



Office of the Public Sector Standards Commissioner

Parliamentary Series Report Four

Management of Recruitment

May 2009

EXECUTIVE SUMMARY

Background to this report

This report details two matters relevant to the compliance of s.8(1)(a)-(c) and s.9 of the *Public Sector Management Act 1994* (PSM Act) and the public sector standards in human resource management. Both cases examine situations where agencies have failed to follow proper process in recruitment.

What this report found

The first matter relates to a recruitment process at the Department of Health, where there was a question of giving preference to an internal candidate over external candidates, and where an industrial agreement was used to justify this decision.

In the case of the Department of Health, OPSSC reports:

- that the Department's transactions on this matter were not compliant with s.8(1)(b) of the PSM Act ("no power with regard to human resource management to be exercised on the basis of nepotism or patronage") on the grounds of power being exercised on the basis of patronage;
- that the Department's actions were not compliant with s.8(1)(c) of the PSM Act on the grounds of employees being subject to arbitrary or capricious acts, in that the panel was instructed by the Manager to act in a manner which was based on or determined by individual preference or convenience rather than by approved procedure; and
- that clauses in industrial agreements need to be carefully worded to reduce the likelihood of giving scope to breaching the provisions of the PSM Act. The Department is advised to amend this clause when the industrial agreement is next under review.

The second matter relates to a recruitment process for the position of Executive Director Community Development with Fire and Emergency Services Authority (FESA), where the appointee had been the subject of disciplinary action following a Corruption and Crime Commission enquiry.

In the case of FESA, OPSSC reports that FESA's process on this matter is not-compliant with:

- the Recruitment, Selection and Appointment Standard; and
- s.8 of the PSM Act

because there has been a failure to make a proper assessment due to:

- inadequate panel composition;
- use of selection criteria not adequate for the position;
- failure to manage appropriately the impact of the CCC matter;
- inadequate verification of candidate's claims; and
- poor documentation resulting in a process that was not transparent and capable of review.

OPSSC reports that the Western Australian Public Sector Code of Ethics requires that all public sector employees must "act with care and diligence and make decisions that are honest, fair, impartial and timely, and consider all relevant information". The decisions in this process do not appear to have been undertaken with due care and diligence on many elements required for a recruitment process to meet the

appropriate standards. Neither did the processes take account of all relevant information, in that limited attempts appear to have been made to seek further highly pertinent information that was available. In this case, which relates to the appointment of a senior public servant already under investigation for a CCC matter, OPSSC is not able to confirm FESA's compliance with the Code of Ethics (PSM Act s.9).

Further, OPSSC is of the opinion that:

- non-compliance with the PSM Act notwithstanding, the appointment is valid; and
- while the appointee's resignation from WA Police may leave no legal reason nor channel for the completion of the disciplinary process against him, there are ethical reasons to resolve this matter. OPSSC believes that it would be appropriate for the Commissioner of Police, following consultation with the appointee, to continue with the disciplinary process relating to the appointee.

What action needs to be taken

This report raises a number of important issues for agency heads.

- Proper assessment is fundamental to meeting the requirements of the PSM Act and the public sector standards in human resource management. OPSSC defines "a proper assessment" as examining each candidate's claims, independently verifying these claims and ensuring scrutiny of the process prior to appointment. A proper assessment requires good judgement, and places the onus on the agency to take steps to apply processes which will inspire confidence in appointments.
- OPSSC again states the importance of external verification of candidates' claims. References should test candidates' claims and status, especially where there are issues of sensitivity. A range of referees should be chosen to provide adequate comment on an individual and their capacity.
- Recruitment reporting which shows key decisions is essential to good processes. This does not mean that reports need to be long or intricate. But where decisions are made which may be questioned, then the reasons for these decisions must also be given. This is especially relevant where there are complex circumstances. Formal advice should be sought as appropriate and documented as part of the process.
- All too often, agencies rely on folklore when recruiting. OPSSC is concerned that many of the barriers introduced into recruiting processes are there only because "that's the way we've always done it". Similarly, the dependence on past practice as a justification for short-cuts or unorthodox practice is of equal concern. Processes need not be complex, but they must be clear and well documented, and followed until such time as they are formally amended.
- CEOs who are directly involved in appointments should take care to separate out their roles in the process, and seek external input and advice prior to completion of the process. CEOs hold many roles and responsibilities within their agencies. Where these roles and responsibilities coincide, seeking the formal support of others is wise. Most importantly, at the commencement of a process where there are complex ethical issues, senior staff are well advised to consult OPSSC for recruitment advice.
- All parties should take care that, while industrial agreements should strive to seek the best possible outcomes for employees, to do this in a way which may risk encouraging non-compliance with the standards is in no one's best interests. All employees are best served by positive support and a fair hearing during recruitment processes. An industrial and recruitment environment which supports this approach, and where there is no possible accusation of patronage or favouritism, is the best way to achieve this outcome.

The complete report is available from the OPSSC website
www.opssc.wa.gov.au