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# **Submission to the PSC Recruitment Review**

**March 2018**



# Executive Summary

The Public Service Association (PSA) provides this submission in response to the PSC's invitation to participate in their review of the GSE Act and associated policies. Having conducted extensive internal consultation with our Industrial staff and our membership it is the view of the PSA that a root and branch review is required into the GSE Act in its entirety.

This submission highlights some of the major points identified during our consultations. We have attempted to place them within the broad framework set out within the attachment to your letter but note that many of the issues cross those boundaries. In those instances, they have been included where we deemed them the best fit.

We note that in general, the experiences of our staff and members have been negative when dealing with the GSE Act and its implementation. It is the view of the PSA that the GSE has created a recruitment environment in which recruitment takes longer than it used to, costs more to manage and has led to less mobility for public servants.

In our view, this has occurred due to the insistence of implementing a new Act to manage the NSW Public Service rather than adjusting the existing, mature, Act. The outcome has been that rather than implementing a change of culture within the service, all parties have had to learn a new system while at the same time dealing with the massive changes occurring to their agencies, and the government sector as a whole. The result has been the breakdown in system that used to work without a coherent or consistent new process taking its place. This issue has been exacerbated by the stripping of the Personnel Handbook concurrently with the introduction of the GSE Act.

New issues have emerged in processes that were working well already while other issues have not worked as intended. As with anything, the change has not occurred in isolation and the PSA contends that the increased pressure placed on Human Resource units, and the increased pace of workforce change, has led to poor outcomes for the public sector.

The view of the PSA is consistent with the evidence from the PSA's own People Matter Employees Survey 2017 that found only 35% of employees are confident in the way recruitment decisions are made. Additionally, only 39% of employees found that change, change in part that is driven by the agencies complying with the GSE Act, is managed well.

In addition, the PSA has identified clear instances where maladministration risks have increased, along with the risk of corruption. Accountability has been reduced, either by the removal of the checks and balances built into the former systems around employment processes or through the failure to develop systems to deal with risks around new processes.

The PSA believes it is time to accept that the GSE is not fit for purpose and to restore the Public Sector and Employment Management Act as the most mature framework for recruitment available for the public sector.

## **1. Recruitment Strategy**

The current recruitment strategy of the NSW Public Service exists in policy only. Agencies either continue to act as they have always acted or use the loose guidelines contained in the GSE Act to do what they want, knowing the language and oversight is so poor they can get away with maladministration, at best, or corrupt conduct.

The capability framework is used as an excuse for any change agencies wish to make to long existed roles or to justify the systemic turnover of long established workforces with the aim of changing work culture. Despite the stated aim of the capability framework making mobility in the sector easier, mobility within agencies is now less likely to occur and less common. The loss of detailed position descriptions has meant that hiring managers are less confident of the skills of public servants looking to transfer roles and lead to more and more external appointments, to the detriment of career development and the maintenance of corporate knowledge within the sector.

Contingent labour is used as the Trojan horse in this regard and despite the deficiencies highlighted by the Audit Office, no action has been taken to rein in Agencies over this issue.

A key finding of the April 2017 Audit Office report on Contingent Worker found agencies lack any long term planning to retain and attract the best employees. Decisions around vacancies are dealt with on spur of the moment decisions, the choice of how to fill a role being undertaken by the immediate manager. The outcome is a workforce less secure in its employment and less likely to remain in the public sector as a result.

### **Case Study: Trustee and Guardian**

*A recent Trustee and Guardian restructure is an example of how agencies use the recruitment process and the loose rules and the broad terms of the capability framework to displace long term public servants. The Trustee and Guardian looks after the financial interests of citizens who are incapable of managing their money and employee lawyers help with issues like after estate planning.*

*In 2016-17 the Budget for Trustee and Guardian budget was cut by \$38 million; from an operating budget of almost \$98 million in 2015-2016 to \$60 million in 2016-17. In order to accommodate the cut, 111 jobs were cut Many of the cuts were made from the legal officer section of Trustee and Guardian.*

