This background paper was authored by the Service Priority Review secretariat in consultation with, and to inform the work of, the Service Priority Review Panel. Every effort has been taken to ensure accuracy, currency and reliability of the content. The paper is not intended to be a comprehensive overview of the subject nor does it represent the position of the Western Australian Government. Changes in circumstances after the time of publication may impact the quality of the information.

The following background papers are published in full on the Department of the Premier and Cabinet website: www.dpc.wa.gov.au

1. Agency capability reviews
2. Best practice regulation
3. Overview of the budget process
4. Counterproductive rules and processes
5. Digital transformation
6. Engaging with the community
7. Functional leadership
8. Government boards and committees
9. Government trading enterprises
10. Leader performance management and accountability
11. One sector workforce
12. Privacy and information sharing
13. Procurement of goods and services
14. Public sector employment framework
15. Role of the centre
16. Service design and delivery
17. Successful implementation of reform
18. Whole-of-government targets
PUBLIC SECTOR EMPLOYMENT FRAMEWORK

Introduction

A mobile and flexible workforce is an essential component of the public sector’s operating capacity. Both employers and employees should be supported by a modern and fit-for-purpose employment framework that keeps pace with an increasingly complex operating environment, while taking account of the changing nature and perceptions of work.

This paper does not seek to conduct a ‘nuts and bolts’ review of workplace practices in WA, nor does it enter into an ideological debate regarding the appropriate relationship between government and its employees. However, it is evident that current approaches to the management of workforce costs and elements of the employment framework are inhibiting workforce mobility, scalability, and overall performance.

The current situation in WA

Managing workforce costs

The WA public sector is the State’s largest employer with more than 140,000 employees, even without counting almost 6,000 sworn police officers and those engaged by utilities (e.g. Alinta, Synergy, Water Corporation and non-government organisations in the delivery of public services).\(^1\)

Employee headcount has remained relatively stable in the five years to June 2017, although there has been an increase of about 3,600 full-time equivalents (FTE) over the same time period.\(^2\)

About 73 per cent of the public sector workforce is employed by the Department of Health, Department of Education and WA Police.\(^3\)

Employment costs make up the largest component (i.e. 40 per cent) of total general government expenditure.\(^4\)

Population growth during the Western Australian resources boom led to upwards pressure on public sector wages and increased frontline employee numbers to address service demand.

\(^3\) Analysis conducted by the review Secretariat.
In response to prevailing financial and economic conditions, the State Government has implemented various financial ‘corrective’ measures to rein in public sector labour expenditure. Examples include:

- capping government wage and condition offers in the negotiation of industrial agreements
- freezing the salaries of senior government employees
- introducing agency salary expense and employee numbers limits
- recruitment freezes
- voluntary and targeted severance schemes
- reductions in the senior executive service
- ongoing agency functional and expenditure reviews.

These measures have proven effective from a financial perspective, with salaries in the general government sector forecast to grow by only 2.2 per cent in 2020-21.6

**Figure 1. Salaries growth – general government sector**

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5 Based on analysis of previous State budget papers and Mid-Year Projections statements.
7 Chart provided by the Department of Treasury. Data taken from Annual Reports on State Finances and Government Financial Results Reports and the 2017-18 State Budget.
Notwithstanding these efforts, total salary costs are projected to be in the order of $12.5 billion by 2020-21\(^8\) and accommodate increased service demand in the education, health, and law and order portfolios.

Nonetheless, blunt financial interventions do not address service demand or structural issues within the employment framework. By way of example, the tightening of government offers under successive iterations of wages policy has contributed to the moderation of growth in labour expenditure. However, this approach has not facilitated needed reform, limiting agency capacity to bargain for changes to outdated and/or unduly restrictive provisions in exchange for higher wage outcomes in the renegotiation of industrial agreements.

