performance management system was difficult in that it required significant input from management, could be abused by poor behaviour on the part of the employee the subject of the management, and that the dismissal requirements may be subject to appeal. Noting that performance management systems are agency designed, these comments demonstrate the ongoing work still needed in the sector to take full advantage of the GSE Act reforms.

It was also suggested to the Panel that in some cases termination without reason was preferable and more efficient than trying to performance manage. However, significant concerns were raised by at least one agency in relation to the compensation arrangements flowing from termination of PSSEs especially given that there was little distinction between long-standing employees who may, for no reason related to any misconduct, be made redundant and those who had a very short employment engagement.

Object 4(a)(ii): Effective and fair employment arrangements, management and leadership

The GSE Act seeks to achieve the objective of a government sector that has effective and fair employment arrangements through a range of provisions including section 7 which states that “recruit and promote employees on merit” is a core government sector value.

Section 10(d) provides that the Public Service Commissioner’s principal objectives include ensuring that government sector recruitment and selection process comply with the merit principle and adhere to professional standards. The Commissioner’s functions include leading the strategic development and management of the government sector workforce in relation to recruitment, particularly compliance with the requirements relating to appointment and promotion on merit, and executive employment arrangements.

Section 48 empowers the Commissioner to make government sector employment rules on the recruitment of non-executive employees including the recruitment process and application of the principle of employment on merit.

Public Service management and leadership: The GSE Act provides a single NSW Public Service senior executive (**PSSE**) structure whereby senior executives across the Public Service are employed on a common basis. The PSSE comprises the following four bands determined by the Minister:

- Band 4 – Secretary level
- Band 3 – Deputy Secretary level
- Band 2 – Executive Director level
- Band 1 – Director level.²³

Part 4, Division 4 of the GSE Act sets out the kinds of senior executive employment available in Public Service (ongoing and term – section 34), the scope of government sector employment rules in relation to PSSEs (section 36), the employment of PSSE in bands (sections 35 and 37), assignment of PSSEs to different roles across the sector (section 38), the contracts and remuneration of PSSEs (sections 39-40) and termination of employment (section 41).

Public Service non-executive employees: Part 4, Division 5 regulates the employment of Public Service non-executive employees. Division 5 sets out the kinds of employment available in the Public service (ongoing, temporary and casual – section 43), matters that the government sector rules may deal with in relation to non-executives (section 48) and termination of employment (section 47). The Division also includes provisions relating to employment in classifications of work (section 45) and the assignment to other roles within an agency in the same work classification (section 46).

Object 4(b): to establish the Public Service as the general service within the government sector

Part 4 of the GSE Act regulates the Public Service and is the most substantial part of the GSE Act, comprising sections 20 to 62.

²³ *Government Sector Employment (Senior Executive Bands) Determination 2014* (NSW).

Section 20 of the GSE Act establishes the Public Service of New South Wales which consists of those persons employed under Part 4 of the GSE Act by the Government of New South Wales in the service of the Crown. By section 22, Public Service employees are employed in:

- (a) Departments (listed in Part 1 of Schedule 1)
- (b) Public Service executive agencies related to Departments (listed in Part 2 of Schedule 1), or
- (c) Separate Public Service agencies (listed in Part 3 of Schedule 1).

Part 7 of the *Constitution Act 1902 (NSW)* authorises the amendment to Schedule 1 to the GSE Act by administrative arrangements order under that Part. As such, the Governor may make administrative arrangements orders which create, abolish or change the name of Departments and other Public Service agencies and transfer employees between agencies (see GSE Act s.22(3) and Part 7 of the *Constitution Act*).

Part 4, Divisions 2 and 3 set out requirements applicable to Secretaries and heads of other Public Service agencies, respectively. They provide for appointments (sections 23 and 28), acting appointments (sections 24 and 29), general responsibility (sections 25 and 30), employer functions (sections 26 and 31) and delegation (sections 27 and 32).

Object 4(c): to provide transparent governance and employment arrangements for the Public Service, including providing for the employer functions and responsibilities of heads of Public Service agencies

The GSE Act prescribes the framework for governance and employment arrangements for the Public Service.

Employer functions: The Secretaries of Public Service Departments under the GSE Act hold the employer functions for all employees in their Departments and for all senior executives in Public Service executive agencies related to their Departments, including in most cases, agency heads (section 26(1)).

Heads of Public Service executive agencies related to Departments hold the employer functions for all other employees (section 31). Heads of separate agencies hold the employer functions for all their employees, including senior executives (section 31).

Employment of Public Service senior executives As noted above, Part 4 Division 4 of the GSE Act governs the employment arrangements of PSSEs including making provision for their contracts of employment (section 39), employment into bands (section 37), assignment to roles (section 38), and termination of employment (section 41).

Employment of Public Service employees (other than executives): As also noted above, Part 4 Division 5 of the GSE Act governs the employment arrangements of Public Service employees, including kinds of employment (section 43), employment in work classifications (section 45), assignment to roles (section 46), and termination of employment (section 47).

Part 4 Division 7 contains various additional Public Service employment provisions, including the ability to make the engagement of a Public Service employee subject to conditions, such as probation, citizenship or residency requirements or clearances (section 54), the retirement of employees on medical grounds (section 56) and the exclusion of industrial or legal proceedings in certain circumstances (section 58).

Public Service employees are also regulated by Part 5 of the GSE Act concerning government sector employees more broadly. It provides for transfer and secondments between government sector agencies (section 64), secondments between government sector agencies and non-government sector bodies (section 66) and cross-agency employment (section 65). It also contains provisions relating to performance, including performance management systems (section 67). A range of other matters are dealt with in Part 5, including workforce diversity requirements (section 63) and jurisdiction of the New South Wales Industrial Relations Commission in relation to excess employees (section 74).

Conditions of employment: The Industrial Relations Secretary is taken to be the employer of Public Service employees for industrial purposes and proceedings (section 50), and may make determinations fixing conditions of employment for the Public Service (section 52, see further Part 4 Division 6).

Salaries and conditions of employment for most non-executive Public Service employees are set by industrial instruments made under the *Industrial Relations Act 1996* (NSW) (**IR Act**) and the GSE legislative framework provides supplementary arrangements, mostly contained in the GSE Regulation.

Object 4(d): to establish an ethical framework for the government sector comprising core values and principles that guide their implementation

Part 2 of the GSE Act recognises the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day (section 6).

As discussed earlier, Part 2 establishes the ethical framework for a merit based, apolitical and professional government sector that implements the decisions of the government of the day and provides government sector core values (sections 6, 7).

The Public Service Commissioner's functions include to promote and maintain the government sector core values (section 8), and the highest levels of integrity, impartiality, accountability and leadership across the government sector (section 10(a)).

Department Secretaries and Public Service Agency Heads are responsible for the general conduct and management of the functions and activities of their Department, in accordance with the government sector core values (sections 25, 30).

Object 4(e): to make provision for the objectives, functions and responsibilities of the Public Service Commission

The GSE Act establishes the office of the Public Service Commissioner (**Commissioner**) in Part 3, Division 1. Section 9 provides for appointment of the Commissioner and the Commissioner's principal objectives.

The Commissioner has various statutory functions under section 11 of the GSE Act and elsewhere in the Act, and is to exercise her functions in accordance with the general policies and strategic directions determined by the Public Service Commission Advisory Board (**PSC Advisory Board**).

Section 14(1) provides that the Commissioner is to report to the Premier in connection with the exercise of the Commissioner's functions but is not subject to the control and direction of the Premier in the exercise of those functions.

The Commissioner is provided the authority to investigate matters relating to the administration or management of a government sector agency (section 83).

Under section 13(1) of the GSE Act, the Commissioner can give a written direction to the head of a government sector agency for the purposes of exercising her functions or ensuring compliance with the GSE Act, the regulations and the government sector employment rules, on a specific matter in relation to the employees of that agency.

Part 3 Division 2 is concerned with the establishment, membership and functions of the PSC Advisory Board. The PSC Advisory Board determines general policies and strategic directions in relation to the Commissioner's functions, and also provides advice to the Premier on any matter relating to the management and performance of the government sector.

6. Overview of achievements against the GSE Act's policy objectives

6.1 Objects of the GSE Act and evidence of achievement

Introduction

The objects of the GSE Act provide an appropriate reference point to gauge achievements under the Act since its commencement. Chapter 5 above sets out how the provisions of the Act support the policy objectives provided by Part 1 of the GSE Act. The discussion below focuses on the key aim of the GSE Act which is to provide a framework for a modern high performing government sector that is efficient and effective in serving the Government in the delivery of services to the people of NSW and that has effective and fair employment arrangements, management and leadership. It also provides some commentary on the ethical framework and deals with the objectives, functions and responsibilities of the Public Service Commissioner.

In the second reading speech on the introduction of the then GSE Bill to the Legislative Assembly, the Hon Barry O'Farrell MP said that "we demand extraordinary things from our public service". This extends to "protecting lives, educating our children and keeping our communities safe, along with developing the policy solutions to the most complex and challenging problems we face".²⁴ The then Premier stated that the reforms under the proposed GSE Act aimed to "create an outward looking, customer focused public service" that is accountable, employed on the basis of merit and deserving of public trust and confidence.

Sources of information

The PSC publishes an annual *State of the NSW Public Sector Report (SOPSR)*, which provides a regular independent assessment of performance of the whole of the government sector and progress with the delivery of a comprehensive set of reforms. The PSC also publishes an annual analysis of government sector workforce data, known as the '*Workforce Profile*',²⁵ as a companion report to the SOPSR.

The SOPSR and Workforce Profile assist those in the public sector and the broader community to understand where the sector is at, where it is going and how it is progressing. To date, eight *State of the NSW Public Sector Reports (SOPSR)* have been published since the office of the Public Service Commissioner was created in 2011. The next SOPSR and Workforce Profile are expected to be published in 2021.

The annual *People Matter Employee Survey (PMES)* is coordinated by the PSC and provides an opportunity for almost 400,000 employees to share their experiences with their work, their team, managers and the organisation. Public Sector organisations receive reports of summarised responses which are used to identify areas of good practice, and to make improvements where needed using the evidence from the survey. The PMES has indexes that provide useful summaries of key aspects of employee experience including engagement, senior leadership and performance management.

Importantly, the Customer Service Commission developed the Customer Satisfaction Measurement Survey in 2013 and this aligns well with the GSE Act's timeframe. Following machinery of government changes in 2019, the work of the Customer Service Commission has been continued by the Customer Experience Unit, Department of Customer Service. A key survey output is the Customer Satisfaction Index which became the indicator for the original Premier's Priority to improve government services. The Customer Satisfaction Index assesses how satisfied customers are with a government service, how close their experience is to their expectations of that service, and how close their experience is to an ideal service.

²⁴ New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 May 2013, 54 (Barry O'Farrell, Premier), Second Reading Speech for the *Government Sector Employment Bill 2013*.

²⁵ The Workforce Profile includes demographic information such as age, gender and diversity group membership, and employment information such as hours worked, leave patterns, remuneration, and mobility within the sector.

These sources, along with the consultations with stakeholders set out above have been used to inform the Panel's assessment of progress against the objects of the GSE Act.

6.2 Customer service

The *State of the Public Sector Report 2019*²⁶ noted that people are increasingly expecting seamless, coordinated and responsive interactions with government, with high-quality outcomes at reduced cost. They want to interact with government services when and where they like, and in ways that suit them.

The 2020 Customer Satisfaction Index score for consumers was 82.0 out of 100, the highest it has been since measurement started, and exceeding the Premier's Priority target of 79.02. This was measured across 23 different NSW Government services to provide an overall view of customer satisfaction. The 2019 Customer Satisfaction Survey also found that consumers' perceptions of the NSW Public Service 'brand' had increased in 2019, ranking on par with Airlines, traditionally the highest performer in terms of customer satisfaction. The Customer Satisfaction Index for businesses increased from 77.6 in 2019 to 80.7 in 2020, a little short of the Premier's Priority target of 81.16. This followed an initial increase from 2015 to 2016, and some degree of stability between 2016 and 2018.

Improved services and customer outcomes continue to underpin the refreshed Premier's Priorities, announced in June 2019. These priorities set ambitious targets to tackle many of the most important and difficult issues faced by the people of NSW. Delivering on these targets requires a committed and capable workforce. Employee engagement plays a key role and the Employee Engagement Index through the PMES has increased modestly, by 0.9% to 65.7 since 2014.²⁷ Additionally, since 2016 when it was first measured, the Performance Management Index has increased by 3.6% and the percentage of staff with a current performance and development plan increased from 61.6% to 71.4%.²⁸

Comment

The Panel notes that the GSE Act has permitted and contributed to the government's considerable achievement in creating a strong customer focus across the New South Wales public sector. The Panel also notes that maintaining such a strong customer focus requires continued monitoring and adjustments as well as strong leadership and determination.

6.3 Leadership and executive structures

Consistent with the Commission of Audit, the PSC has noted that prior to the enactment of the GSE Act, organisational structures across the sector were based purely on local considerations rather than taking a whole-of-sector approach.²⁹ Organisational structures were highly variable, including in relation to the number of executives and management layers, spans of control, classification levels and naming conventions for executive positions.³⁰

The GSE Act was designed to bring executives closer to front-line service delivery, increase decision-making efficiency and accountability, and overcome the barriers of innovation in a multi-layered structure.³¹ The GSE Act was intended to achieve this through a single, flatter, and more mobile structure known as the Public Service senior executive. Under this structure, senior executives are employed in a band, rather than appointed to a specific position, as is also the case for non-executive employees.

²⁶ NSW Public Service Commission, *NSW State of the Public Sector Report 2019* (2019) 23.

²⁷ NSW Public Service Commission, *People Matter Employee Survey 2014 – 2019* <<https://www.psc.nsw.gov.au/reports---data/people-matter-employee-survey/previous-surveys>>.

²⁸ NSW Public Service Commission, *People Matter Employee Survey 2016 – 2019* <<https://www.psc.nsw.gov.au/reports---data/people-matter-employee-survey/previous-surveys>>.

²⁹ NSW Public Service Commission, *State of the Public Sector Report 2013* (2013) 17.

³⁰ Ibid.

³¹ Ibid 10.

In 2014, Work Level Standards for the NSW Public Service senior executive and the NSW Public Service Senior Executive Remuneration Management Framework were established. Together with the creations of the four senior executive bands, this structure is intended to result in employment arrangements that are more transparent, promote consistent classification of and remuneration for common roles across the sector and create the potential for greater mobility.