*Rather than apply a matching process or even a ranking process within existing grades all Legal officers were asked to apply for roles they already held. During the first round of*

*recruitment for the roles, two thirds of the Legal Officers were told they did not meet the capability framerk to perform the roles they currently held. The recruitment decisions were made despite all the legal officers having a practicing certificate from the Law Society, and having undertaken the mandatory training required for the role.*

*The PSA referred the process to the NSW industrial Relations Commission (IRC case 785/2015). Commissioner Newell recommended an independent review be conducted regarding the recruitment process. The resulting independent recruitment review resulted in many of the original holders being reappointed to their positions.*

*Employees get frustrated when they are told that they are not qualified to do the job they currently do because of the inability of the capability framework to correctly reflect the complexities of the public sector. This adherence to an inflexible framework destroys confidence in recruitment processes and the relationship between employees and their employer.*

*In this instance, it resulted in long term public servants taking voluntary redundancies at the very time the service required their institutional knowledge to get through a difficult period of change. Trustee and Guardian last reported that currently 47 contractors are engaged to help fill the vacancies left due the loss of experienced staff through the restructure.*

*To add insult to injury, the Trustee and Guardian is currently in the process of hiring 100 additional officers in order to deliver services.*

## 2. Systems and solutions

The introduction of capability testing has weakened the strength of corporate knowledge within the public sector and led to less value being placed on internal applicants' experience and knowledge.

There has been no evidence produced to show that the capability assessments or behavioural interviews are appropriate or effective in selecting better candidates than the old methodology used under the PSEM Act of application, CV and interview only.

Additionally, temporary employees undertake the same capability testing, even when they are applying for the role they hold. This is counter intuitive to a system designed to increase mobility within the sector and decrease recruitment timeframes. Having already undertaken two competitive assessments to win the temporary role, we see no reason why a desktop assessment of their performance couldn't be undertaken of their performance, and where this is positive, the conversion of status made.

The increased complexity and time required under the GSE for recruitment practices means managers are looking for short cuts. As a result managers outsource as much of the responsibility as they can to private providers. These providers do not have the knowledge to ensure testing is job specific or appropriate. Testing is increasingly generic, meaning that canny applicants can 'game' the system by researching techniques for role playing, psychometric testing and related tasks.

There is also evidence of specific agencies and hiring managers exclusively using one agency for all recruitment practices. These examples appear to have occurred naturally and without a tendering or other competitive selection process occurring. The irony of this situation is not lost on us... At best this represents maladministration, at worst a possibility for corrupt conduct by the manager.

This is evidenced by the recent Independent Commission Against Corruption (ICAC) investigation, in February 2018, into application fraud within the public sector. They note that such conduct includes contingent labour hire and the lack of an internal process around utilising this type of engagement.

Contingent labour hire spending has expanded under the GSE Act to over \$1.2 billion in 2016-17. Prior to the GSE Act, in 2012-2013 financial year public sector spending on contingent labour hire was \$505 million. This is a clear indication that the recruitment strategies of the government are not performing as required. This issue is doubly concerning given the Audit Office's report into the failure of the Public Sector to implement any long term planning or review process into the use of Contingent Labour. Their April 2017 report is damning of the public sector's failure to properly manage its use of contingent labour.

What isn't addressed by this report but has come to our attention is where managers came from one of these external agencies and then use that agency for all future recruitments within

their section. This is clear conflict of interest but there are no current guidelines or protocols addressing this issue. It is a clear corruption risk for agencies.

***Case Study: Office of General Counsel***

*During the Office of General Counsel's restructure many long term employees did not win roles at grade.*

*What was particular about this restructure process is that the staff undertook a Behavioural assessment as part of the capability testing. Many of the staff felt they did receive appointments during the restructure due to not meeting the speaking skills requirement of this interview process and those from non-English speaking background were particularly disadvantaged. Staff remain bemused how this assessment was relevant given they were performing the roles without behavioural issues being raised at any point.*

### **3. Capability and structure**

Human Resources teams have not been exempt from knowledge drain caused by the GSE and its problems. The past five years have seen turnover in HR teams reach critical levels. The result is that many agencies are advised by HR groups without corporate knowledge or a deep understanding of public sector principles or ethos. In smaller agencies, they are also less likely to support or set up Talent Pools due to the administrative burden they create. Many smaller agencies have never set up or used a Talent Pool under the GSE.