Table 1. Public sector wages policy settings in WA – 2009-2017\(^9\)

<table>
<thead>
<tr>
<th>Policy</th>
<th>Setting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Sector Wages Policy 2009</td>
<td>Government offers contained within projected growth in the Perth Consumer Price Index (CPI) and WA Wages Price Index (subject to consideration of notional and/or efficiencies realised in negotiations).</td>
</tr>
<tr>
<td>Public Sector Wages Policy Statement 2014</td>
<td>Government wage offers limited to projected CPI only.</td>
</tr>
<tr>
<td>Public Sector Wages Policy Statement 2016</td>
<td>Government wage offers limited to 1.5 per cent only.</td>
</tr>
<tr>
<td>Public Sector Wages Policy Statement 2017</td>
<td>Increases in wages and associated conditions limited to $1,000 per annum per full time employee.</td>
</tr>
</tbody>
</table>

Further, indiscriminately applied financial interventions do not reward strong performing agencies. A 2012 New South Wales Commission of Audit found centrally-imposed and whole-of-government financial corrective measures “did not distinguish between agencies that have been running at efficient staff levels and those that have not”\(^{10}\). The commission concluded that chief executives should be left to meet their responsibilities, so long as they perform their activities well and within budget.\(^{11}\)

**Oversight of public sector employment framework**

Successive State Governments have retained system-level oversight to mitigate risks that can arise from decentralised and deregulated models of public sector workforce management (e.g. inequitable outcomes, unsustainable growth in costs, unethical decision making).

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\(^8\) Government of Western Australia. 2017f. General government sector and excluding superannuation costs.

\(^9\) Wages Policy restricts the maximum wage offers that can be made by Government agencies in the renegotiation of public sector industrial agreements. Importantly, the policy setting does not bind union negotiation parties to accept Government offers.


\(^11\) Potential budget process reform options are the subject of a separate Service Priority Review background paper.
Workforce-related functions in the WA public sector are currently overseen by two areas of government:

- the Public Sector Commissioner, supported by the Public Sector Commission (PSC), is responsible for workforce management functions as prescribed under the *Public Sector Management Act 1994 (WA)* (PSM Act)
- the executive director labour relations, supported by Public Sector Labour Relations (PSLR)\(^\text{12}\), is responsible for industrial relations functions as described under Premier’s Circular 2017/03 – *Coordination and Governance of Public Sector Labour Relations*.

There is a significant intersection between these two functions. Job classification and work value, change processes, performance management, attraction and retention, termination and severance all have human resource and industrial relations implications.

The designation of workforce-related responsibilities is not uniform across other public sector jurisdictions. In Victoria for example, bargaining and agency advice is provided by Industrial Relations Victoria\(^\text{13}\), while Treasury is responsible for “strategic public sector industrial relations policy, financial and technical advice to achieve financially sustainable employment arrangements”\(^\text{14}\). The Victorian Public Sector Commissioner is established as a separate office with a specific focus on workforce development, performance, leadership, and integrity.\(^\text{15}\)

In NSW\(^\text{16}\) and Queensland\(^\text{17}\), public sector industrial relations responsibilities reside with Treasury, while other workforce functions are performed by their respective Public Sector Commissions.

In other jurisdictions, workforce functions are performed by a single government entity. This responsibility falls to the Department of Premier and Cabinet (DPC) in Tasmania and the Office for the Public Sector in South Australia\(^\text{18}\). Similarly, the Australian Public Service Commission (APSC) is responsible for providing “support and advice to agencies on the Australian Government’s employment and workplace relations policies ... to promote effective agreement making across the sector”.\(^\text{19}\)

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\(^\text{12}\) A directorate within the Department of Mines, Industry Regulation and Safety.


\(^\text{14}\) Ibid.


Complexity of the employment framework

The public sector employment framework in WA comprises three broad layers of regulation:

1. legislation and legal instruments
2. whole-of-government administrative policy settings and directives
3. operational agency policies and practices

A list of legal and administrative instruments governing public sector employment is provided at Appendix 1.

Stakeholders have pointed to a complex and unwieldy legal system that is, in some instances, incompatible with contemporary workforce and agency needs. Specific legal framework issues include inconsistencies in regulatory settings; restrictive award and industrial agreement provisions; disparate employment conditions between occupational groups and workplaces; and inflexible arrangements in relation to recruitment, modes of employment, performance management, staffing ratios, and severance.