From the period of 2013-14, the Secretaries of each Department and Agency heads were required to review their senior executive structures in order to transition to the new GSE Act arrangements by 2017.³² The process for transitioning to the new senior executive arrangements was incorporated in the transitional provisions in the GSE Act. The PSC provided additional guidance to agencies to support the transition.

Comment

The Panel agrees that the band approach is consistent with the GSE Act's objectives, however a number of submissions and comments from a range of stakeholders raised concerns about the method of determination of bands, the possibly unintended consequence of the system which might prevent or mitigate against flexibility and mobility where executives are essentially offered less attractive roles or similar or reduced remuneration to move within the band.

Senior Executive for NSW Health, Transport and Police Force

As noted in Chapter 4.3, further alignment of sector wide executive employment arrangements was achieved with the commencement of Schedule 2 of the **GSELA Act** for the Health Service (on 1 January 2017), Schedule 4 for the Transport Service on 1 July 2017, and Schedule 3 for the NSW Police Force on 31 October 2017.³³

Senior executive mobility

The proportion of senior executive mobility increased from 2.1% in 2014 to 4.0% in 2020.³⁴ The alignment of provisions within the GSE Act may be an important factor supporting this increased movement of executives across agencies. Employee experience of senior leadership from 2016 when it was first measured in the PMES Senior Leadership Index has increased by 3.0%.³⁵

NSW Leadership Academy

The PSC established the NSW Leadership Academy in 2014 and it continues to promote excellence in leadership by enhancing the skills and capabilities of existing and emerging leaders through a unique suite of development programs.

Best practice from public and private sectors around the world is intended to be incorporated in each program, targeting the specific capabilities required to succeed at the next level of leadership, while providing bespoke support to maximise an individual's professional development. The Leadership Academy programs are designed to create a pipeline of future leaders who can inspire others and lead with purpose to take on our State's challenges and make an impact for the citizens of NSW.

In addition to the Leadership Academy programs, a range of leadership development courses are available for the NSW Public Sector including the PSC's Senior Executive Fundamentals

³² NSW Public Service Commission, *Public Service Commission Annual Report 2013-14* (Report, 2014).

³³ Ibid.

³⁴ NSW Public Service Commission, *Workforce Profile 2014 – 2020* <<https://www.psc.nsw.gov.au/reports---data/workforce-profile>>.

³⁵ NSW Public Service Commission, *People Matter Employee Survey 2016 – 2019* <<https://www.psc.nsw.gov.au/reports---data/people-matter-employee-survey/previous-surveys>>.

Program.³⁶ Executive Fellows Program and Executive Master of Public Administration, both delivered by the Australia and New Zealand School of Government (**ANZOG**), and the Public Sector Management Program delivered through the Queensland University of Technology.³⁷

Comment

Noting the Premier's Priority to create a world-class public sector, the Leadership Academy may have a very significant role and should be focus of considerable attention and support.

The Panel supports the PSC's Leadership Academy initiative and notes that success was achieved with previous tertiary level support through the Graduate School of Government delivered by the University of Sydney. Development of the Leadership Academy may be enhanced by the identification of clear set of objectives and measures to establish what is world-class in public service and what achievements the Academy provides.

The Panel believes the PSC should take the lead in requiring agencies to report on professional development activities and investment within their agencies and should analyse, benchmark and report on such activities. This is particularly desirable in the development of skills and innovation in digital delivery of services and cyber security.

6.4 Merit-based employment and capability

A highly capable government sector workforce, recruited on merit, is essential to delivering for the people of NSW.

Recruitment

Growing the sector's capabilities means recruiting the right people to deliver a world-class public service. Recruitment is an important, high-volume activity for the sector, which is the largest employer in Australia. In 2019, nearly half a million applications were submitted through the *I Work for NSW* recruitment system. The system hosted around 22,000 job advertisements and 32,000 job openings in 2019, the highest annual numbers ever. Around 24,000 applicants won a job in the NSW public sector in 2019.³⁸

Enhancing the application of merit was a key objective of GSE reforms. The GSE Act established new rules and procedures for merit-based recruitment across the NSW public service. The recruitment reforms in the NSW Public Service have resulted in significant changes to the recruitment methods and practices of agencies in a reasonably short time frame.

In 2013, the PSC undertook a comprehensive review of existing sector recruitment practices and global best practice. The review found that existing practices favoured internal applicants with subject matter expertise and created a barrier to people joining the sector from outside, limiting infusion of new ideas and people. It also found that including capability based assessments in recruitment processes produced better recruitment outcomes, and that the existing practice of selection criteria, interview and referee checks was towards the lower end of return on investment in recruitment decisions. The recommendations from this work were the basis for GSE Rules on merit, recruitment and mobility, creating a principles-based approach to recruitment and merit which promotes the use of capability-based assessments.³⁹

The rules set minimum assessment requirements for temporary and ongoing employment, with temporary employment requiring less assessment than ongoing. All ongoing opportunities are to be advertised on the *I Work for NSW* website to ensure potential candidates from outside of the sector have access to opportunities and to encourage skills transfer between different sectors.

³⁶ See NSW Public Service Commission, *Senior Executive Fundamentals Program* <<https://www.psc.nsw.gov.au/senior-executive-fundamentals>>.

³⁷ See NSW Public Service Commission, *Leadership Academy* <<https://leadershipacademy.nsw.gov.au>>.

³⁸ NSW Public Service Commission, *State of the Public Sector Report 2019* (2019) 59.

³⁹ NSW Public Service Commission, *Public Service Commission Annual Report 2015-16* (Report, 2016) 23.

The GSE Rules also introduced the concept of talent pools. PSC developed the first talent pools for use by any agency in the sector, comprising applicants assessed against the requirements of the most frequently advertised roles. Talent pools were made available to agencies to support them to employ a suitable person without the need for separate advertising and assessment.

The Commissioner introduced further reforms to recruitment processes through amendments to the *Government Sector Employment Rules 2014* which came into effect on 2 September 2019. These amendments simplified the assessment processes and improved the operation of talent pools. In March 2020, responding to the COVID-19 pandemic, the Commissioner urgently amended the GSE Rules to enable extensions of term and temporary employment so that the sector could mobilise resources faster to deal with the pandemic. Each of these rule changes involved consultation with government sector agencies and public sector unions and demonstrate the exercise of the rule making power of the Commissioner in a manner consistent with the legislative scheme.

The Briggs Report found that the GSE Act reforms are generally regarded as a success by agencies, in that they have delivered high quality recruits and can result in shorter time to hire when applied effectively.⁴⁰

The average time to hire has reduced from 69.8 days in 2015 to 42.7 days in 2019.⁴¹

From July 2019 to February 2020, the average days to hire from the Public Service talent pools was 8. This is incredibly positive compared with sector average of 41.5 days for single-opening recruitment activities.⁴²

Public sector capability

In 2013, the PSC launched NSW Public Sector Capability Framework which is a foundational tool that supports the public sector to attract, recruit, develop and retain a responsive and capable workforce. The Framework was refreshed in 2020 to reflect changes in public sector work and service delivery models. To complement the Capability Framework, a number of sector-wide occupation specific sets have been developed including those for Finance, Legal, Human Resources, Procurement and ICT.

The Briggs Report found that the Capability Framework has given discipline to assessment and established a service-wide assessment framework that was sorely needed in the NSW public service. For the first time, job applicants have a clear understanding of what capabilities are required to get a job in the public service, irrespective of agency. Through cluster deep dives and Secretary interviews, the Briggs Report found that the Capability Framework, with thoughtful review of experience and knowledge, has delivered better quality recruits, noting that aspects of implementation could be improved.⁴³

Digital capability

The allocation of funding to priority digital transformation projects continues to provide government sector employees with opportunities to utilise technologies and adopt new approaches to working.

The Panel understands that PSC and the Department of Customer Service (**DCS**) are developing learning content and learning pathways that will uplift digital capability. Learning will be delivered via a digital platform available anywhere, anytime. A trial of the platform will be run for 5,000 users in DCS commencing in April 2021. Evaluation of the trial will inform plans to scale use of the platform across the sector.

⁴⁰ Lynelle Briggs AO, *Review of the NSW Public Service Recruitment Reforms*, (June 2018) 5.

⁴¹ NSW Public Service Commission, *Workforce Profile Report 2019*, (2019) 52. The length of time from when a candidate completes their application to when they are hired. Excludes all recruitment activity for Health cluster and 2017+ activity for the Industry cluster; 2020 data not available.

⁴² NSW Public Service Commission, *State of the Public Sector Report 2018* (2018).

⁴³ *Ibid* 18.

Cyber security is an increasingly critical capability for the public sector and business across the community as digital service delivery and day to day operations become ever more technology dependant. Continual investment in the skills and capability of the sector in this area is essential to an effective, credible and high performing public sector.

6.5 Ethical conduct

Ethical framework

As noted in Chapter 5, the government sector's ethical framework is established under Part 2 of the GSE Act. It includes the government sector core values and principles that guide their implementation.

The Public Service Commissioner is responsible for promoting and maintaining these values as well as for leading the strategic development and management of the government sector workforce in relation to general conduct and compliance with ethical practices.⁴⁴

Agency heads are responsible for the ethical conduct and management of their agencies in accordance with the government sector core values.

Ethics policies and guidelines

To support the ethical framework the Public Service Commissioner issued the following:

- *Direction 1 of 2014*: required government sector agencies to implement the *Managing gifts and benefits minimum standards* by 1 September 2015
- *Direction 1 of 2015*: required government sector agencies (except NSW Health Service) to implement the *Code of Ethics and Conduct* for NSW government sector on and from 1 September 2015 and to require employees to comply with it. The *Code of Ethics and Conduct* sets mandatory requirements and best practice conduct for government sector employees
- *Behaving Ethically: A guide for NSW government sector employees* (2015): assists employees to understand their ethical obligations.

Following the finalisation and publication of the *Behaving Ethically* guide, in the period of 2014-15, the Commissioner conducted 35 *Behaving Ethically* regional and metropolitan briefings around NSW, as well as holding the first Ethics and Leadership Conference, held in May 2015.

At the time of writing the PSC had conducted a scoping exercise to determine whether any changes should be made to the *Code of Ethics and Conduct* or to the *Behaving Ethically* guide. In doing so, the PSC had engaged with the relevant integrity agencies and no fundamental concerns were identified with these resources. Nevertheless, in the People Matter Employee Survey, approximately one quarter of those who responded said they had witnessed misconduct or wrongdoing at work and this may indicate a need for some effort to bring the ethical framework to greater prominence.⁴⁵

6.6 Diversity

Under the GSE Act, Agency heads are responsible for workforce diversity within the agency and for ensuring that workforce diversity is integrated into workforce planning in the agency (section 63).

The GSE Act also confers a function on the Public Service Commissioner of leading the strategic development and management of the government sector workforce in relation to workforce management, including equity and diversity strategies to ensure our workplace

⁴⁴ See NSW Public Service Commission resources for government sector employers at <<https://www.psc.nsw.gov.au/employment-portal/culture-and-ethics/ethics-and-conduct/ethics-conduct>>.

⁴⁵ NSW Public Service Commission, *People Matter Employee Survey 2016 – 2019* <<https://www.psc.nsw.gov.au/reports---data/people-matter-employee-survey/previous-surveys>>.

reflects the wider community (section 11(1)(b)). The Commissioner is also to provide periodic reports on workforce diversity across government sector agencies (section 63).

Government sector workforce diversity has been supported through a range of measures including resources published on the PSC website and awareness campaigns. The Age of Inclusion campaign, for example, focuses on improving outcomes for people with disability. The PSC has published two Aboriginal Employment Strategies (2014-17 and 2019-25) and is currently working on a key deliverable to deliver training program to develop a culturally capable and trauma-informed public sector workforce. The establishment of the Pride in NSW Program is gaining momentum since its commencement in early 2020. A number of reports on gender equity have been produced, including Advancing Women: Increasing the participation of women in senior roles in the NSW public sector.

The Workforce Profile shows varying levels of progress against the Premier's Priority workforce diversity targets. The representation of women in senior leadership has increased from 33.4% in 2014 to 41.1% in 2020 and will require a recruitment rate of 6/10 to achieve gender parity by 2025. There has been a modest increase in the Aboriginal and Torres Strait Islander representation from 2.9% in 2014 to 3.5% in 2019. Aboriginal senior leaders have increased from 57 in 2014 to 105 in 2020 and this diversity measure is on track to reach the target of 114. There is varying success in achievement against the 3% Aboriginal and Torres Strait Islander representation target at each non-Executive grade in the Aboriginal Employment Strategy, with representation at higher grades below target. The representation of people with a disability in the sector in 2020 is 2.4%, well below the target of 5.6%.

6.7 Role of the Public Service Commissioner and the Advisory Board

Public Service Commissioner

The role and functions of the Public Service Commissioner are set out in the GSE Act and described in other Chapters of this Report, as is the Commissioner's significant role in implementing the recommendations of the Schott Report.

More recently, the Commissioner has taken responsibility for driving the Premier's Priority of a World Class Public Service by building best practice models for workforce management and driving their implementation at the NSW public sector, cluster and agency levels. These include *Flexible working in the NSW Government*, the *Strategic Workforce Planning Framework*, the *Aboriginal Employment Strategy 2019-25* and *The Age of Inclusion* concerning creating an inclusive workplace for people with disability managing people with disability inclusively.⁴⁶ Through whole-of-sector reporting, the PSC provides a regular and clear assessment of how the NSW public sector is progressing in its uptake of these models.

The role of a Public Service Commissioner is now common across Australian jurisdictions as an appropriate mechanism to lead design and implementation of workforce management strategies and reform to ensure the capability of the public sector workforce to deliver high quality public services.

Public Service Commission Advisory Board

In 2019 the Independent Review of the Australian Public Service led by Mr David Thodey AO (**APS Review**), recommended that an Advisory Board be established to support the APS Commissioner best discharge the significant responsibilities of the position. The APS Review recommended that to preserve the APS Commissioner's independence, the Board should support and advise, but in no way direct, the Commissioner. The APS Review noted that the

⁴⁶ See NSW Public Service Commission website <<http://www.psc.nsw.gov.au>>.

