

PUBLIC ACCOUNTS COMMITTEE

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

MINISTERIAL RESPONSE

Recommendation 1

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

Response:

In its statement of 13 July 2009, *Liberal-National Government moves further to reform the Public Sector*, the Government announced a range of reforms it intends to make to the public sector. Once the detail of how these reforms will be achieved has been determined, the necessary legislative amendments will be put before Parliament.

Recommendation 2

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

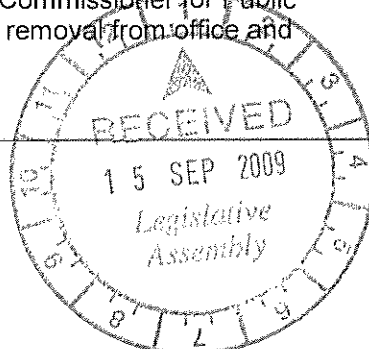
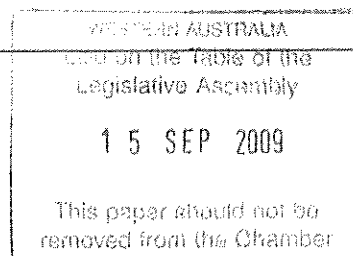
- (i) establish the Public Sector Commissioner as an independent officer of the Parliament with appointment and dismissal provisions similar to the office of Auditor General;
- (ii) amalgamate the offices of Public Sector Standards Commissioner and Public Sector Commissioner;
- (iii) establish in statute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

Response:

(i) & (ii)

As announced on 13 July 2009, and in line with the Liberal Party's election commitment *Government Accountability and Public Sector Management*, the Government will be merging the roles of the Public Sector Commissioner and the Commissioner for Public Sector Standards and creating a new statutory position of Public Sector Commissioner.

In creating the statutory position of Public Sector Commissioner, the elements of independence currently associated with the Commissioner for Public Sector Standards, such as appointment to and removal from office and



reporting directly to Parliament, will, in general, be transferred to the Public Sector Commissioner.

It is anticipated that the Minister responsible for public sector management will continue to have the capacity to direct the Public Sector Commissioner in a small number of areas, such as a direction to undertake a review of a public sector body. As indicated in the response to recommendation 1, once the detail has been determined, the required legislative amendments will be put before Parliament.

- (iii) The Government has publicly stated its commitment to halve the number of boards and committees and does not intend to create new ones unless there is a compelling reason to do so.

The advisory function recommended by the Public Accounts Committee can be achieved effectively through means other than the creation of a board. As an example, the Public Sector Commissioner has recently conducted a series of consultation forums to seek views on what is needed to improve the flexibility and integrity of the public sector. As well as Chief Executive Officers and human resource directors from public sector agencies, representatives of a number of organisations, such as unions, universities, the Institute of Public Administration Australia (WA), and the Chamber of Commerce and Industry, participated in the forums.

- (iv) As well as making the necessary legislative amendments to establish the position of Public Sector Commissioner, the major issues identified in previous reviews of the Act will be considered as part of the Government's public sector reform program. These include:
- streamlining the disciplinary provisions of the Act;
 - greater mobility of employees across the public sector;
 - increased flexibility in the remuneration and rotation of Senior Executive Service members;
 - enabling Chief Executive Officers to undertake recruitment in a timely and flexible manner; and
 - removing a range of administrative anomalies and inconsistencies.

Subsidiary instruments of the Act, such as approved procedures, will also be reviewed to make sure they provide administrative flexibility.

In addition, the Public Sector Commissioner has issued a series of discussion papers and sought comment from both within and external to the public sector. These discussion papers cover three broad themes, that is:

- (1) Flexibility in recruitment and employment practices
- Attraction and retention
 - Merit-based appointment and what constitutes a proper assessment
 - Appointment to level rather than position or office
 - A more robust and flexible Senior Executive Service

- (2) Management of employee performance and exit arrangements
 - Managing, assessing and rewarding employee performance
 - Substandard performance and discipline
 - Termination of employment

- (3) Improving whole-of-sector performance
 - Building capacity for a modern public sector
 - Measuring agency performance
 - Collaborative and joined up government
 - Independence of the Public Sector Commissioner

Recommendation 3

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

Response:

The delegation of powers and duties from the Premier as Minister responsible for public sector management is currently located on the Department of the Premier and Cabinet's website and is updated as changes occur. Once the Public Sector Commission's dedicated website is completed, the information will be available on that site.

Recommendation 4

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

Response:

The appointment process for Chief Executive Officers is currently being considered as part of the Government's public sector reform program.

As indicated in the response to recommendation 1, once the detail of how these reforms will be achieved has been determined, the necessary legislative amendments will be put before Parliament.

Recommendation 5

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

Response:

As announced on 13 July 2009, the Government will be merging the roles of the Public Sector Commissioner and the Commissioner for Public Sector Standards and creating a new statutory position of Public Sector Commissioner. Responsibility for the recruitment and selection process for Chief Executive Officers will lie with the Public Sector Commissioner.

The Government will ensure that changes to the *Public Sector Management Act 1994* (the Act) and subsidiary instruments will enable the Public Sector Commissioner to adopt the highest standards of integrity in the selection of Chief Executive Officers.

Recommendation 6

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

Response:

The amended legislation will reflect the community's expectations that the selection process for Chief Executive Officers is free from nepotism and patronage.

Where selection panels are formed to assist the Public Sector Commissioner, the expertise and experience panel members can bring to the process will be taken into account and any issues associated with potential bias or impartiality will be considered carefully.

Recommendation 7

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

Response:

While long selection processes for Chief Executive Officers is a concern, there needs to be a balance between a thorough process and timely outcomes, and a recognition that there are valid reasons for variances in the lengths of such processes.

An absence of prescription in the amended legislation, while still requiring the upmost integrity in the process, will assist with the timeliness of the selection processes.

Recommendation 8

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

Response:

The selection and appointment process for Chief Executive Officers is being considered as part of the public sector reform program. Once the detail of how these reforms will be achieved has been determined, the necessary legislative amendments will be put before Parliament.

On 18 August 2009, the Commissioner for Public Sector Standards delegated to the Public Sector Commissioner her responsibilities to assist in the appointment of Chief Executive Officers for any new positions that become available. This will assist the Public Sector Commissioner to examine the issues regarding the timeliness of the process.

It should be noted that currently the Public Sector Commissioner has the delegated powers and duties of section 45 of the Act "Appointment of chief executive officers". The additional delegation from the Commissioner for Public Sector Standards effectively means that the Public Sector Commissioner has responsibility for both the recruitment and appointment of Chief Executive Officers. As the clear intent of the Act is that the two functions be undertaken by different offices, the Public Sector Commissioner will not be performing the responsibilities delegated to him by the Premier pursuant to section 45 of the Act while this situation remains and has temporarily referred these responsibilities back to the Premier.

Recommendation 9

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

Response:

Significant amendments to the Act will be required to implement the Government's public sector reform program. Consultation on the reforms is still occurring and the details of these amendments are not yet known. Once they have been determined, the necessary legislative amendments will be put before Parliament.