The sheer volume of administrative workforce directives issued by central agencies are argued by some stakeholders to lack clarity and cohesiveness. These directives are typically compliance focused, rather than enabling workforce flexibility for chief executives in the execution of their functions. Some directives have been misapplied at the operational level. Stakeholders also referenced a lack of central agency strategic support and advice in navigating through the framework requirements.

Poor agency practices and overzealous self-regulation also appear to be hindering workforce performance, driven by a culture of risk aversion, the proliferation of employment ‘myths’, and a dearth of strategic human resource capability across the public sector more generally.

In 2009 the Economic Audit Committee (EAC) made recommendations focused on removing barriers preventing flexibility and innovation in relation to public sector management.

While actions were taken in relation to some of these recommendations, including involuntary severance and process changes related to assessment of merit, discipline matters, and recruitment, there is no evidence that the changes have achieved significant improvement in public sector management practices. Stakeholders have advised that factors contributing to this outcome included resistance from some agencies, changed financial circumstances, and ambiguity in the wording of some recommendations.

In 2010 the Government released findings of an independent review into the WA industrial relations system, responding to a widely-held view that the system was outdated and did
not adequately reflect the needs of its primary users (i.e. small business and the public sector). Many of the review recommendations were incorporated into the Labour Relations Legislation Amendment and Repeal Bill 2012. However, the Government later conceded that the review’s 193 recommendations would not be pursued and the Bill was shelved. The industrial relations legislative framework has remained largely unchanged since this time.

As part of the 2017-18 State budget, the Department of Mines, Industry Regulation and Safety has been allocated $0.3 million to meet an election commitment in relation to a review of the Industrial Relations Act 1979 (WA). This presents an immediate opportunity to examine the legislation from the perspective of government as primary user of the industrial relations system.

**Workforce mobility**

The movement of employees within and between roles, occupational groups and agencies allows the sharing of expertise, builds capability, and enables better alignment of resources to business need. When used as a professional development tool, mobility also contributes to a more engaged and motivated workforce.

While the PSM Act facilitates the movement of some occupational groups (via secondment, transfer, placement, redeployment, general powers to direct), stakeholders have identified several barriers to improved workforce mobility.

There is significant variation in employment conditions between occupational groups and/or agencies (e.g. hours’ arrangements, penalty rates, shift loadings, annual leave, personal leave, long service leave). Many of these differences arise from legal instruments (including awards and industrial agreements) in recognition of work value and/or the nature of the work being performed. Some agencies administer additional and improved arrangements to assist in employee retention. For example:

- Perth Transport Authority employees receive free public transport
- WA Health employees have access to improved salary packaging arrangements relative to the broader public sector workforce (as permissible under Commonwealth taxation arrangements)

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23 Western Australia remains the only state to retain an industrial relations system with application to both private and public sector entities.
• lawyers employed by the Parliamentary Counsel’s Office, Department of Public Prosecutions and the State Solicitor’s Office have improved pay scales relative to other government lawyers
• Department of Fire and Emergency Services public servants have access to enhanced superannuation arrangements as afforded to firefighters
• differing regional housing subsidies within and between agencies
• inconsistent classification and remuneration outcomes for jobs of similar work value.

This disparity of conditions can be a major barrier to sector-wide mobility, with employees unwilling to move when faced with a loss of take home pay and/or entitlements.

Other factors limiting mobility include inflexible budget rules, myths regarding the movement of employees and perceptions of risk, and increased specialisation in administrative roles.

Other public sector jurisdictions have attempted to address the workforce mobility issue. For example, a 2012 NSW Commission of Audit found that linking employees to a specific position in an organisational structure may impede flexible and efficient resourcing.27 The NSW Government subsequently proclaimed the Government Sector Employment Act 2013 (NSW) (GSE Act), which promotes mobility in the public service by employing people in classifications of work or bands, rather than narrowly defined positions, and assigning them to suitable roles.