NSW Public Service Commission Advisory Board demonstrates how such an arrangement can work in practice.⁴⁷

General observations

In the State of the Public Sector Report 2017 the then Commissioner noted:

“Six years ago, the picture that Dr Kerry Schott painted (in the Commission of Audit) of the sector’s approach to workforce management as one where our key asset – our people – was not at the centre of our agencies’ approaches to managing their respective businesses. We have made very significant progress in turning that situation around, and we’ve done that in a large and very complex system.”⁴⁸

The Panel’s consultations suggest that this progress has continued noting that some stakeholders have raised concerns with certain provisions of the GSE Act and their implementation.

In 2020, NSW has faced its most challenging year in living memory. The COVID-19 pandemic and the responses that have been necessary have placed enormous stress on the community but also on the public sector. The sector has risen to that challenge, responding strongly in the community’s time of need. This does not mean that the legislative underpinnings of the GSE Act are perfect, but it may suggest that they have some solid foundations, continuing to provide an appropriate legal framework for the NSW government sector to do its vital work.

⁴⁷ Commonwealth of Australia, *Our Public Service Our Future – Independent Review of the Australian Public Service*, (2019) 285.

⁴⁸ NSW Public Service Commission, *State of the Public Sector Report 2017* (2017) <<https://www.psc.nsw.gov.au/reports---data/state-of-the-nsw-public-sector/previous-editions/state-of-the-sector-2017/foreword>>.

7. Implementation of the Schott Report Recommendations

Introduction

The NSW Commission of Audit (**CoA**) was tasked by the NSW Government to:

- explain the current situation with regard to financial, people and asset management across the NSW public sector
- describe what excellence in these fields might look like
- provide recommendations on how to move the NSW Government and the NSW public sector to a stronger position to manage these issues.

The Schott Report was released in February 2012 and made 52 recommendations suggesting action for either the NSW Government, NSW government sector central agencies or the PSC.

7.1 Structure of Government Sector- Recommendations for reform

The Schott Report recommended that immediate priority be given to “fixing the structures of Government”. The Schott Report noted that government services were then being provided by about 322,400 full time equivalent employees (**FTEs**) working in around 4,400 government entities. The structure of such a large diverse service organisation needed to have clearly defined roles, responsibilities and regular performance checks. The structure also needed to allow flexibility to cope with societal change. New entities need to be created easily and redundant ones merged or retired from time to time.⁴⁹

The Commissioner made it an early priority to examine the structure and management arrangements for the sector’s senior executive. The Commissioner was assisted in this work by a group of eminent former public sector leaders and the PSC Advisory Board. The work was necessary as the form and functions of the Senior Executive Service (**SES**) had not been comprehensively reviewed since 1988. The analysis covered almost 3,900 positions, comprising a subset of the executive positions in the sector that had a base salary at least equivalent to that of a Senior Officer 1, which at the time of the analysis was \$136,651. Positions outside the scope of the analysis included some specialist occupation groups, judicial officers and executives of State-owned corporations.

The results of the analysis demonstrated why reform was needed. It established a single picture of the sector’s executive for the first time, and showed that it was not structured for optimal performance. Organisational structures had tended to be designed based purely on local and internal considerations rather than taking whole-of-sector factors into account. The structures were highly variable, including the number of executives and management layers, spans of control, classification levels and naming conventions for executive positions.⁵⁰

Introduction of GSE Act and new government sector structure

As discussed in Chapter 5.2, the GSE Act provides a new streamlined framework directed at the government sector, and in particular, the Public Service as a whole and senior executives across the government sector.

Machinery of government changes

Since introduction of the GSE Act, the NSW Government has further streamlined the structure and operation of the Public Service. Decisions in relation to the grouping of Public Service agencies and their responsible Minister/s are made at the most senior levels of Government,

⁴⁹ NSW Commission of Audit, *Interim Report: Public Sector Management* (Interim Report, 2012) 11.

⁵⁰ NSW Public Service Commission, *State of the NSW Public Sector Report 2013* (2013) 17.

and then implemented through changes to Sch.1 to the GSE Act through Administrative Arrangements Orders and other legislative amendment.

On 1 July 2019, the number of Departments was streamlined from ten to eight.⁵¹ The Department of Premier and Cabinet (**DPC**) announcement of the machinery of government changes noted that

“[w]hile there have been significant achievements over the past eight years, the government now requires us to have an even greater focus in areas such as social reforms and regional NSW. By following a people-first approach, aligning our resources with the government priorities and streamlining how we operate, we are able to deliver better services for the benefit of all our citizens.”⁵²

The DPC Machinery of Government webpage⁵³ described the eight new Departments and their cluster areas of responsibility as follows:

- **Premier and Cabinet:** leads the NSW public sector to deliver on the NSW Government’s commitments and priorities;
- **Treasury:** takes the lead on the economy, jobs and investment;
- **Customer Service:** plans, prioritises, funds and drives digital transformation and customer service across every cluster in the NSW Government;
- **Planning, Industry and Environment:** brings together the functions from the former Planning & Environment and Industry clusters;
- **Transport:** continues to evolve through further streamlining and integration across all modes of transport;
- **Health:** focuses on providing quality healthcare and continuing with hospital expansion and renewal capital works program;
- **Education:** drives early childhood, primary, secondary and all tertiary education – vocational, university, skills and lifelong learning;
- **Stronger Communities:** brings together the former Family and Communities and Justice clusters.

An additional Department, Regional NSW, was added to Part 1, Sch.1 to the GSE Act in April 2020.⁵⁴

Change is a constant in the public sector, as it continually evolves to better deliver for citizens. Despite the uncertainty this creates for some in the sector, employee engagement increased in 2019 to 65.7%, the highest it has been since the People Matter Employee Survey (**People Matter survey**) commenced in 2012.⁵⁵

7.2 Accountability and performance of the sector

Westminster System and GSE Act’s Ethical framework for the government sector

One focus of the GSE Act reforms and the work of the PSC has been on ensuring the NSW public sector has the structures and culture appropriate to a modern service operating in a Westminster system of government. Under Westminster system principles, staff employed in the NSW government sector serve the people of the State by implementing the policies, decisions

⁵¹ See *Administrative Arrangements (Administrative Changes—Public Service Agencies) Order 2019* which commenced on 1 July 2019.

⁵² Department of Premier and Cabinet, *Machinery of Government* <<https://www.dpc.nsw.gov.au/tools-and-resources/machinery-of-government/>> (Accessed 30 October 2020).

⁵³ Ibid.

⁵⁴ *Administrative Arrangements (Administrative Changes – Regional NSW and Independent Planning Commission) Order 2020* (NSW).

⁵⁵ NSW Public Service Commission, *State of the Sector Report 2019* (2019) 2.

and programs of the Government of the day, and providing apolitical, non-partisan advice to Ministers.⁵⁶

As noted in Chapter 4.2, the GSE Act recognises Westminster System principles by providing a clear *Ethical framework for the government sector* (set out in Part 2 of the GSE Act).

Relevant principles guiding the government sector core values include “place the public interest over personal interest” (integrity), “uphold the law, institutions of government and democratic principles” (trust), and “provide apolitical and non-partisan advice” (trust) (s.7).

Another key feature of the Westminster system is the recruitment and appointment of employees on merit which is discussed in other Chapters.

The *Ethical framework for the government sector* is embedded through the *Code of Ethics and Conduct for the NSW Government sector*,⁵⁷ agency Codes of Practice, induction training and ongoing training programs supported by the PSC.

Premier’s and Ministerial priorities

The Premier and Responsible Ministers set the Government’s required priorities for the Government sector through a range of measures, including:

- The Premier’s Priorities.⁵⁸
- Responsible Ministers send their Secretaries and Agency Heads an annual Charter Letter setting out the Government’s required priorities for the coming year.
- Each cluster reports progress against Cabinet-endorsed State Outcomes through Outcome Budgeting processes.
- Each agency develops and publishes an annual Business Plan to achieve Premier’s Priorities, State Outcomes and Ministerial priorities allocated to it.
- By convention and under the NSW Cabinet Practice Manual, all significant matters affecting the Government as a whole require Cabinet consideration.⁵⁹

Some of these accountability measures are discussed in more detail below.

Premier’s Priorities

In 2019, the Premier released 14 Premier’s Priorities which aim to enhance the quality of life of the people of NSW.⁶⁰ Each priority has an ambitious target and has been set with the purpose of delivering on government’s key policy priorities, being:

- a strong economy
- highest quality education
- well-connected communities with quality local environments
- putting customer at the centre of everything we do
- breaking the cycle of disadvantage.

⁵⁶ See NSW Public Service Commission, *Behaving Ethically* <<https://www.psc.nsw.gov.au/workplace-culture--diversity/workplace-culture/behaving-ethically/behaving-ethically>>.

⁵⁷ NSW Public Service Commission, *Our Code of Ethics and Conduct* <https://www.psc.nsw.gov.au/about-us/our-code-of-ethics-and-conduct>.

⁵⁸ NSW Government, *Premier’s Priorities* <<https://www.nsw.gov.au/premiers-priorities>>.

⁵⁹ Department of Premier and Cabinet, *Cabinet Practice Manual* <<https://www.dpc.nsw.gov.au/tools-and-resources/cabinet-practice-manual/>>.

⁶⁰ See NSW Government, *Premier’s Priorities* <<https://www.nsw.gov.au/premiers-priorities>>. Prior to the introduction of the Premier’s Priorities in September 2015, the NSW Government’s State Plans directed the activities of the NSW public sector, set priorities for action and guided resource allocation – see e.g. A plan to make NSW number one NSW 2021 (NSW 2021), released in 2011.

The Premier's Priorities provide targets for the work of Government agencies in key areas, including education outcomes for children, Aboriginal young people, vulnerable children, domestic violence, homelessness, improving service levels in health care and mental health, greener public spaces, Government made easy, and World Class public service. Further information on each Priority and progress against targets is published by the Government.⁶¹

State Outcomes

The NSW Government introduced State Outcome Budgeting for the government sector in late 2018.⁶² State Outcomes identify the primary purpose for which Budget funding is being expended and explain to the public the goals the Government is seeking to achieve for its citizens.⁶³ Ministers are responsible for the State Outcomes associated with their respective cluster or agency/ies.⁶⁴ Clusters are required to develop State Outcomes for endorsement at Cabinet level. Clusters also identify Outcome Indicators, Performance Measures, Programs and Program Groups for each endorsed State Outcome, with Regional Breakdowns. The government sector reports against State Outcomes using a common framework that covers total budget spend and tracks progress in managing and delivering State Outcomes. Features of the new budgeting processes include citizen perspective, outcome focus, performance informed decisions and systemic reviews.⁶⁵

Legislative compliance frameworks

Various legislative frameworks support accountability in the delivery of Government services and operation of Government:

- Agencies are required to deliver their services and work programs in accordance with applicable legislation and policy.
- Ministers, Agencies and their staff have responsibilities and powers in relation to financial management under the *Government Sector Finance Act 2018* (GSF Act).
- Agencies report their achievements and work programs through Annual Reports presented to responsible Ministers and tabled in both Houses of Parliament.⁶⁶
- Various agencies and independent statutory office holders monitor and oversee performance by Government agencies, for example the Auditor General, Ombudsman, and ICAC.
- Productivity growth and reform in delivery of government services is monitored by the NSW Productivity Commission.⁶⁷
- Access is provided to Government information under the *Government Information (Public Access) Act 2009*.

⁶¹ See NSW Government, *Premier's Priorities* <<https://www.nsw.gov.au/premiers-priorities>> (accessed 4 November 2020).

⁶² See NSW Treasury, *NSW Treasury Circular TPP18-09 Outcome Budgeting Policy and Guidelines Paper* (December 2018).

⁶³ See NSW Government, *Outcome Budgeting* <<https://www.budget.nsw.gov.au/budget-detail/outcome-budgeting>> .

⁶⁴ NSW Treasury, *NSW Treasury Circular TPP18-09 Outcome Budgeting Policy and Guidelines Paper* (December 2018) 7.

⁶⁵ See NSW Treasury, *NSW Treasury Circular TPP18-09 Outcome Budgeting Policy and Guidelines Paper* (December 2018) 1.

⁶⁶ Under the *Annual Reports (Departments) Act 1985* (NSW) and *Annual Reports (Statutory Bodies) Act 1984* (NSW).

⁶⁷ NSW Government, *Commissioner for Productivity* <<http://productivity.nsw.gov.au/>> (accessed 1 November 2020).

Performance of the sector

The GSE Act requires the Commissioner to annually report on the State of the government sector, and to include an assessment of the performance of the whole of the government sector, including notable achievements, challenges and priorities (section 15(2)(a)). The SOPSR is discussed in further detail in Chapter 6.1 of this Report, under the subheading “Sources of information”.

7.3 How management of people should be

The Schott Report noted that the PSC was established “to recreate a NSW public sector which manifests capability, accountability, professionalism, initiative and customer service”.⁶⁸ The CoA noted six key requirements that are usually observed if people management is excellent, or near that end of the scale:

- Knowledge of your organisation’s role and its values
- A clear understanding of the job
- Honest feedback on your performance
- Workforce planning that considers new entrants, retirements, skills, personal training and development that is job-related
- Widespread and honest reporting (exits, entrants, safety performance, sick leave, annual leave)
- Recognition of the importance of people in achieving objectives, meeting agreed values and culture.

7.4 Appointment and conditions of PSSEs and Agency Heads

A critical area of reform has been the sector’s senior executive structure and appointment and management arrangements.

By section 39 of the GSE Act, all PSSEs are required to be employed under a written contract of employment. The GSE Rules prescribe the model contract of employment for all PSSEs, including Secretaries and other agency heads.⁶⁹ The model contract provisions are mandatory (with limited exceptions), and specify the nature of the engagement (ongoing or time limited), the band in which the executive is employed, remuneration, leave, performance obligations, and other conditions.

As noted earlier, the GSE Act provides a uniform band and remuneration structure for senior executives. Senior executive roles are assigned to a band based on work level standards.⁷⁰

Section 40 of the GSE Act requires that PSSE remuneration packages must be within the range determined under the *Statutory and Other Offices Remuneration Act 1975 (SOOR Act)* for the band in which the executive is employed.⁷¹ This requirement also applies to Secretaries of a Department and the head of any other Public Service agency if the head is an employee and not a statutory officer. The Statutory and Other Offices Remuneration Tribunal (**SOORT**) makes and publishes annual determinations of remuneration packages for PSSEs and other Offices on and from 1 July each year.⁷²

⁶⁸ NSW Commission of Audit, *Interim Report: Public Sector Management* (Interim Report, 2012) 67.

