



Public Service Association of NSW

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Pat Imbert
Senior People & Culture Partner
Crown Solicitor's Office
60-70 Elizabeth Street, Sydney NSW 2000

Via email: pat.imbert@cso.nsw.gov.au

19 May 2021

Dear Ms Imbert,

The Public Service Association (PSA) appreciates the opportunity to provide feedback on and consult in relation to the Crown Solicitor's Office proposed Recruitment Policy and Process Guide (the Recruitment Documents). The Recruitment Documents outline the guiding principles, values and processes for recruitment at the CSO.

The feedback from the PSA and its members about the Recruitment can be categorised as follows:

1. Comments and suggestions about broader workforce planning issues at the CSO, including specifically the retention of staff, staff development and career progression;
2. Comments and suggestions regarding the Recruitment Documents and recruitment processes at the CSO; and
3. Comments about other related matters.

The feedback is summarised in this letter below. The PSA requests that the CSO meet with the PSA to discuss this feedback.

1. FEEDBACK ON WORKFORCE PLANNING ISSUES

- I. The CSO should develop a longterm workforce plan which should be referred and annexed to the Recruitment Policy**

The unsatisfactory process and outcomes of recent recruitment action at the CSO suggests that recruitment is just being undertaken at the CSO as a matter of course and that there is insufficient long-term planning or preparation for recruitment decisions.

Recently, there have been multiple bulk recruitments (solicitor grade 5 and 6) which took lengthy periods to finalise. However, upon finalisation, few employees were appointed to

ongoing roles with remaining successful candidates placed in talent pools. This is despite there being multiple unfilled solicitor grade 5 and 6 roles and that multiple talent pooled candidates occupying temporary assignments to the same roles that they have been talent pooled. There has also been recruitments where the criteria for a role has changed midway through the recruitment process. For example, in the middle of the grade 4 bulk recruitment last year, a new rule was made about CSO graduates not being eligible for the role.

The CSO's failure to appoint persons to roles at the completion of a lengthy recruitment process, where roles are available, and the decision to change role criteria midway throughout a recruitment process suggests that there are significant deficiencies in the CSO's planning around recruitment activities. This situation is contrary to the merit based employment principles set out in Part 2 of the *Government Sector Employment Act 2013* (NSW).

In order for the PSA to effectively consult on the issue of workforce planning at the CSO, the PSA requests that it be provided with the CSO's multi-year workforce plan or policy document. If such a document does not exist, the PSA requests that the CSO undertake to develop such a plan, that this plan or strategy be annexed and referred to in the Guide, and that the PSA be given an opportunity to consult in relation to this plan. Persons making decisions to commence recruitment processes should be required to ensure that the recruitment is necessary and that roles will be available once the recruitment is finished.

Further, the recent practice of bulk recruitment followed by most successful applicants being placed in a talent pool means that appointment to roles reverts back to 'Director's pick' i.e. Director/Executive have absolute discretion as to who, if anyone, is appointed to roles from the talent pool. Here again, the process indicates that the CSO is not acting consistently with merit based employment principles set out in Part 2 of the *Government Sector Employment Act 2013* (NSW). Also, new bulk recruitments are conducted when existing talent pools have not been exhausted – this should not be allowed. This is a waste of resources on recruitment and unfair to those in the existing talent pools.

Finally, the recruitment policy should allow for practice area specific recruitment for Grade 5 and 6 roles (as occurred in the past) – solicitors at this level have usually developed a speciality in a particular practice area and therefore may not perform well in, or be deterred from applying for, a generic bulk Grade 5 and 6 recruitment.

II. Provision of ongoing roles, lack of transparency around decisions to convert employees on temporary contracts to ongoing contracts

The PSA is concerned about the CSO's excessive use of temporary contracts for employees and about the lack of transparency around the decision making to convert employee contracts from temporary to ongoing.

The PSA understands that previously it was general practice for all grade I-3 solicitors to have their temporary contracts converted to ongoing contracts once they had worked at the CSO for two years. The PSA understands that there are several grade I-3 solicitors who have been employed in the CSO over two years but they remain on temporary contracts.

The PSA also understands that many solicitors in grade 4 roles and above (all the way up to directors) who are being appointed to short, 1 year or 6 month, temporary contracts, despite there being ongoing roles available.

The provision of temporary contracts and the uncertainty about whether such contracts will be extended affects staff morale. Moreover, the lack of consistency within the CSO about which employees have their contracts converted from temporary to ongoing, breeds distrust amongst staff and further destroys staff morale. Temporary staff are very worried about their future due to the recent and continued focus on billable hours, changes to billing practice and the financial issues surrounding the core fund.

To resolve these issues, the CSO should provide information outlining:

- the circumstances in which an employee is to be temporarily appointed to a vacant ongoing role,
- a policy or guide explaining how a temporary employee can get their role converted to ongoing and who can make that decision (assuming one is available), and
- a policy for the conversion of grade 1-3 temporary employees to ongoing employees at the completion of their two year rotation program.

III. Excessive and inconsistent use of temporary assignments

The PSA have concerns about the CSO's use of temporary assignment and the recruitment processes surrounding such assignments. Key concerns about the use of temporary assignments are:

- Failure to advertise the temporary assignment at all or advertisement of role only to an individual team;

- Creating temporary assignments for a role, circumventing a talent pool, when the associated talent pool for the role has not been exhausted; and
- Creation of temporary assignments which appear to be targeted at specific employees.

Some teams have created new temporary roles for grade 4 positions for people who did not complete the formal recruitment process last year. These positions were not advertised, with no interview or application needed to apply for a 3-month role. Further, the lack of transparency as to why certain teams do not use talent pools where other teams do, deeply affects staff morale and has created perceptions of bias and unfairness. A consistent and uniform approach should be applied across the CSO and the Policy should be updated to stipulate how this will occur.