The Australian Public Sector Commission (APSC) has established ‘Operation Free Range’, a 12-month cross-government research initiative designed to:

• test the benefits of interagency mobility
• identify and understand the barriers that impact negatively on mobility
• recommend and refine solutions that can improve mobility, including any IT-based solutions
• better position the Australian public service for the future by enabling a more agile and responsive workforce.28

The APSC’s research focuses on temporary vacancies staffed via secondments or temporary transfers within seven agencies (Australian Bureau of Statistics, Australian Communications and Media Authority, APSC, Department of Defence, Department of Finance, Department of Health, Department of the Prime Minister and Cabinet). Host managers advertise roles on the Operation Free Range jobs board, and employees can apply for a vacancy with the support of their home manager. All parties involved in Operation Free Range, whether they be the employee, host manager or home manager, are expected to complete a survey at the end of each placement to inform the APSC’s research.

Performance management and underperformance

Performance management is critical for building capacity and for attracting and retaining a skilled workforce. However, effective performance management has been a longstanding challenge in the WA public sector.

Section 29(1) of the PSM Act requires CEOs to evaluate the performance of their employees and to establish and implement training, education and development programs. This requirement is supported by the performance management standard, which provides guidance on meeting the minimum standard of merit, equity and probity, and from which agencies can develop specific performance management programs.29

Despite the legislative requirements and policies supporting performance management, a 2013 PSC review found participation rates generally remain consistently low across the sector.30 It concluded that a sustained effort by all agencies was required to ensure “employees are regularly and positively engaged in the performance management process”.31 It made several recommendations for consideration and implementation by agencies.

By 2017 however, only 67 per cent of public sector employees employed for more than 12 months reported having attended at least one formal performance management meeting.32 Just over half of all agencies surveyed reported more than 80 per cent of second and third tier officers participating in formal performance planning and appraisal.33

Several CEOs also expressed concern regarding barriers to the effective management of substandard performance. Identified factors related to a lack of strategic human resource capability, fear of prosecution, and a lack of support from central agencies in terms of strategic advice and the necessary tools. Stakeholders also noted the complexity of different rules and processes that apply in relation to substandard performance, depending on the industrial arrangements under which an employee is engaged.

A 2017 PSC survey indicated that only 53 per cent of public sector employees believed their immediate supervisor appropriately dealt with employees who performed poorly.34 In a separate survey, most of the 75 respondent public sector agencies acknowledged that none of their employees were currently subject to a substandard performance process.35

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31 Ibid. p5.
34 Public Sector Commission. 2017d. p36.
35 Advice from the Public Sector Commission.
Workforce scalability

CEO capacity to adjust workforce size and composition is critical for meeting Government priorities, operational needs and financial requirements.

The current public sector employment framework generally provides for employees to be engaged on a permanent, fixed term, or casual basis. As demonstrated in the following table, almost 30 per cent of the public sector workforce is employed on a non-permanent basis.

Table 2. Public sector modes of employment – as at June 2017

<table>
<thead>
<tr>
<th>Appointment type</th>
<th>Proportion of workforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent</td>
<td>69.7%</td>
</tr>
<tr>
<td>Fixed term contract</td>
<td>18.3%</td>
</tr>
<tr>
<td>Casual</td>
<td>10.8%</td>
</tr>
<tr>
<td>Other</td>
<td>1.2%</td>
</tr>
</tbody>
</table>

Some stakeholders claim that the current framework curtails workforce scalability, leading to suboptimal workforce and cost outcomes.

Successive State Governments have shown a preference for permanent employment. This is enshrined in *Commissioner’s Instruction No. 2 – Filling a Public Sector Vacancy*, which limits the use of fixed term arrangements to:

- one-off periods of relief
- work on projects with a finite life, where funding is not guaranteed past a certain date or the work is seasonal in nature
- roles where the skills and abilities to perform a function are expected to vary over time
- periods of traineeships, apprenticeships and cadetships.\(^\text{37}\)

Award and industrial agreement provisions can further limit situations where non-permanent employment arrangements can be used for specific occupational groups (e.g. police, firefighters). Some provisions also enable the automatic conversion of fixed term employees to permanency (e.g. education assistants).