⁶⁹ See *Government Sector Employment Act 2013* (NSW) s 39, *Government Sector Employment Rules 2014* (NSW) r 43, Sch 1 Model contract of employment for PSSEs, Sch 2 Model contract of employment for Secretaries of Departments and heads of other Public Service agencies GSE Rules.

⁷⁰ See NSW Public Service Commission, *Employment Portal: Senior Executive Work Level Standards* <<https://www.psc.nsw.gov.au/employment-portal/joining/senior-executives/work-level-standards>>.

⁷¹ The SOOR Act allows for a Minister to issue a direction to the SOORT requiring it to make a “special determination” as to whether certain nominated office holders should receive remuneration that is different from that prescribed for a particular band: section 14, SOOR Act. However, the SOORT is not obliged to make a determination prescribing higher remuneration.

⁷² See NSW Remuneration Tribunals, *Current SOORT Determinations* <<https://www.remtribunals.nsw.gov.au/statutory-and-other-offices/current-soort-determinations>>.

7.5 Performance management

The Schott Report identified a number of key challenges across the sector at the time of the review, including performance management and management of poor performance.⁷³ The NSW public sector has long been required to implement performance management systems. However, for a range of reasons (not all unique to the public sector) it struggled to maintain these systems.

The Schott Report recommended “that the Public Service Commission should:

- develop a program to promote the importance of performance management, set minimum standards and encourage each supervisor to understand that performance management, especially conducting appraisals, is an integral part of their job.
- develop clear and effective mechanisms and guidance to managers to address poor performance
- investigate mechanisms to provide remuneration and/or other incentives to high performers, including greater use of broad banded positions and the introduction of a small component of ‘at risk’ pay for executives.”⁷⁴

Progress against these recommendations has been made both through the enactment of the GSE Act and ongoing work in relation to sector performance management and development frameworks and systems. As noted in an early SOPS Report:

“the GSE Act is intended to provide a foundation for an innovative, professional, capable, diverse and accountable government sector that encourages and recognises performance, delivers better front-line services for local communities, and creates a competitive landscape for investors, economic growth and job creation in NSW.”⁷⁵

Agency performance management systems

Section 67 of the GSE Act requires the head of a government sector agency to develop and implement a performance management system for the agency’s employees. The GSE Act enables the GSE Rules to deal with the core requirements of any such performance management systems, and agencies have the flexibility to develop their own systems to meet those requirements.

Performance Development Framework for the government sector

The GSE Act also gives the Commissioner the function of leading the strategic development and management of the government sector workforce in relation to performance management and recognition (section 11(1)(b)).

The PSC developed a Performance Development Framework for agency performance development systems, which was recently revised in consultation with the sector in September 2018.⁷⁶ The Performance Development Framework contains the essential elements and mandatory guidelines for agency performance development systems and sets the approach for managing all aspects of employee performance in the NSW public sector. GSE Rule 35 and the Performance Development Framework set the following core requirements:

- Set and clarify expectations for employees
- Guide and review employee performance
- Develop employee capability

⁷³ NSW Public Service Commission, *State of the Public Sector Report 2013* (2013) 15.

⁷⁴ NSW Commission of Audit, *Interim Report: Public Sector Management* (Interim Report, 2012) 96.

⁷⁵ NSW Public Service Commission, *State of the Public Sector Report 2013* (2013) 14.

⁷⁶ NSW Public Service Commission, *Performance Development Framework* <<https://www.psc.nsw.gov.au/workforce-management/performance-development/performance-development-framework>> (accessed 5 November 2020).

- Recognise employee achievements
- Improve employee performance
- Resolve unsatisfactory performance
- Evaluate and strengthen practices.

The GSE Act and the consistent application of the Performance Development Framework are intended to result in agencies placing more emphasis on good performance management practice, and better appreciating why this matters.

A significant driver of performance is an employee's understanding of what is expected of them in the role and how the work they undertake relates to the organisation's objectives. Effective performance management helps build that understanding and align the employee's performance with those objectives so they can make a positive contribution to the organisation.

PSSEs

At the senior executive level, all PSSEs, Secretaries and other Agency Heads must enter into a performance agreement with their employer and have their performance reviewed at least annually.⁷⁷ If a PSSE, Secretary or other Agency Head meets the performance requirements under the agency's performance management system, the senior executive's total remuneration package may be increased within the range of remuneration applicable to the senior executive's assigned role. Such increase is at the discretion of the employer and is not an entitlement.⁷⁸

Managing poor performance

In cases of poor performance, the GSE Act requires government sector agencies to follow the procedural requirements in the GSE Rules to ensure employee performance is addressed fairly, transparently, appropriately and promptly (see GSE Rule 36). If performance is then determined to be unsatisfactory in accordance with the GSE Rules, the Head of a Public Service agency / person exercising employer functions may terminate the employment of a PSSE or Public Service non-executive employee on the grounds of unsatisfactory performance (sections 47(1)(c), 68).

Recognising employee achievements

The Premier's Awards for Public Service recognise outstanding performance and achievements in the delivery of public services to the NSW community by the public sector, not-for-profit organisations and private businesses.⁷⁹

The Premier's Awards for Public Service are comprised of nominations in seven categories, which recognise the broad spectrum of work delivered across the sector broadly aligning with the government's priorities. The Anthea Kerr Award is a standalone award within the NSW Premier's Awards for Public Service. It recognises future public sector leaders who are under 35 years of age. The winner of the Anthea Kerr Award receives an individually customised professional development program to assist them in accelerating their career. The NSW Public Servant of the Year Award is another standalone award within the NSW Premier's Awards

⁷⁷ *Government Sector Employment Rules 2014* (NSW) r 49, see also *Government Sector Employment Rules 2014* (NSW) Sch1 Model contract of employment for PSSEs, cl 9.1, *Government Sector Employment Rules 2014* (NSW) Sch 2 Model contract of employment for Secretaries of Departments and heads of other Public Service agencies cl 8.1.

⁷⁸ *Government Sector Employment Rules 2014* (NSW) Sch 1 Model contract of employment for PSSEs, cl 12.1, Sch 2 Model contract of employment for Secretaries of Departments and heads of other Public Service agencies cl 11.1.

⁷⁹ Details of the Premier's Awards are published on a separate website, <<https://premiersawards.nsw.gov.au/>>, which is managed by the PSC.

for Public Service. It recognises the exemplary work and outstanding leadership from an individual in the NSW public sector.⁸⁰

7.6 Mobility

The Schott Report noted that mobility was another challenge for the sector, and recommended “that the Government should agree to the development of mechanisms to decouple positions from a narrow classification and appoint employees where appropriate to a substantive remuneration band level, to provide greater flexibility in staff deployment within an agency or cluster”.⁸¹

These recommendations were agreed and implemented through the GSE Act. PSSEs may be assigned to a role in any Public Service agency in the band in which they are employed and any non-executive employees may be assigned to a role within the Public Service agency in the classification of work in which they are employed, rather than owning a fixed position (sections 38, 46). PSSEs and non-executive employees may be assigned to roles to enable the flexible deployment of staff resources and to develop the capability and experience of staff.

The GSE Rules establish minimum assessment requirements for recruitment into the sector and for subsequent moves around the sector. The provisions are designed to require high bar of assessment for entry into the sector, and a lower bar of assessment for subsequent mobility around the sector at the same classification of work or band. Assessment for entry into the sector requires advertising and assessment against core capabilities. Subsequent moves with an agency or between agencies at the same grade can be made on the basis that the receiving agency is satisfied the employee has the capability to perform the role – no additional formal assessments are mandated by the GSE Act framework.

The GSE Act provides a variety of mobility pathways, including assignment, temporary assignment, transfer or secondment for PSSE and non-executive employees within their agency, between Public Service and government sector agencies and more broadly to the non-government sector. The Commissioner has the function of leading the strategic development and management of the government sector workforce in relation to staff mobility (section 11(1)(b)). PSC provides guidelines and guidance to the sector to support mobility,⁸² and an increasing number of agencies have mobility strategies.⁸³

A mobile workforce enables agencies to deploy people to the areas where they are most needed to deliver high-priority services. Mobility also gives employees opportunities to broaden their range of experience, acquire a wider range of capabilities, enhance their own career options and prospects, and, if they so choose, develop into well-rounded future leaders. The concept of a mobile workforce is relevant to most if not all of the drivers of high performance referenced in this Report, and has a particular impact on productivity.

Employee mobility is widely regarded as one of the best ways to develop leadership capability, provide enriching careers, and build and retain capability and ‘know-how’ in an agency and the sector more broadly. Exploring new opportunities is part of the *I Work for NSW* Employee Value Proposition (which has received attention across jurisdictions due to its effectiveness).⁸⁴

⁸⁰ Premier’s Award Information Kit 2020.

⁸¹ NSW Commission of Audit, *Interim Report: Public Sector Management* (Interim Report, 2012) 82.

⁸² See e.g. Mobility Guideline: Transfer and Secondment, Assignment to Role Guideline and other guidance at <<https://www.psc.nsw.gov.au/employment-portal/fill-a-role/assignments-transfers-secondments>>.

⁸³ The State of the Sector Report 2015 found that the percentage of agencies with a documented mobility strategy has increased significantly from 28% to 61% since 2014. The number of agencies with a mature mobility strategy (19%) also increased in the past year, and 27% of agencies reported having a developed or highly developed program to promote mobility. Most of these current mobility strategies relate to opportunities within the same agency: NSW Public Service Commission, *State of the Public Sector Report 2015* (2015) 58.

⁸⁴ Commonwealth of Australia, *Our Public Service Our Future – Independent Review of the Australian Public Service* (2019) 212. See <<https://pmc.gov.au/resource-centre/government/independent-review-australian-public-service>>.

Despite the importance of mobility, it is estimated from Workforce Profile collection data that only 1.7% of employees (or 6,000 people) moved between agencies in 2019. Furthermore, more than 40% of respondents to the 2019 People Matter survey said they had been in the same role for five years or more. While more mobility is clearly needed, putting it into practice is not without its challenges. One challenge is the potential loss of experienced employees.⁸⁵

A significant factor in ensuring NSW Government can respond to the needs of its citizens during the COVID-19 pandemic has been transitioning the workforce to work remotely whilst also maintaining service delivery and business continuity. PSC in collaboration with the sector was able to rapidly re-deploy staff from across the sector to NSW Health to assist with the response to COVID-19, including contact tracing. The GSE Act enables this rapid movement.

7.7 Recruitment

The Schott Report noted that a second serious challenge for the public sector was recruitment, noting that position descriptions were long and bureaucratic, that recruitment processes were unwieldy and inefficient, and there was a focus on adhering to specified procedures rather than identifying and hiring the best person for the job. The CoA recommended that the PSC review clusters' recruitment processes, with a view to assisting them to maximise efficiencies through use of the e-Recruitment system and addressing any policy, legislative and cultural barriers to ensuring that the best person gets the job.⁸⁶

Significant progress has been made to improve public sector recruitment, including through:

- the recruitment and merit appointment provisions of the GSE Act discussed earlier
- launch of the new *I work for NSW* recruitment website for the sector⁸⁷ in 2015
- development of an overarching Employee Value Proposition for the NSW Government, to support the goal of being an employer of choice in Australia and attracting and retaining the best and brightest people to the NSW public sector⁸⁸
- development and further refinement of the NSW Public Sector Capability Framework and Recruitment and Selection guidance
- development of NSW Public Service talent pools, and
- development of NSW Graduate Program and Aboriginal Internships Program.

Some of these are discussed in more detail below.

Capability - NSW Public Sector Capability Framework

Capabilities are the transferable knowledge, skills and abilities relevant to a role.⁸⁹

The NSW Public Sector Capability Framework was developed in a response to the Schott Report which:

- noted that the rigour of a capability framework was necessary to address poor outcomes identified in workforce planning at that time, and that the potential value of a capability framework would only be realised through a systematic, integrated approach to its implementation in all aspects of workforce planning;
- recommended that the PSC provide further guidance and assistance to agencies in rolling out the Capability Framework; and that particular focus be given to using it to develop Plain English position descriptions; and
- highlighted the need for an agile, adaptable workforce so that roles could be quickly and easily filled as vacancies arose.⁹⁰

⁸⁵ NSW Public Service Commission, *Workforce Profile Report 2019* (2019) 65.

⁸⁶ NSW Commission of Audit, *Interim Report: Public Sector Management* (Interim Report, 2012) 97.

⁸⁷ See NSW Government, *iworkforNSW* <<https://iworkfor.nsw.gov.au/>>.

⁸⁸ See *ibid*.

⁸⁹ See NSW Public Service Commission, *The NSW Public Sector Capability Framework* <<https://www.psc.nsw.gov.au/workforce-management/capability-framework/the-capability-framework>> (accessed 5 November 2020).

⁹⁰ NSW Commission of Audit, *Interim Report: Public Sector Management* (Interim Report, 2012) 90-91.

- recommended that the PSC develop cross-sector strategies to meet existing and potential skills shortages in a range of areas including finance, IT, project management and management of third party contracts.⁹¹

The NSW Public Sector Capability Framework was issued in August 2013, shortly after the GSE Bill was passed and before commencement of the GSE Act, with the strong recommendation that agencies embed it across workforce management activities within a three-year period. It was intended to apply to all roles and was integrated into Guidelines for role descriptions, recruitment and mobility.

As well as introducing a new NSW Public Sector Capability Framework, the PSC responded to the Schott Report recommendations by:

- including a group of Business Enablers (Finance, Procurement & Contract Management, Procurement and Project Management) in the Capability Framework for application to all roles.
- developing a number of “occupation specific capability sets” to complement the Capability Framework for employees in corporate service functional areas including Finance, Procurement, Technology, Human Resources and Legal.
- adopting the well regarded Skills Framework for the Information Age (SFIA) as the capability set for ICT roles.

User research conducted in 2017-2019, including the Review of Sector Recruitment Reforms and the Capability Framework Stocktake, found that although the Capability Framework and its supporting resources were well accepted by agencies, the requirement to assess all 16/20 capabilities plus occupational capabilities in recruitment had not delivered the expected outcomes. The research found that there was a need to restore the balance between capabilities, knowledge and experience in recruitment. Some of the comments received in submissions to the GSE Act Review have touched on these issues.