In consequence, many HR teams are timid in how they advise managers on recruitment practices. They lack the corporate knowledge to understand long term strategic planning of a workforce and react, rather than act to shape, events. Despite a major concern of managers being the time a recruitment takes, it seems that many are still reluctant to use a Talent Pool despite the saving it would represent in filling roles.

Middle Management mistrusts Talent Pools, especially if they weren't involved in setting them up, seeing them as some sort of refuse dump for unwanted workers rather than merit selected applicants awaiting a promotional or permanent position. They also don't seem to be aware that using a Talent Pool would speed up their recruitment process, or how to decide how to pick someone out of the pool.

In the few instances when talent pools are utilised, staff are left in the dark about their status. Under the old Eligibility Lists people were ranked and knew where they were. The new Talent pools do not rank people so there is no accountability for the selection of people out of pools. The language used by management to unsuccessful applicants from talent pools is also inappropriate, with members reporting that they were found unqualified for roles at grades that many of them have already held for years. A similar issue exists for staff applying through EOI processes. Despite having been through that process, they are later informed they are unqualified.

Timeframe is a serious problem when dealing with staff who seek redeployment as part of being displaced due to workplace change. The retention period for staff seeking redeployment is only 3 months yet most recruitment processes take over 6 weeks now. This means that staff have as little as six weeks to find and apply for positions before it becomes inevitable that they will be retrenched.

**Case Study: Family and Community Services – FACS Mobility Pathway**

*This taint can be seen by the evidence of people within talent pools being rejected in competitive selection process performed for roles at the same grade. Internal applicants are discriminated against in many areas as a result of being associated with Talent Pools or internal transfer processes such as the FACS Mobility Pathways program.*

*The Mobility Pathway is a tragic example of this prejudice. The NSW government decision to transition Disability Services to the private sector left 900 staff potentially displaced and searching for positions with other Agencies. As part of the process staff were provided with specific support including the engagement of INS, a private job placement provider, to assist them with identifying and applying for positions.*

*The PSA believes that INS performed their role and note that most, if not all, staff on the pathway received valuable assistance from the provider. Despite this, staff were constantly ignored for roles they were capable of filling and many informed the PSA that they were informed they were deemed not capable for roles at grade and even for identical roles to the role they had left.*

*HR managers within FACS have placed the blame on hiring managers at other agencies and a lack of support to people within the program from public sector sources.*

#### 4. Enablers

The Government Sector Employment Act is an immature piece of legislation that has overturned a previously mature system. The result has been increasing chaos as agencies deconstruct their policies to match the weaker provisions of the GSE. Clear gaps exist from previous legislation and these gaps continue to increase with the intentional stripping of the former Personnel Handbook by the PSC. This handbook represented the developed process and custom of the public sector and allowed HR practitioners to understand and comprehend how to apply the various legislative and legal opinions in the daily application of the Act.

The GSE is deficient in enforcing the mobility agenda of the government by being silent on key issues and actively prohibitive in other areas. Recruitment has become far more cumbersome and time consuming, as outlined earlier. As well, the appeals mechanism which should have been extended to all participants on a merit basis was instead reduced to remove the merit basis and to become one of procedural fairness. As a result merit selection has become an untested concept with no ability for any party to test that the concept is being fulfilled. This is a clear corruption risk for the government.

In the same way, disciplinary requirements of the GSE have been weakened. There is now no clear delineation within the process for an independent investigation with the decision maker able to make all investigations as well as make the final decision. Procedural fairness for people under investigation has been lost as a consequence.

Temporary Employment has strict rules around how long employees can be kept on these contracts. Although the PSA supports this provision, the mechanism to convert these employees is not robust and instead of working to secure these workers long term where they are required, is in effect forcing agencies to remove officers capable of performing these roles and readvertise. Even where the temporary officer is then winning this role, they are forced to go through a further capability testing process, despite having already been through one to win the temporary position. As discussed above, a desktop assessment of their performance should be sufficient to see them confirmed in a role.