There have also been numerous temporary assignments without EOI advertising. Office wide EOIs facilitate the ability for cross-office transfers and promotions to different teams. There have been examples where an EOI was only sent out to the relevant team as opposed to the whole of CSO which can be perceived as the recruitment panel already knowing who they wish to recruit. Members are concerned that this does not allow development opportunities for all staff equally.

The PSA understands that there may be an informal policy in place at the CSO which governs the use of temporary assignments and the recruitment processes that surround them. The PSA requests that it be provided with a copy of this policy, if it exists, and, if it does not exist, that the CSO create a policy outlining how temporary assignments are used and advertised in the CSO.

The PSA also requests that the Policy and Guidelines should clearly address the issue of temporary assignments and how they will be used and advertised within the CSO.

Finally, members are concerned that long term temporary appointments for selected staff do not allow development opportunities for all staff equally. We would like to discuss how this can be dealt with via policy so that development opportunities are shared fairly across the CSO.

2. FEEDBACK ON RECRUITMENT DOCUMENTS

I. Role criteria must be specified at the commencement of a recruitment process and cannot be varied or added to once recruitment commences

There are concerns that the criteria or standards applied to roles are not always determined in accordance with the principles of merit based recruitment as set out in the *Government Sector Employment Act (NSW)*, Part 2, particularly where those criteria change after recruitment

commences. For example, in the recent solicitor grade 4 recruitment referred to above the role criteria was varied midway through the recruitment process.

The PSA is advised by its members that after the recruitment for that role commenced, an additional criteria was added which specified that applicants must have had formal carriage of matters for over 12 months. As CSO graduate solicitors were not permitted at the time to have formal carriage of matters, all CSO graduates were culled from the recruitment for the role. This is despite the fact that many CSO graduates had had effective carriage of matters for over 12 months, in a process that was encouraged by CSO directors. The PSA is concerned that the additional criteria suggests that the CSO was seeking specifically to exclude CSO graduate candidates from the role, as opposed to being focused on recruiting the best candidate on the role. The PSA notes that this additional criteria was not included in the grade 4 recruitment process that occurred in 2019, during which several CSO graduate solicitors were successful.

To ensure that the CSO complies with the merit principle, the PSA requires that the Guide specify that a recruitment panel must have to set the role criteria at the time of advertising and cannot vary them once the role has been advertised. The PSA also requests that the CSO adopt an internal system where the role criteria applied is cross checked to ensure the criteria selected are appropriate and applicable for the role. This should be included in the Guide.

II. Improve transparency of recruitment process

The Policy and Guide does not seem to address the broader concern that there is a lack of transparency as to how recruitment decisions are made. It is not clear who decides how to cull initial applications (are they reviewed by an external provider, an individual panel member, the entire panel?) and if third party non-panel members are providing input into the recruitment decisions (such as the current manager/supervisor of internal applicants).

To fix this, the Guide should specify who is the decision maker at each stage of a recruitment process and whether recruitment decisions can be made by an individual panel member or if they need to be made collectively. The Policy should also specify the role that external providers may play in recruitment decisions and should indicate that candidates will be informed if an external provider is engaged in the recruitment process.

The Guide should also clarify whether third parties (such as, current supervisors or directors of CSO employees) are permitted to provide input into recruitment processes or decisions and, if so, the scope of their involvement.

The recruitment policy should allow for practice area specific recruitment for Grade 5 and 6 roles (as occurred in the past) – solicitors at this level have usually developed a speciality in a particular practice area and therefore may not perform well in, or be deterred from applying for, a generic bulk Grade 5 and 6 recruitment.

III. Ensure variation in recruitment panel members

The PSA is concerned that there is a practice of using only a small number of the same people on recruitment panels.

The PSA understands that it can be difficult for the CSO to find staff members to sit on recruitment panels. However, to ensure adherence to the merit principles and to improve the transparency of the recruitment processes, the PSA request that the Recruitment Documents specify that:

1. The CSO will create an annual roster of staff members that will sit on recruitment panels;
2. Individual staff members cannot sit on the same recruitment panel multiple years/recruitment sessions in a row;
3. CSO wide recruitment panels are comprised of staff members from across the various divisions or sectors (where it is a cross-divisional recruitment); and
4. Further details about the recruitment panel roster and how it will be adhered to.

3. MISCELLANEOUS MATTERS

I. Further Irregularities in Recruitment

The PSA understands there are further irregularities with the CSO's recruitment. For instance, in the People & Culture team, there are staff members who have been given higher grade roles without any EOI, recruitment or consultation in any way. The PSA is concerned that the CSO may be planning a restructure within this area.

The PSA reminds the CSO that it must be consulted with in regards to any planned or proposed restructure and requests that the CSO advise if it is planning to undertake any restructure within the office.

II. Finance Team

In relation to the Finance restructure and the new staff, the PSA understands there are no plans for ongoing appointments. Temporary staff have been brought in with a plan to simply suitability

assess them. This does not appear to be a sustainable way to staff a whole unit within the CSO. Again, this situation needs to be addressed via workforce planning.

III. Fee earner roles

Some positions recently advertised for the re-structured finance/support/IT roles are offered as ongoing roles, whereas fee earners have been told (at least in T05) that ongoing roles will not be offered for fee-earner roles going forward. Also, the grading of some of the new non-fee earner roles, when compared against fee-earner grades/pay scales, appear to be relatively high – what is the basis for the relatively high grading/pay scales for some non-fee earners.

The PSA requests a meeting with the CSO to discuss the above issues.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Monika Wunderlin', with a stylized flourish at the end.

Monika Wunderlin

For

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