The PSC has acted to correct these problems by:

- Amendments to the GSE Rules which came into effect on 2 September 2019, simplifying assessment processes by adding a definition for focus capabilities and making clear that the minimum requirement is for an assessment of focus capabilities, knowledge and experience, rather than an assessment of all the capabilities in the role description along with knowledge and experience; and
- Revisions to the Public Sector Capability Framework Role Description Development Guidelines and Template in February 2020, to give greater prominence to knowledge and experience requirements and to make the Business Enablers optional in the RD and recruitment.

Occupation Specific Capability Sets

Occupation specific capabilities describe specialised capabilities for professional, technical or trade-related roles. The occupation specific capability sets are designed to complement the NSW Public Sector Capability Framework to provide a fuller description of the capabilities required to perform in a professional role.⁹²

⁹¹ NSW Commission of Audit, *Interim Report: Public Sector Management* (Interim Report, 2012) 97-98, Recommendation 52.

⁹² NSW Public Service Commission, *Occupation Specific Capability Sets* <<https://www.psc.nsw.gov.au/workforce-management/capability-framework/occupation-specific-capability-sets>>.

These sets generally apply to roles above entry level but below agency head. This is because specialised knowledge, skills and abilities are rarely required for either entry level roles or agency head roles.⁹³ Occupation specific capability sets are available for the following professions:

- Finance
- Human Resources
- Information and Communications Technology (ICT)
- Infrastructure and Construction Project Leadership
- Legal
- Procurement.

Talent pools

NSW Government Talent Pools have been introduced to provide a time and cost effective way to recruit roles across the sector.⁹⁴ An initial evaluation of the talent pools has shown that the sector is slowly realising the benefits of using talent pools to fill roles (reduced time and cost), however, there is cultural resistance towards using the pools. Whilst uptake is slowly shifting, building trust takes time.

To address this, an uplift strategy was implemented by PSC in December 2019 which, in addition to removing the per hire fee as a pilot for FY19/20, included:

- the introduction of a new, cross sector working group, attended by agency recruitment leads.
- the rollout of a hiring manager and recruiter toolkit which includes an improved website with separate sections for recruiters and candidates, role personas, a step-by-step guide to using the pools and information about the candidate selection process.

NSW Government Graduate Program

In 2016, the PSC introduced a new whole-of-government graduate program. The NSW Government Graduate Program (**Program**) showcases the government sector's employee value proposition as the largest employer in Australia with a wide variety of roles and opportunities.

The growth of the Program from 2016 to 2019 as reported in the State of the Public Sector Report 2019 (**SOPSR**), as well as the PSC data for the 2020 and 2021 program is shown below as follows:

YEAR	APPLICATIONS RECEIVED	SUCCESSFUL PLACEMENTS
2016	1,218	25
2017	2,077	107
2018	2,809	168
2019	3,420	189
2020	3,937	182
2021	6,377	Not available at the time of writing

⁹³ Ibid.

⁹⁴ See Talent pools toolkit and guide for HR and hiring managers at NSW Public Service Commission, *Talent pools toolkit and guide* <<https://www.psc.nsw.gov.au/workforce-management/recruitment/nsw-public-service-talent-pools/information-for-recruiters/talent-pools-toolkit-and-guide/resources>>.

The SOPSR 2019⁹⁵ also notes:

- The Program continues to expand, with placements increasing from 25 in 2016 inaugural program to 189 in 2019, including 19 roles in the Central West and Hunter regions, with further expansion in 2020 to the North Coast (Coffs Harbour and Grafton) and New England (Tamworth and Armidale) regions, raising the total number of regional roles to 30.
- The mobility of graduates in the 2016 and 2017 intakes has been followed over time. Retention is high. Of those who completed the Program, 80% were still employed in the sector two years later.
- Program participants have also progressed rapidly in their careers since starting the program at Grades 3/4. Almost half (46%) of the 2016 and 2017 cohorts had moved to a role at least two grades higher one year after completing the program. By the two-year mark, 28% of the cohort had moved to a role that was at least three grades higher.
- The Program continues to repay the investment made by participating agencies. More than half (58%) of the continuing graduates from the 2016 and 2017 cohorts returned to their home agency after completing the Program. Over three-quarters (77%) are currently employed in an agency where they completed a rotation during the Program.
- Now in its fifth year, the Program is fourth place in the Australian Financial Review's Top 100 Graduate Employer's listing for the second consecutive year competing with both public and private sector organisations. The Program has also been awarded the Most Popular Government and Defence Employer in Australia for the third year running. The Program was also awarded the "Most Popular Integrated Marketing Campaign" for 2020 by the Australian Association of Graduate Employers.

Occupational Specific Stream – Legal Stream

- In response to a request from General Counsels across the public sector, the 2020 Program is piloting a new Legal Stream. The aim of the Legal Stream is to attract entry-level law graduates into NSW Government and provide them with exposure and development over 18 months so that they are ready to apply to be admitted as a solicitor and have a clear career pathway within NSW Government.

Internships

- The NSW Government has also introduced a Virtual Internship Program and an Aboriginal Internship Program. These internships provide early exposure and understanding of work in NSW Government while students are still completing their university degree and deciding on their future career.
- The Virtual Internship Program offers students an internship like experience while showcasing the breadth of opportunities available to graduates across NSW Government agencies. The Program offers virtual work modules in areas of policy, digital and data analysis with a legal work module launched in July 2020.
- The Aboriginal Internship Program commenced in November 2019 with 10 Aboriginal interns placed across NSW Government agencies. The Program supports Aboriginal students to complete their university studies and gain valuable on-the-job experience necessary to be competitive in the NSW Government Graduate Program.
- Work is underway to launch a Disability Internship Program in the 2020/21 financial year.

7.8 Capability of HR across sector

The Schott Report also identified the need to improve the capability of HR units so that the strategic issues around workforce planning and individual staff management and development can be handled professionally. The Schott Report recommended that the PSC formulate and implement a strategy to develop the capacity of Human Resource leaders and units across the sector.⁹⁶ Various actions have been taken to implement these recommendations.

⁹⁵ NSW Public Service Commission, *Workforce Profile Report 2019* (2019) 62.

⁹⁶ NSW Commission of Audit, *Interim Report: Public Sector Management* (Interim Report, 2012) 90 and Recommendation 48.

Community of Practice – Community of HR Professionals

The Community of Practice of HR Professionals was established in 2012. The PSC administers the Community of Practice for NSW public sector employees working in any area of HR. The Community of Practice of HR Professionals' mission is to position the HR profession as a key contributor in delivering business outcomes through best practice workforce management. It provides opportunities to connect HR professionals from across the NSW public sector as a forum where people can share ideas and experiences.⁹⁷

Human Resources Capability Set

The PSC has developed an occupation specific capability set designed to be used with the NSW Public Sector Capability Framework. The Human Resources Professionals Capability Set is comprised of seven capabilities that define additional knowledge, skills and abilities required for roles within the human resources profession. When used together, the Capability Framework and the Human Resources Professionals Capability Set provide a comprehensive description of the capabilities required for successful performance in a human resources role.⁹⁸

The Spark –Shaping a world-class HR

More recently, in 2020 the PSC released *The Spark –Shaping a world-class HR* program, designed for NSW Government HR leaders and practitioners to ensure the HR Community can support the transformation of the current and future NSW Government workforce to deliver a world class public service.⁹⁹ *The Spark—Shaping a world-class HR* program seeks to:

- Provide a new and innovative learning experience
- Align with global trends in HR and smarter ways of working in the NSW public sector
- Make a positive difference to what HR practitioners think and do
- Leverage, engage and invigorate the NSW public sector Community of Practice
- Align to the NSW PSC Human Resources Professionals Capability Set.

⁹⁷ NSW Government, Community of HR Professionals <<https://www.comprac.nsw.gov.au/Communities-of-Practice/hr-professionals>>.

⁹⁸ NSW Public Service Commission, *About the Human Resources Professionals Capability Set* <<https://www.psc.nsw.gov.au/workforce-management/capability-framework/occupation-specific-capability-sets/human-resources-capability-set/about-the-human-resources-professionals-capability-set/about-the-human-resources-professionals-capability-set>>.

⁹⁹ NSW Public Service Commission, *The Spark: Shaping a world-class HR* <<https://www.psc.nsw.gov.au/workforce-management/capability-framework/the-spark/the-spark-shaping-a-world-class-hr>>.

8. Review of GSE Act and GSE Act reforms 2018-2020

The PSC has commissioned a review of NSW Public Service recruitment reforms under the GSE Act and undertaken several internal reviews of the GSE Act over the past 3 years.

The Briggs Report was discussed in Chapter 4.1 and 5.4.

The PSC conducted an internal review of the GSE Act in 2019 in consultation with the Department of Premier and Cabinet. The PSC sought input for its review from all Public Service agencies as well as the Policy Force and, via their cluster Departments, the NSW Health Service, Transport Service and Teaching Service.

The Commissioner provided a draft *Review of the Government Sector Employment Act 2013* to the Premier and Minister in December 2019, which it updated with minor amendments in June 2020 (**PSC Report**).

The PSC Report found “the overarching conclusion of this Review is that the policy objectives of the Act remain valid and the terms of the Act remain appropriate for securing these objectives, but there is scope to make minor amendments to the Act to improve its operation”.

The PSC Report also found “that the terms of the Act remain broadly appropriate for securing the above objectives and that “Analysis of and consultation on the Act has not revealed significant concerns with its operation and it is not considered that substantial amendments to the Act are required.”

The PSC Report recommended the following amendments to the GSE Act:

1. Facilitate the flow of information to and from the Commissioner in relation to the exercise of the Commissioner’s functions under sections 16 (requiring agencies to provide reports and information) and 83 (the conduct of inquiries by the Commissioner) (**Recommendations 1 and 7**). The Privacy Commissioner has been consulted on and does not object to these proposed amendments.
2. Provide for the assignment of a Public Service employee to a lower band or classification of work, including from an executive band to a non-executive classification, only in situations where the relevant employee requests or consents to the assignment (**Recommendation 2**).
3. Clarify that the provisions in other legislation which exclude the operation of the Act or certain provisions of the Act do not exclude the operation of section 41(3) or section 78(7) of the Act unless those subsections are expressly excluded. Those provisions require that a person who has received compensation under section 41 for termination of employment or under section 78 for removal from statutory office must not be employed in the public sector during the period to which any such compensation relates, unless arrangements have been made for a refund of the proportionate amount of the compensation (**Recommendation 3**).
4. Clarify that appointment to a statutory office amounts to employment in the public sector for the purpose of the requirement to refund the proportionate amount of compensation received by a PSSE upon termination or a statutory officer upon removal under Part 6 of the Act (**Recommendation 4**).
5. Amend section 66, which provides for secondments of staff between government sector agencies and other relevant bodies, to allow for the secondment of a government sector employee to an international public authority or government agency (**Recommendation 5**).
6. Strengthen the requirements relating to the secondment of government sector agency employees to non-government sector bodies by:
 - a. requiring that the head of an agency must be satisfied that a secondment to a non-government sector body would allow the relevant secondee to acquire skills, knowledge and/or experience that would be beneficial for that agency on the secondee’s return; and
 - b. limiting any such secondment to two years in duration (consistent with the existing position in relation to secondments to a government sector agency under section 66 and secondments between government agencies under rule 31 of the *Government Sector Employment (General) Rules 2014* (**GSE Rules**) (**Recommendation 6**).

7. Correct several minor drafting errors in the Act, remove obsolete provisions and make other minor clarifying amendments (**Recommendation 8**).

These minor drafting amendments are set out at Appendix 1 to this current Report.

Comment

The Panel recognises the work and effort in preparing the PSC Report and supports most of the recommendations contained in it, as described below. The amendments would provide reasonable and useful enhancements to the operation of the provisions concerned. However, the Panel decided not to accept recommendation five in the PSC Report. Recommendation five was that section 66 should be amended to permit a government sector employee to be seconded to an international public authority or government agency. The Panel is concerned that this recommendation, if implemented, would raise issues as to whether and in what circumstances New South Wales government funds should be used for these purposes and whether, in current circumstances of a global pandemic, such an amendment would have any practical impact.

9. Key themes raised by stakeholders in consultations

In undertaking its Review, the Review Panel consulted various stakeholders (see Chapter 3.4 above). A number of submissions touched on issues concerning the regulations or the operation of the GSE Rules. Amendment to the GSE Rules is out of scope of this Review, however given the importance of feedback from stakeholders in relation to the public sector the issues raised are taken into consideration and subject to comment, or treated as a related matter.

Some submissions argued for the return of appeal rights to the Industrial Relations Commission against promotions. It is noted that the then Premier in his Second Reading speech for the GSE Bill specifically stated that:

“Apart from moving award-based executives into the new contract-based sector executive structure, existing public sector industrial instruments are not changed by the bill. Section 21 of the current Public Sector Employment and Management Act, which provides a right of appeal to the Industrial Relations Commission against promotions, will not be brought into the new Act. Agencies will be required instead to have proper review mechanisms to deal with procedural issues ...”.¹⁰⁰

In the discussion which follows in this Chapter 9, sections have been prepared by the Public Service Commission entitled “Overview of Relevant Provisions” which are designed to describe the framework context and interpretation of provisions of the GSE Act, the rules and other materials in order to assist in considering the submissions received.

Common themes canvassed throughout the submissions are discussed as follows.

9.1 Accountability

As discussed in Chapter 5 of this Report, the objects of the GSE Act include “developing a modern high performing government sector that is efficient and effective in serving the Government in the delivery of services to the people of NSW”, through a range of provisions based, in part, on the ethical framework for the government sector. Section 7 prescribes the core values including:

“Accountability

- (a) Recruit and promote employees on merit.
- (b) Take responsibility for decisions and actions.
- (c) Provide transparency to enable public scrutiny.
- (d) Observe standards for safety.
- (e) Be fiscally responsible and focus on efficient effective and prudent use of resources.”

Section 6 further recognises the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the government of the day, and establishing a framework for a merit-based, apolitical and professional government sector.

Additionally, section 21(2) provides:

“Persons may be so employed for the following purposes-

- (a) to enable Ministers to exercise their functions,
- (b) to enable statutory bodies or statutory officers to exercise their functions,
- (c) for any other purpose.”

Conversations with stakeholders focused upon the interaction between the Westminster system of responsibility in Ministers and the devolution of responsibility for implementing government policy to the senior executives responsible to do so.

¹⁰⁰ New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 May 2013, 55 (Barry O’Farrell, Premier), Second Reading Speech for the *Government Sector Employment Bill 2013*.