In other areas where the workforce is permanently staffed by temporary roles, due to the nature of the funding reliant of grants or federally sourced, the provisions within the rules for the Commission to grant an exemption is not being utilised effectively. Staff are being released at the conclusion of their temporary contracts and having to undergo a new recruitment, including capability assessment, process before continuing in their existing role.

The GSE has also led to increasing isolation of workers within the Public Sector, based on the incompatibility of transfer provisions between the various Acts overseeing separate Agencies. PSC has misinterpreted the provisions and meaning of the State Owned Corporations Act by not allowing employees to transfer back into the Public Sector with their entitlements and a continuity of service. In the same way, many of the Agencies set up under separate legislation or which have separate workforces under different legislation (such as Education and Health) fail to have continuity to allow for the free flow of staff across positions within the organisations.

Reassignment provisions for employee initiated secondments do not take into account the impact of the transfer in terms of anything except the base rate of pay. Staff in roles which attract substantial amounts of allowances, shift penalties or other additional salary portions as part of their standard operation are not having this considered in terms of fairness when forced to a new role at grade. Although the GSE Rules allow for allowances to be considered for SES level staff, there is nothing for workers on lower rates of pay.

The Act stresses the need for formal qualifications within certain professions but ignores the work done in the sector through the past 30 years on recognising the value of on the job experience and practical skills. The increase in job descriptions requiring formal qualifications is disadvantaging long term public servants who know the work but don't have the qualification to go with it. The PSEM recognised this and allowed for it, the GSE has removed this flexibility without a justification of why the new method is an improvement.

Conversion principles are an improvement on the previous PSEM Act in that the language has been strengthened to state how and when these should occur. The issue here is that there is still no outright statement that conversion occurs automatically. The result is that Agencies are inconsistently managing this process. Some Agencies only do a check of eligibility ever six months or so, processing people in batches, while other Agencies perform no checks and rely upon the individual manager, employee or Union intervention to prompt a conversion to ongoing employment. It is our view that the requirement to perform an additional comparative assessment as part of this process is a leading factor in this failure for agencies to be proactive in this area.

Policy development by the PSC is patchy and unenforceable when Agencies don't wish to follow it. The PSA is constantly met with the claim that Agencies are either bound by PSC decisions, or aren't bound by them, based on their view of an individual issue. Legislation has not clarified this situation, allowing Agencies this wriggle room.

A key issue of this nature is around the application of the capability framework in relation to the formation of role descriptions. Although the PSC has clear guidelines that are published, many Agencies either do not follow the guidelines or are unaware of them. PSA staff highlighting where new roles don't align, these criteria are being ignored. We note in many of these instances, the roles are being assessed lower than the guidelines recommend they should be.

Return to Work coordinators (even where these roles are specialised) are poorly trained. The complexity of issues means that usually they attempt to remove the problem rather than manage it. With the GSE Act being silent on disability, temporary incapacity due to a work injury and/or non-work injury, medical retirement has become the default option in all cases. With no policy dealing with reasonable adjustment for workers who injured themselves away from the workforce, it is easier for HR representatives to initiate a medical assessment and remove the worker permanently from the workplace. This is particularly prevalent in physical occupations where staff require alternative duties rather than just adjustment within their role.