A number of comments are relevant:

- “the challenge is that accountability doesn’t crossover from the Secretary to the Senior Minister and there is no accountability of the Secretary to the Minister”
- “what is the role of the new group Deputy Secretary position”
- “the system currently relies on collaboration, Secretaries working together”
- “the role for Departments in New South Wales is very much a direct service provider and infrastructure provider as distinct from say federal government agencies”
- “if the Victorian situation [in relation to the Covid-19 outbreak] arose in New South Wales I could not say with certainty that it could not be repeated however I believe that our systems and responsibilities would hold up better”
- “look at the CBD light rail – the City Council raised need for huge contingency for underground services which was ignored by Transport”
- “the recent enquiry into Ministerial accountability commented that it’s ridiculous to expect the Secretary to know what thousands of people are doing”
- “anyone in a senior executive role must maintain the confidence of portfolio Ministers so as to carry out work and maintain relationships with Cabinet Ministers”
- “being competent and performing well is not included within the core values of the GSE”
- “non-executive levels may have a tick box complacency which may not achieve accountability”.

A further suggestion was that there would be better Ministerial accountability through mechanisms such as the Secretary undertaking 360 degree performance reviews for senior executives with the Minister, and consulting the Minister on senior executive recruitment and engaging with Ministers where Ministers had concerns about performance.

A number of stakeholders raised concerns in relation to the operation of clusters and the Westminster system of responsibility and accountability in the context of recent controversy in response to the current virus pandemic in Victoria which saw confusion, denial of responsibility and decision-making knowledge, and ultimately the resignation of a Minister as the ultimately accountable person.

Another stakeholder commented that “whilst accountability is one of the core values under the GSE Act and there are provisions dealing with discipline and misconduct, there doesn’t seem to be any explicit obligation on Public Service employees to act competently, effectively and in a timely fashion. Further there does not appear to be consequences for failing to do so.”

9.2 Government structure – Clusters

Overview of relevant provisions

The cluster system is not mandated but is instead facilitated through the authority to make administrative orders which create, change and allocate Public Service Departments and other agencies through the Schedule 1 to the GSE Act.

As noted by the Department of Premier and Cabinet, “Clusters are not legal entities, but rather administrative arrangements that bring together a group of different legal and administrative entities and allow similar and complementary Government services to be coordinated more effectively within the board policy area of a particular cluster”.¹⁰¹

¹⁰¹ Department of Premier and Cabinet, *NSW Public Sector Governance Framework* (2013) 3 (accessed on 20 November 2020 at <<https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Programs-and-Services/Governance/736f5dc2ba/NSW-Public-Sector-Governance-Framework-2013.pdf>>).

Submissions

Comments on the Cluster system generally arose in the second round consultations and included comments such as:

- “the cluster model is not overtly obvious in the legislation and there is no clear definition of a cluster”
- “difficulties arise in diverse clusters which include executive agencies where the Secretary may not have responsibility”
- “an extremely opaque relationship between cluster Ministers and portfolio Ministers, clusters formalise powers but rely on informal decision-making”
- “clusters rely on effective relationships between the cluster Minister, portfolio ministers, the Secretary and public sector teams”
- “issues arise concerning ministerial responsibility in clusters and alignment of policy and implementation”
- “issues arise from communications between Ministers offices and staff and the public service, particularly around clarity of decisions and responsibility, performance and timeframes and reporting”
- “the system currently relies on collaboration, Secretaries working together, which could be undermined by a group of Secretaries and Ministers who lack communication and cooperation”.

A related issue was raised in relation to the operation of the cluster system and the complications for portfolio Ministers who have responsibilities pursuant to their Charter Letters and responsibilities for all government decisions, but do not have any direct role in the engagement and management of the managers who are charged with the implementation of those policies and projects.

Curiously the GSE Act provides that Ministers have power to appoint and remove Secretaries and separate Public Service agency heads and acting appointments to those roles, but do not have power to appoint Public Service executive agency heads or appointments to those roles.

9.3 Relationships between Departments and Executive agencies

Overview of Relevant Provisions

The GSE Act creates Departments and Public Service executive agencies related to Departments in section 22 and Schedule 1 to the GSE Act. The GSE Act governs the employment of staff in Executive Agencies related to Departments, and their agency heads.

By s.26 of the GSE Act, the Secretary of a Department exercises employer functions of the Government (including the power to employ persons, assign them to roles and to terminate their employment) in relation to:

- the head of each Public Service executive agency related to the Department (unless the office of the head is a statutory office established by another Act, the head is the Secretary, or Sch.1 provides otherwise), and
- the PSSEs assigned to roles in each Public Service executive agency related to the Department.

Section 27 of the GSE Act empowers the Secretary of a Department to delegate any employer functions under any Act or law that the Secretary exercises on behalf of the Government of New South Wales in relation to Public Service employees. However, section 27(4) also enables the GSE Rules to limit a power of delegation or sub-delegation under this section.

GSE Rule 4 states that various specific employer functions relating to PSSEs cannot be delegated by the Secretary of a Department under section 27, namely, (a) the initial engagement of a PSSE and their assignment to a role, (b) the temporary assignment of a PSSE under Rule 11 for more than 12 months (b1) the assignment of a PSSE to a different role under section 38 of the GSE Act, and (c) the termination of employment of a PSSE under sections 41,

68 or 69 of the GSE Act. However, by GSE Rule 4(2), a Secretary may delegate to the head of a Public Service executive agency related to the Department a function in relation to the initial engagement of a PSSE and their assignment to a role.

Submissions

One agency stakeholder noted that this Review may be an opportunity to simplify relationships between Departments and Executive agencies. Complexities in management of an Executive agency arise when a Minister is the relevant employer of the head of an Executive agency.

Consultations with stakeholders, particularly large departments, indicated that multiple government sector employers, including separate senior executive services and separate employers, created transfer issues in particular and expanded upon the matters raised in the submissions.

A number of comments related to difficulties with budget and services through executive agency arrangements with Departments and Secretaries where the executive agency is small, and particularly noted issues with management of staff and implementation of sector wide decisions such as efficiency dividends.

9.4 Workforce diversity

Various stakeholders raised concerns in relation to difficulties faced in seeking to promote workforce diversity.

Overview of Relevant Provisions

Workforce diversity is primarily supported by section 63 of the GSE Act which provides that:

- Government sector agency heads are responsible for workforce diversity within the agency and for ensuring that workforce diversity is integrated into workforce planning in the agency (section 63(2))
- The Government Sector Employment Rules may deal with workforce diversity in any government sector agency. The agency head is to ensure that any obligations of the agency under those rules are complied with (section 63(3)).

Section 63(5) further provides that the obligations of the GSE Rules prevail over any inconsistent obligations under the *Anti-Discrimination Act 1977* (NSW). This means that where the GSE Rules place obligations on a government sector agency head in relation to workforce diversity, the prohibitions contained in the *Anti-Discrimination Act* do not operate in relation to any modified process and employment decision made in accordance with such Rules.

GSE Rule 26 is designed to assist government sector agencies to employ “eligible persons” (listed under Rule 26(4)) in non-executive roles. By Rule 26(1), an eligible person may be employed by the government sector agency head in a non-executive role.

By Rule 26(2), the agency head must be satisfied that the eligible person employed in a role under Rule 26 is suitable for the role and has the greatest merit of the eligible persons seeking to be employed in the role at the time (regardless of whether they are in the same class of eligible persons). This requires a merit based assessment comparing, for example, graduate applicants under the age of 25 with groups of other eligible persons (such as persons with a disability or Aboriginal persons). “Targeted recruitment” (which may include advertising targeted at a particular class of eligible persons) is a tool for encouraging applicants of a particular class to apply for a role, but does not override the requirement to comply with the terms of rule 26 in relation to all the “eligible persons” who do in fact apply for the role.

The GSE Act confers a function on the Public Service Commissioner of leading the strategic development and management of the government sector workforce in relation to equity and diversity, including strategies to ensure the government sector reflects the diversity of the wider community (section 11(1)(b)). The Commissioner is required to provide periodic reports on workforce diversity across government sector agencies (section 63), and may require

a government agency to provide reports and information relating to workforce diversity in the agency (section 16). Rule 27 requires the head of a government sector agency to ensure that information relating to workforce diversity is collected to provide to the Commissioner if required to do so under section 16 of the Act.

Submissions

A range of stakeholders raised concerns in relation to workforce diversity including:

- difficulties in relation to recruitment arising from the interaction of the GSE Act and *Anti-Discrimination Act*, given the section 63 exemption from the *Anti-Discrimination Act* is dependent on the GSE Rules imposing obligations on government sector agencies. It was noted that the PSEM Act previously contained facilitative provisions that enabled exemptions from recruitment assessments for limited diverse backgrounds. Currently agencies must apply for an exemption from the NSW Anti-Discrimination Board for diversity and inclusion programs that would otherwise be non-compliant with the *Anti-Discrimination Act*
- difficulties faced by agencies in promoting broader workforce diversity and inclusion for people from diverse backgrounds including those with a disability, as a result of the limited scope of workforce diversity provisions
- difficulties faced in recruiting and retaining people with a disability at senior executive and non-executive levels
- difficulties faced in recruiting and retaining Aboriginal people at executive and non-executive levels
- difficulties in recruiting women and people with carers responsibilities to senior executive roles.

Recommendations by stakeholders included:

- amendment to the GSE Act to increase employment opportunities for people of diverse backgrounds
- broadening the definition of “eligible persons” in the GSE Rules to include women and LGBTIQA+, noting that this proposal would be particularly important for agencies that were historically male dominated
- broadening the scope of Rule 26 to enable targeted training and/or development for employees in diversity groups
- broadening the scope of Rule 26 to consider capturing targeted pre-recruitment and employment programs more generally
- amendment to the GSE Act to facilitate agencies implementing targeted recruitment or workforce diversity strategies in relation to senior executive roles
- specific positive measures to improve Aboriginal employment across the sector at senior executive and non-executive levels, with a particular focus on agencies that have a significant role in addressing Closing the Gap targets
- selection panels for Aboriginal identified and targeted roles include a suitably qualified member from the Aboriginal community. It was also recommended that Aboriginal roles be broad-banded to facilitate career progression.

Comment

The Panel understands that the PSC has been considering how best to support workforce diversity in the GSE Rules within the framework provided by the GSE Act.

The PSC has reviewed the GSE Act diversity settlements and held recent discussions with the sector to consider how best to support workforce diversity in the GSE Act framework. Following consideration of those discussions and sector submissions to this Review, the PSC now recommends that more extensive reform be considered to address the impediments faced by agencies in seeking to promote workforce diversity, inclusion and equity. The Panel supports such reform.

9.5 Recognition of Aboriginal and Torres Strait Islander people and development of cultural capability

Overview of relevant provisions

While the GSE Act contains the provisions discussed above in relation to equity and diversity, there are currently no specific provisions in the GSE Act concerning the recognition of Aboriginal and Torres Strait Islander people or to build First Nations cultural capability in the workforce.

Submissions

Two stakeholders recommended making amendments to the GSE Act to recognise and acknowledge the unique and important place Aboriginal people have in New South Wales as the State's first people and nations. Submissions recommended embedding in legislation an ongoing commitment to build and maintain a government sector workforce that is Aboriginal culturally capable and assigning responsibilities to the Public Service Commissioner and agency heads for this. They sought to formalise the notion of a world class public service that:

- Recognises the unique and important place Aboriginal people have in New South Wales as the State's first people and nations (similar wording in section 2 of the *Constitution Act 1902* and/or section 5 of the *Disability Inclusion Act 2014*)
- Commits to building the Aboriginal cultural capability of all employees in the government sector (similar to provisions in the *Public Service Act 2020* (New Zealand)).

The submissions note that New South Wales has the largest resident population of Aboriginal and Torres Strait Islander peoples in Australia and that recognition and commitment to building capability would have an enduring and significant impact on the delivery of government services to the people of New South Wales.

Comment

The Panel supports the PSC giving further consideration to amending the GSE Act to acknowledge the unique and important place Aboriginal people have in NSW as the State's first people and nations and to set out principles and objectives that commit to building a government sector workforce with significantly enhanced Aboriginal and Torres Strait Islander cultural capability.

9.6 Mobility

Workforce mobility and the need to simplify mobility from additional administrative requirements was raised by a number of stakeholders.

Overview of Relevant Provisions

A range of different mobility pathways are currently available under the GSE legislative framework, including:

- assignment of PSSEs (other than agency heads) to roles in bands across the government sector (section 38 of GSE Act)
- assignment of Public Service non-executive employees to roles (s.46)
- secondments of staff between government sector agencies and non-government sector bodies (local councils, State Owned Corporations, private sector entities, public authorities of the Commonwealth or of another State or Territory, and universities) (section 66 of GSE Act).
- secondments to staff of political office holders (clause 35 of GSE Regulation 2014)
- temporary assignments within a Public Service agency (GSE Rule 11)

- transfers and secondments of employees between government sector agencies (which extend to the Audit Office and the service of Parliament where initiated by the employee concerned) (Part 6 of GSE Rules, sections 28, 29, 31).

Submissions

One agency stakeholder noted the complexity around mobility, including different staff movement types, time provisions for the movements and differences in suitability and comparative assessment processes were difficult to navigate for non-HR staff within their Department.

Another stakeholder noted the difficulties staff faced in practice in relation to internal career progression and accessing career development opportunities and temporary appointments to other agencies. Concerns were also raised in relation to the impact on staff of assignment to role provisions.

In consultations with stakeholders, queries were also raised as to whether the use and experience of the capability framework has been well understood and has improved mobility. Comments included:

- “the Capability Framework has been a significant element of change and improvement has not worked completely seamlessly in practice”
- “mobility has not happened in a systematic way in lower levels and there needs to be better management of talent”.

Recommendations to improve mobility included:

- amendment to the GSE Act to allow the Teaching Service to be considered a “Public Service agency” for the purpose of temporary assignments between the Teaching Service and corporate Departmental roles
- amendment to allow transfer between those employed in the Health Service (employed under the *Health Services Act 1997*) and those employed under the GSE Act within the Ministry of Health
- amendments to the GSE Rule 4 to allow a Secretary to delegate the approval of (a) temporary assignments of PSSEs for over 12 months and (b) moving existing PSSEs within a Department
- amendment to GSE Rule 29 to allow for secondments to be extended for a further two years (four years in total), consistent with GSE Rule 10 provisions enabling temporary appointments for up to four years. It was noted that some temporary roles are for a specific program, piece of work or tied to funding, and the difference between maximum duration of secondment/temporary employment creates equity issues between external candidates and existing GSE ongoing employees
- amendment to allow a person to be moved from a PSSE role to a non-executive role if a role is downgraded, due to circumstances other than poor performance, to enable the agency to retain the person
- improvement of mobility between Departments and other sectors, including State Owned Corporations (SOCs) and the private sector.

Comment

The Panel notes that these recommendations are out of scope of this review to the extent they recommend amendment to the GSE Rules. The recent PSC Draft Report recommended amendments to the GSE Act to improve mobility (see Chapter 8 above, recommendations 2, 5 and 6).

The Panel notes that following consideration of submissions to the current Review, the PSC recommends consideration be given to the following additional amendments:

- **Amendment** to introduce an explicit mechanism to provide for mobility between the Teaching Service and the Public Service (to facilitate career change movement from

active service as a teacher to a role in the Department) (and potentially similar mobility between the Public Service and Police Service, Health Service and Transport Service).

- Consider enabling movement of a Public Service employee to a lower band or classification (whether PSSE or non-executive), only in situations where the relevant employee requests or consents to the assignment, and with appropriate safeguards. As an alternative, consider removal of requirement for advertising and assessment requirements for an existing staff member voluntarily moving to a lower graded role, with appropriate safeguards
- **Amendment to Part 3 of the GSE Regulation** to recognise prior service with a State Owned Corporation (**SOC**) for the purposes of extended leave.

The Panel supports consideration of such additional amendments and notes that the PSC does not support legislative amendment to extend the duration of secondments to four years due to the adverse impact on the home agency employer and staff, in particular, as it would deprive other employees or potential employees of the opportunity to apply for the role on an ongoing basis whilst the secondee is on secondment.

9.7 Public Sector Senior Executives (PSSEs) – termination of employment and compensation related to termination

Matters relating to the termination of PSSEs were raised in a number of submissions.

Overview of Relevant Provisions

The GSE Act provides the employer of a PSSE to terminate the employment of the executive at any time, for any or no stated reason and without notice (section 41(1) of the GSE Act). This provision has existed since the GSE Act was first introduced.

By section 41(2), a PSSE who is terminated under section 41 is entitled to such compensation (if any) as may be specified in their contract of employment (and to no other compensation or entitlement for the termination of employment other than superannuation entitlements). Having had their employment terminated and having received such compensation, the former PSSE is not to be employed in the Public Sector (including the government sector, the service of a SOC or any other service excluded by section 5 of the GSE Act) during the period specified in the contract of employment unless arrangements have been made for a refund of the proportionate amount of the compensation (section 41(3)). Subsections 41(2) and (3) were amended by the *Government Sector Employment Legislation Amendment Act 2016 (GSELA Act)* in order to tighten entitlement to compensation in the event of termination under section 41.

GSE Regulation clause 39 requires that the contract of employment of a PSSE is to provide for the payment of the following compensation on the termination of the executive's employment:

- (a) if the employment is terminated under section 41 during or at the end of any period of probation imposed as a condition of the executive's engagement – an amount equal to the executive's remuneration package for a period of 4 weeks
- (b) if the employment is otherwise terminated under section 41 – an amount equal to the executive's remuneration package for a period of 38 weeks or for the period remaining on the term of the contract (whichever is the lesser)
- (c) if the employment is terminated under section 68 of the GSE Act for unsatisfactory performance – an amount equal to the executive's remuneration package for a period of 13 weeks.

Clause 17.1 of the Model contract of employment for PSSEs (other than Secretaries and agency heads) (set out in Schedule 1 of the GSE Rules) provide that the Senior Executive is entitled to the payment of compensation, on the termination of employment by the employer as determined by clause 39 of the GSE Regulation. Further, under clause 17.2, the Senior Executive agrees that if reemployed in the public sector (as defined in section 41) within the period to which the compensation relates, the Senior Executive will repay the proportionate

amount as calculated in accordance with clause 39 of the GSE Regulation before the commencement of that re-employment.

By section 58 of the GSE Act, the employment of an executive employee (the Secretary of a Department or other PSSE), or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*. This provision has existed since the GSE Act was first introduced.

Submissions

One agency stakeholder requested consideration of whether the termination provisions for PSSEs are providing agencies with flexibility in the current budget environment. A recent decision of the Industrial Relations Commission of NSW (**IRC**) has allowed the IRC to consider an appeal against the termination of a PSSE under section 41 of the GSE Act in the circumstances of alleged “victimisation”. In *Davie v Industrial Relations Secretary (Department of Justice, Corrective Services NSW) (No. 2)* [2019] NSWIR Comm 1056, the IRC held that section 41 does not permit a termination that is unlawful (for example because it involves victimisation or discrimination).

Another agency stakeholder recommended that GSE Rule 4(1)(c) be amended to allow Secretaries to delegate termination of Band 1 and Band 2 PSSEs to Deputy Secretaries. It was also proposed that PSSEs with less than 12 months of service should not have access to the full 38 weeks of compensation set out under clause 39 of the GSE Regulation, in relation to termination under section 41 of the GSE Act. It was proposed that compensation should be capped at 13 weeks for the first two years, and that this cap should also apply to term PSSEs who are released early from their contract. Similarly, another agency stakeholder also recommended a sliding scale of compensation based on years of service.

Concerns were raised by another stakeholder that the conditions imposed by s.41(1) were an impediment to the employment of women and other people with caring responsibilities. Another stakeholder expressed concerns that the use of contractors and the Capability Framework, and the right to sack or terminate without cause has led to a lack of job security.

It is noted that the PSC Review recommendations 3 and 4 suggested amendments to the GSE Act to address drafting issues in the GSE Act in relation to the termination of PSSEs.

9.8 PSSE employment

Several agency stakeholders proposed amendment to GSE Rule 12(1)(b) to extend probation of PSSEs to 6 months to align with probation periods for non-executive staff and enable more considered assessment of a new PSSE's suitability for the role.

Agency stakeholders flagged issues requiring amendment in relation to the interaction of the GSE Act and legislation concerning employment of the Services, and amendment to the Model Contract.

A number of stakeholders recommended legislative amendment to address workforce diversity and inclusion in relation to PSSEs, and mobility of PSSEs. These issues are discussed earlier in this Chapter.

Comment

The Panel notes that recommendations to amend the GSE Rules are out of scope for this Review and that the PSC is considering recommendations that:

- the GSE Regulation clarify that a Senior Executive Contract of Employment may be signed electronically
- section 24 of the GSE Act to clarify that a person in the Transport Service (or one of the other aligned Services) may be appointed to act as Secretary of a Department.

9.9 Workplace flexibility – regionalisation, remote working

One stakeholder raised a number of issues for consideration including the need to remove significant obstacles to employees relocating to regional NSW in order to increase the proportion of the public service that is regionally based. Proposals for consideration include shifting the focus of new employment to regional locations and improving incentives for existing employees to move to regional areas, and simplification of industrial awards to enable flexible working.

Submissions

A number of stakeholders expressed positive views concerning the successful response to pandemic by the New South Wales government sector and satisfaction that the sector had been able to function so well in a work from home and limited contact environment. Comments included:

- “strong supporter of remote working and flexibility in workplaces”
- “the pandemic experience showed the leadership capacity in the public sector and safety is a core value in itself”
- “the recent experience has proven work at home can be successful and we need to look at this model going forward”
- “COVID has shown that a distributed workforce can be better for workers and regions”
- “the opportunity now presented to reformulate workplace practices and location, provided there is sufficient opportunity for collegiality and learning, and full regional infrastructure development must not be missed”
- “we support the principle of subsidiarity i.e. decisions should be made at the closest appropriate level”.

Comment

The Panel is aware that the Government is working on initiatives to further develop opportunities for regional employment within the sector. The Panel further notes the PSC does not consider that amendment is required to the GSE Act to facilitate encouragement of regionalisation or remote working, and the Panel supports this view.

9.10 Recruitment practices

Capability based assessments and role descriptions (RDs)

Background

The GSE Rules contain various provisions concerning the use of capability- based assessments to assess a person’s suitability for a role. The PSC’s NSW Public Sector Capability Framework describes the capabilities and associated behaviours that are expected of all NSW public sector employees.¹⁰²

Submissions

A number of stakeholders raised concerns in relation to Capability Framework assessments and the administrative burden on agencies, noting recruitment processes were outsourced by some agencies to private recruitment agencies and contingent labour used. Concerns were also raised in relation to RDs and the potential assignment of PSSEs and Public Sector non-executive employees to roles for which they do not have the necessary skills due the generic language used in RDs.

¹⁰² See NSW Public Service Commission, *Using the Capability Framework* <<https://www.psc.nsw.gov.au/workforce-management/capability-framework/access-the-capability-framework/using-the-capability-framework>>.

The PSC recently simplified Capability Framework assessment processes in 2019 through amendments to the GSE Rules to allow agencies to assess focus capabilities, knowledge and experience for employment decisions. The PSC also introduced revised *Role Description Development Guidelines and Template* in February 2020.

Other comments included:

- “The Capability Framework predates the GSE Act and whilst intended to create excellence there is a difficulty for the public service which has so many specialist roles ranging from police helicopter pilots to child protection specialists and the Framework can be too restrictive”
- “The Capability Framework has not led to improvements in retention rates or portability of skills”
- The Framework is not mandated but encouraged. It might be fundamentally flawed but it’s better than any alternatives that might exist”
- “Concern at lack of independent participation in recruitment panels and the practice of people moving around the sector, often through the same recruitment agents”
- “The challenge to provide independent selection panels due to large numbers recruited”
- “Different implementation by different agencies and Departments of the Capability Framework”
- “Concerned at consultant and recruitment costs and too broad grading leading to inconsistency not flexibility”
- “Capability is used as the minimum requirement and there is still often a need for knowledge and expert experience”
- “The high cost to the Department of recruitment, often in the region of \$30k to \$40k”
- “The Capability Framework was intended to move away from years of service as a way to be promoted which particularly disadvantaged women”.

9.11 Talent pools

GSE Rule 19

GSE Rule 19 provides for the use of a “talent pool” or list of persons (whether or not existing Public Service employees) who have satisfied the pre-established standards for a role through comparative assessment for recruitment to ongoing employment or for temporary or term employment.

Submission

One stakeholder noted that agencies have been slow to adopt talent pools and do not utilise candidates from the talent pools even where they are set up.

In consultations, several stakeholders stated that they did not use talent pools for executives. For executives there was a need to test the market to find suitable candidates.

The Panel notes the PSC Response that this issue is out of scope and that no legislative amendment is required to the GSE Act or Regulations. Instead, this is an area for culture change.

Kinds of employment - Temporary or term employment, casual employment

Legislative framework

The GSE Act enables employment of Public Service non-executive employees to be ongoing employment, temporary or casual employment, with these terms defined in s.43 of the GSE Act.

GSE Rule 10 imposes a maximum total period of temporary employment of Public Service non-executive employees of 4 years in the same Public Service agency within any continuous period of 5 years. However, temporary employment can be extended for a further 4 years in

certain circumstances. GSE Rule 12 also enables temporary or term employment to be converted to ongoing employment in certain circumstances.

Clause 7 of the GSE Regulations exempts casual and part-time employment from the prohibition on Public Service employees not undertaking other paid work without the agency head's permission (but only if the performance of duties in the Public Service is not adversely affected and no conflict arises).

Casual employees are excluded from extended leave (clause 16 of the GSE Regulation).

Submissions

Several stakeholders raised concerns in relation to time limits of temporary employment, including difficulties for roles linked to funding arrangements that do not align with the maximum periods specified in the GSE Rules, and the situation of long term temporary employees.

One stakeholder noted that the pandemic has shown the importance of employers having oversight of the locations where employees work.

Another stakeholder which employs PSSEs covered by the GSE Act and other staff covered by other legislation noted particular issues with temporary assignments between two workforces and suggests that the GSE Rules should include a specific provision along the lines "...For the purposes of these rules, the..... [insert name of Service] will be considered part of the public service and the senior executive service".

A further specific matter raised was the lack of flexibility to allow reassignment of employees whose position becomes redundant to roles at a reduced income where the employee agrees to such a course.

Comment

The last two suggestions, whilst outside the scope of the Review, appear to be suggestions which can be covered in the further work the PSC has indicated it will do in relation to other areas.

9.12 Merits-based employment and appeals of recruitment decisions

Legislative framework

Section 58 of the GSE Act excludes the employment of a Public Service executive employee (a Secretary of a Department or other PSSE) from industrial proceedings under the *Industrial Relations Act 1996* (NSW) and other legal proceedings.

Section 58 similarly excludes the engagement of, or the failure to engage, a person as a non-executive employee, or any matter, question or dispute relating to any such engagement (or failure to engage), from industrial proceedings under the *Industrial Relations Act 1996* and other legal proceedings.

Submissions

One stakeholder was critical of the absence of appeals provisions enabling an employee to challenge a selection process on the basis of merit, and the potential for misconduct or even corruption in the recruitment process.

Other comments from stakeholders included:

- "concerned at the very structured way merit is applied and some concerns with the capability framework particularly regional needs"
- "concerned Acting roles are used contrary to merit selection raising cronyism and perception that it is a 'stitch up'"

- “worried at the loss of expertise and specialisation and loss of skills and the tendency for agencies to contract out”
- “noted concerns from a recent appeal to the IRC based on victimisation”.
- “believes psychometric testing and assessment is an expensive waste of time and notes that it is not a legislative requirement”.

9.13 Disciplinary processes for managing unsatisfactory performance and misconduct

Legislative framework

Section 47 of the GSE Act enables a Public Service agency head to terminate the employment of a Public Service non-executive employee of the agency on various specific grounds including if the performance of the employee under section 68 is deemed to be unsatisfactory, or if a finding of misconduct has been made against the employee under s.69, or if the employee is retired on medical grounds under section 56.

If the performance of a government sector employee is determined to be unsatisfactory, the person exercising employer functions may terminate employment (after giving the employee an opportunity to resign): section 68(2).

Where there is a finding of misconduct against a Public Service or other prescribed government sector employee, section 69(4) permits the person exercising employer functions to take any of various specified actions, including giving the employee an opportunity to resign before terminating employment or imposing a fine on the employee.

Submissions

In relation to poor performance, one agency stakeholder recommended that the requirement to offer an opportunity to resign be removed.