### **Case Study: Digital Technology Services (DTS)**

*At the start of the Digital Technology Services (DTS) restructure, there were more roles than staff. Confirmation from the CEO that there were plenty of roles was provided. The restructure started with the higher grader positions and progress to the lower positions. As the restructure progressed, from the top down, it became clear 2/3 of staff were being told they did not meet the requirement of the Capability Framework at grade.*

*Justice agreed to a review of the restructure following the PSA raising this matter through the IRC. They also agreed to providing assistance to applicants during Stage 2 of the selection process.*

*Another result of the hearing was that it became clear that an agency contractor had been appointed to a selection panel as part of the restructure process. It was only through the intervention of the IRC that Justice agreed to disband and reform this committee with only public servants on the panel. The breakdown of such a simple requirement of a fair restructure recruitment process is only possible in a system that is suffering from clear deficiencies in checks and balances.*

*After help with the recruitment process, the number of applicants being selected for roles improved from one third to two thirds. This shift in the number of recruits demonstrates that the framework does not provide adequate assessment of the skills and knowledge of staff.*

*Staff reported the behaviour interviews process was inconsistency in the questioning process and the interpretation. The prevalence of inconsistency in the processes to review staff have serious consequences as the staff have lost the ability to challenge their assessments and do not receive credit for their current work performance. One staff member, with over 20 years of experience, was informed they had failed their Behavioural Interview due not providing a suitable example of resilience. Such a petty*

## 5. Measurement framework

The GSE has led to the strange circumstance where recruitment within the service now takes longer, costs more, encourages less mobility amongst existing public servants. It has achieved all this while also becoming (or more accurately because it is) less transparent.

The introduction of a more complex recruitment system, with increased timeframes for recruitment have led to an ever increasing reliance on shortcuts by recruitment managers. Contingent labour hire has increased as it is seen as an easier option than recruiting permanently or temporary employees and has led to these workers becoming increasingly engaged.

These contingent labour hires are then in the prime seat once the regulations require that these positions be filled permanently or when the increasingly common restructures require them to be formalised. Existing Public Servants with skills are not afforded an opportunity to fill these roles as there is no internal process or opportunity for existing staff to exhibit skills they may already have beyond the role they currently fill.

In restructures this has become endemic. An IT restructure in Justice led to 2/3 of existing staff losing their positions in a restructure to contingent labour. This is despite the fact that many of these public servants were performing these roles prior to the restructure competently. There is something wrong with the capability framework if people performing roles are deemed unfit during a restructure process. The cost to the organisation in terms of corporate knowledge lost and redundancies to staff who could have performed those roles is massive.

Capability testing should not apply to permanent and long term temporary employees applying for new roles at grade during a restructure.

The loss of appeal rights now means that selection panels are less accountable for their decisions. How does the Agency oversee the actions of individual managers' recruitment decisions? How has this metric been improved since the end of self-regulation of employee appeals on the basis of merit? Appeals should be restored and extended to allow any public servant to challenge an appointment from outside the sector to reflect the changed dynamics of recruitment from external sources. Restoring this appeal process will reduce the current concerns around maladministration and corrupt conduct.

Temporary Employment provisions allow an exemption to certain roles based on the type of funding for the roles. Examples include Rice Researchers in Primary Industries where funding is federal based. These roles are ongoing but the provisions require these people to be release on set time frames. Provision allows for certain roles to seek exemptions but the mechanism either isn't being approved or isn't being utilised correctly by the agencies.

Temporary employees who win their role through capability testing and a full merit based assessment should not have to undergo another assessment for their employment to be converted to an on-going status. This is a redundant process that serves no purpose, their capability has already been assessed. Ongoing performance in the role should be enough to see them converted following the other requirements for this role being met.

The implementation of roles under the GSE, and the ongoing conversion of roles through the capability framework has led to the de identification of identified roles for Aboriginal, diversity and disability.

In terms of Aboriginal positions, these roles were not just about ensuring quotas of Aboriginal employment within the public sector but also about ensuring that roles working with the Aboriginal community were filled with people capable of understanding and interacting with the community due to their Aboriginality. These roles have been dismantled or failed due to the loss of the incumbent position holder or the failure of the non-Aboriginal person to maintain the value of the unidentified role.

This circumstance is not assisted by the failure of the government to set quotas for Aboriginal employees at anything below an SES level. Without lower level quotas, where are these Aboriginal SES people going to come from? For the youngest community (in terms of average age) the failure to provide traineeships, apprenticeships and identified entry level positions is a massive failure.

The applying the Capability Framework during restructures has created a process in which a large amount of time and money are spent forcing long term employees to reapply for roles.