In relation to misconduct, an agency stakeholder recommended review of the actions that can be taken as a result of a misconduct process. The proposal called to clarify that ‘any or a combination’ of actions may be taken in response to a finding of misconduct. Another agency stakeholder recommended that the inclusion of a fine as disciplinary action be reviewed as this is very rarely imposed. A similar comment included a suggestion that there should be more flexibility in the use of fines prior to termination.

Another observed that the complexities and difficulties associated with performance management may influence a preference for termination without cause and compensation as an easier and more effective course to take.

Another noted in relation to misconduct and discipline that the Act requires procedural fairness but does not define what is required.

9.14 Performance development

Learning and development is not regulated by the GSE legislative framework but instead supported through the work of the Commissioner and PSC (see s.11 of the GSE Act), individual government sector employers and agencies with a lead role in relation to particular subject areas.

Submissions

One stakeholder supported the increased emphasis on performance development, but noted that Public Sector employees continue to highlight concerns about the implementation of performance development, stemming from a lack of training, support and resource allocation. Another expressed concerns at a lack of performance development compared to performance measurement and historical underspend on professional development.

Several commented that departments and agencies need sufficient budget provision and the ability to run programs to up skill employees on a consistent basis. It was suggested that clusters should develop their own learning systems and professional development programs and materials.

9.15 Salaries and remuneration

Legislative framework

Section 40 of the GSE Act requires that the remuneration package payable to a PSSE must be within the range determined under the *Statutory and Other Offices Remuneration Act 1975* for the band in which the executive is employed. Further, a PSSE is only entitled to the remuneration, employment benefits or allowances provided in the executive's contract of employment. While PSSE band determinations are published annually, remuneration paid to individual PSSEs is not disclosed, unless an above band determination is made by the SOORT.

The remuneration of Public Service non-executive employees is governed by awards made under the *Industrial Relations Act 1996* and subject to decisions of the Industrial Relations Secretary – see Part 4, Division 6 of the GSE Act.

Submissions

A number of stakeholders expressed concern in relation to consistency in practice of remuneration for similar roles across Government. Opposite views were put forward as to the adequacy of current bands and remuneration levels for PSSEs, with one stakeholder calling for a cap on remuneration for PSSEs. The concern was also expressed as to the possibility that where some sectors are not fully covered by the GSE Act and have higher salaries, when adopting the GSE Act they may grandfather existing entitlements to retain higher salaries which raises issues about fairness and equity. Concern was also expressed at public sector wage caps.

The Panel was also interested in the concept of moving to performance based increments and performance management arrangements for remuneration, similar to the system used by Tcorp which rewards innovation and performance against a publicly disclosed scorecard, rather than simply applying scales of increases for years of service. The Panel also noted a comment that the Industrial Relations Commission has recently ruled on wage increases essentially basing them on underlying CPI movements. These are matters for further consideration by the Minister and the Industrial Relations Secretary.

A number of stakeholders raised the issue of whether public sector wages are inadequate for professional staff e.g. solicitors and highly technical roles and the wide gap in salary levels within individual bands which may have a tendency to cause grouping at the upper end and act as a disincentive to apply for employment in a higher band, and also a question as to how salary levels are set in the bands.

Specific concerns were expressed in relation to government agencies which operate in competitive environments with the private sector or other state and local governments where recruitment for leadership roles and other marketing and similar roles is disadvantaged if GSE Act requirements and contracts are used. These agencies may range from technical, scientific and other specialist agencies through to entertainment, convention, sporting and cultural institutions. There should be scope for flexibility in the contract provisions and remuneration which is benchmarked against the market. In so doing, consideration should also be given to community expectations about the terms and remuneration of personnel in government agencies.

Comment

The Panel notes that there is some existing flexibility under the GSE Act framework in relation to the remuneration for scientists. The Research Scientist Classification (RSC) recognises the importance of science in the NSW Public Service by providing a remuneration and career

structure for scientists in Public Service agencies and who undertake and publish original scientific research. The Classification provides some higher than usual salary points enabling engagement and retention of valuable talent subject to strict criteria including peer review.

The Panel notes that wage fixing is outside the scope of the GSE Act and regulated under IR Act and SOOR Act.

9.16 Recognition of Prior Service

Clause 28 and Sch.2 to the GSE Regulation regulate the recognition of prior service with a “Commonwealth or interstate agency” (as defined in Schedule 2) for extended leave purposes.

One stakeholder noted the complexities that arise in applying these definitions.

The Panel notes that there should be flexibility, with the agreement of the Commissioner, to recognise prior service in the event that an exceptional candidate for a role is identified.

9.17 Return to work and retirement on medical grounds

By section 56 of the GSE Act, a Public Service employee may be retired if found to be unfit to perform or incapable of performing the duties of his or her employment and the unfitness or incapacity appears to be of a permanent nature and has not arisen from actual misconduct by the employee or causes within the employee’s control. Clause 15 of the GSE Regulation contains provisions concerning fitness for duty.

One stakeholder was concerned that the use of section 56 by agencies is not consistent with the government’s role as an employer of the choice or its requirements under the Work, Health and Safety legislation. A further concern was the possibility that section 56 could be used to forcibly retire an employee on medical grounds rather than managing the employee’s issues.

Several stakeholders referred to a significant increase in workers compensation claims for psychological injury in the across the sector and suggest there may be a link with section 56, contrary to mobility objectives.

9.18 Contractors

Several stakeholders raised issues in relation to the use of contractors by the public sector. It was noted that contractors, particularly those with specialist skills and experience are often needed to deliver large projects including infrastructure projects and IT projects, and that it is convenient to use contractors where the public service headcount does not include such roles.

However, concerns were expressed that where contractors are being used widely and/or for extensive periods, this is potentially leading to a larger issue as to the appropriate way to gain the experience and expertise needed to work in government. In addition to the cost of contractors compared to usual public service salaries, concerns were expressed as to whether the use of contractors indicated deficiencies in public sector capabilities which should be addressed.

A further concern is that contractors may be considered at common law to be employees with the additional industrial relations and employment responsibilities and entitlements that that entails.

Further it was noted that the GSE Act does not include any definition contractor and that this may lead to additional issues.

Comment

The Panel notes that contractors engaged by government agencies, either in the form of staff engaged as contractors rather than appointed to roles under the GSE Act, or staff engaged

through the NSW Government Contingent Workforce Scheme,¹⁰³ are not regulated by the GSE Act.

Under the GSE Regulation and GSE Rule 3 “government sector employee means a person who is employed in a government sector agency”. Under the GSE Act, a “Public Service employee” means “a person employed in ongoing, term, temporary, casual or other employment, or on secondment, in a Public Service agency (and employee of a Public Service agency means a person so employed, or on secondment, in the Public Service agency)”.

The Panel notes that contingent labour forms part of the overall public sector workforce, with workers typically employed to meet a short-term need or to address a capability gap. The Contingent Workforce Scheme is administered by NSW Procurement (within the Treasury) and offers government agencies access to contractors provided by Managed Service Providers. The Panel understands that NSW Procurement maintains data on the use of contingent labour, and that this is included in PSC’s Workforce Profile reports.¹⁰⁴

The PSC issued Contingent Workforce Management Guidelines in 2014 to assist government sector agencies in the planning and management of their contingent workforce as part of broader workforce strategy and management. The Panel understands the PSC is currently reviewing those Guidelines in consultation with NSW Procurement and the sector, and in light of a recent Auditor General Report.¹⁰⁵

9.19 Public Service Commissioner and work of the PSC

A number of stakeholders commented favourably upon the role of the Public Service Commissioner and the interaction of the GSE Act, the GSE Rules and other instruments available under the GSE Act, and the importance of the continuing leadership for reform being provided.

Submissions included comments:

- “the early PSC work was too complex, executives need tools to make performance understandable to the public, public servants and politicians”
- “the Commissioner must be the reform leader for the public sector”
- “we prefer a simpler legislation with flexible rules and a framework”
- “the GSE Act provides minimum standards to encourage mobility, the PSC produces the detailed rules and the Department customises package”
- “the PSC was established to be an important leader to give effect to the New South Wales government five pillars which included restoring accountability of the public service”.

Submissions noted the progress, leadership and importance of the delivery of government services digitally and the commitment of the government to leadership in digital and cyber space, and noted the importance of these policies in rural and regional New South Wales and the importance of training and skills development for public sector workers in this area.

¹⁰³ See NSW Government, *Contingent Workforce Scheme* <<https://buy.nsw.gov.au/schemes/contingent-workforce-scheme>>. Use of the Contingent Workforce Scheme is mandatory for agencies wishing to obtain services covered by the scheme.

¹⁰⁴ See NSW Public Service Commission, *Workforce Profile* <<https://www.psc.nsw.gov.au/reports---data/workforce-profile>>.

¹⁰⁵ See Audit Office of New South Wales, *Internal Controls and Governance 2019* (5 November 2019) <<https://www.audit.nsw.gov.au/our-work/reports/internal-controls-and-governance-2019>>.

9.20 Minor drafting errors

As noted in Chapter 8, the PSC has recommended that several minor drafting errors in the GSE Act be corrected, and that obsolete transitional provisions be removed. These are contained in the Appendix 1 to this Report.

One stakeholder recommended amendment to modernise the definition of “special office temporary employee” in the GSE Rules. The Panel notes that PSC will consult further with this stakeholder on this issue.

10. Recommendations

Terms of Reference (a)

The Panel has found that the objectives of the *Government Sector Employment Act 2013* remain valid.

Terms of Reference (b)

The Panel considers that the terms of the Act remain appropriate for securing its objectives.

The Panel makes the following recommendations:

1. Having regard to the objectives relating to a modern high performing government sector, and the workplace experiences of the COVID-19 pandemic, including the widespread use of digital technology, the Premier and Minister together with the Secretaries develop strategies for a whole of government approach to public sector workplace locations and practices with a view to taking the opportunity to locate jobs and pursue economic development in rural and regional New South Wales maximising safety and health. The Panel understands that the Government is already working on some initiatives concerning regional employment for the government sector.
2. That the Premier and Minister consider further reforms to employment structures for the government sector, including opportunities for recruitment from other jurisdictions, with an objective that the number of different employer arrangements is reduced consistent with the rationale that the GSE Act forms the basis for wider government sector employment.
3. Having regard to the object of the GSE Act to create an ethical framework for the government sector, including the core government sector value of accountability, the Premier, the Minister and the Secretary of Premier and Cabinet examine the mechanisms and effectiveness of current arrangements for the implementation of government policies by the Public Service senior executives responsible for implementing those policies.
4. Noting the responsibilities of Ministers and senior public servants in the Westminster system, the Premier, Minister and Secretaries consider appropriate arrangements to ensure that any views of portfolio Ministers are included in appointments and in 360 degree performance reviews of senior executives in relation to their portfolio areas.
5. The PSC should take the lead in requiring agencies to report on professional development activities and investment within their agencies and should analyse, benchmark and report on such activities. This is particularly desirable in the development of skills and innovation in digital delivery of services and cyber security.

Terms of Reference (c)

The Panel makes the following recommendations in relation to legislative or regulatory issues requiring amendment:

6. The Panel supports the adoption of the majority of the recommendations in the PSC Report, as follows:

Section 16; (Recommendation 1 of the PSC Review):

That in the course of the Public Service Commissioner obtaining a report or information under section 16, the amendment should expressly authorise the exchange of personal information and/or health information between the Commissioner and a government sector agency.

Sections 38/46; (Recommendation 2):

That these sections should be amended to provide specifically for the assignment of Public Service employees (both senior executives and non-executives) to a lower band or classification with the consent of the employee concerned.

Sections 41(3) and 78 (7) and 41(5) and 78 (8); (Recommendations 3 & 4):

That these sections be amended to clarify that sections 41(3) and 78(7) apply to ensure it is clear that refunds of compensation for termination or removal are required in the event a public sector senior executive or statutory officer is employed in the public sector during the relevant compensation period. The related amendments are required to clarify the definition of “employment” in these circumstances.

Section 66; (Recommendation 6):

That this section be amended to clarify the justification for secondments from government to non-government agencies and align their duration.

Section 83; (Recommendation 7):

That the section be amended to expressly authorise in the course of a section 83 inquiry, the exchange of personal and/or health information between the Public Service Commissioner, the Secretary of the Department of Premier and Cabinet or their appointee who is conducting the inquiry (on one hand) and a government sector agency (on the other hand).

7. Suggestions for amendment to the Act, the GSE Rules, Regulations and any other Act proposed in submissions to this review should be considered by the PSC in the course of its ongoing reviews and administration of regulatory and legislative matters.
8. The PSC should review the management of the processes under sections 39, 41, 67, 68 and 69 of the GSE Act to determine whether Departments and agencies require any further assistance in relation to the management of and understanding of these provisions.

The Panel notes the suggestions in relation to improvement in diversity in the sector and other matters discussed in Chapter 9.

Terms of Reference (d)

The Panel makes the following recommendations in relation to matters related to the Act:

9. The PSC should consider, from a policy perspective, whether contractors should be subject to some elements of the GSE Act and whether the definition of government sector employee should be amended to clarify whether it includes contractors or not. Further the PSC should collect data from Departments and Agencies on contractor hires and monitor whether the mix is optimal and appropriate and whether there are longer term issues in relation to gaps in expertise.
10. The PSC should consider the validity of concerns expressed to the Panel in relation to the complexity, cost and delays in the recruitment process for senior executives.
11. The Capability Framework as adopted is well understood by the public sector leadership and human resources teams however we found that there was still some misunderstanding and confusion in parts of the Public Service and that there was still some reluctance to use the capability framework where roles were considered to be technical or expert. We also heard concerns about potential bias in the system through the practices in relation to appointments to acting positions, the lack of independent members on selection panels and imprecise role descriptions. The Commissioner should continue to refine and educate in relation to the capability framework.
12. The Premier and the Minister should consider whether the GSE Act provides sufficient flexibility in relation to contractual terms and remuneration to recruit the most experienced and expert applicants to agencies which operate in competitive environments with the private sector or other state and local governments including agencies requiring technical, scientific and other specialist skills and in the entertainment, convention, sporting and cultural institutions, and should benchmark remuneration against the market. In so doing, consideration should also be given to community expectations about the terms and remuneration of personnel in government agencies.

Appendix 1

PSC Review

Minor drafting changes to the GSE Act

1. In the GSE Act, the phrase “of a Minister” in sections 25(2) and section 30(2) should read “on a Minister”.
2. Deletion of obsolete transitional provisions from Schedule 4.