Some CEOs are bound to client-staffing ratios for specific occupational groups (e.g. prison officers, teachers), while others are required to manage political commitments in relation to increased employee numbers (e.g. police officers, education assistants).

Further, the use of contract for service (i.e. non-employee) arrangements are limited to situations where:

- the appropriate expertise is unavailable in the public sector at the time of need


• there is a requirement for impartiality and objectivity external to the public sector
• the required expertise and specialist skills are available only from external sources
• there arises a need to fill a position on very short notice for which the appropriate expertise within the public sector cannot be readily made available (e.g. one to two weeks).  

Stakeholders also pointed to the cost of managing surplus employees, combined with the complex and unduly restrictive nature of redeployment and redundancy framework arrangements.

Severance arrangements are prescribed under the Public Sector Management (Redeployment and Redundancy) Regulations 2014 (RR Regulations). Surplus employees have access to redeployment, or alternatively are entitled to three weeks’ severance for every completed year of service (capped at 52 weeks), a 12-week incentive payment for early resignation, pro rata long service leave and outstanding annual leave balances. There is also provision for enhanced schemes, subject to ministerial endorsement. In comparison, private sector employees are entitled to 16 weeks’ severance after nine years’ continuous service.

Some of the RR regulations are also more generous than those afforded in other State jurisdictions. For example, surplus or ‘registered’ employees in the WA public sector have the legal right to be in redeployment for a period of up to 26 weeks before being involuntarily severed. The maximum redeployment period is shorter in Victoria (12 weeks), NSW (12 weeks) and Queensland (14 weeks).

This framework has been successfully used to achieve large numbers of employee exits. In the past eight years for example, six ‘targeted separation schemes’ have led to 4,367 employees taking a voluntary severance, at an estimated total upfront cost of $460 million and recurrent savings of $320.5 million per annum. In September 2017, the Government announced a further voluntary separation scheme for 3,000 employees as part of its budget repair agenda.

Involuntary severance was first introduced via the RR Regulations in 2015 to cater for situations where surplus employees are not able to be deployed elsewhere in the sector. As at July 2017, however, only 20 employees have been involuntarily severed. Stakeholders have cited complexities in the construction of regulations, a lack of funding for termination payments, industrial risks related to procedural fairness, and political directions as contributing factors to this result.

39 Termination, Change and Redundancy Order (87 WAIG 733).
40 Advice from the CEO Workforce Management Working Group in July 2017.
42 Advice from the Public Sector Commission.
**Senior executive service**

Agency CEOs need strong support from their agency leadership to deliver legislative and operational functions, while working towards realisation of the Government’s public sector renewal agenda and other priorities.

In WA the senior executive service (SES) is established under section 42(1) of the PSM Act as a cohort capable of furnishing high level policy advice, undertaking managerial responsibilities in agencies, and being deployable within and between agencies so as best to promote the efficiency of the public sector.

The SES plays a key leadership role in providing critical support to CEOs, setting the values and culture of individual agencies, and having strong bearing on the sector’s capacity to do its job.

However, many stakeholders do not perceive the SES as a strategic or collaborative leadership/management group as envisaged under the PSM Act. Specific SES issues raised included attracting and retaining the ‘right’ people, a lack of mobility and capability development, and difficulties associated with performance management and termination.

As shown below, the SES has increased by almost 37 per cent in the 10 years to 2017, far outstripping growth in general public sector workforce numbers. Contributing factors are difficult to pinpoint, but would have been shaped by the changing economic context and likely to include expanded government priorities, the amount and complexity of regulation, and increased demand for services, not only in terms of volume but also in terms of quality and standards.

**Figure 2. SES numbers in the WA public sector – 2000-2017**

![Graph showing SES numbers in WA public sector from 2000 to 2017](data:image/png;base64,iVBORw0KGgoAAAANSUhEUgAAAQAAAAUXCAYAAACk1VN0AAADHlwZAAAAAElFTkSuQmCC)

Data provided by the Public Sector Commission.
The proportion of women in SES positions has increased from 19.1 per cent in 2000 to 34.2 per cent by 2017.\textsuperscript{44} Factors contributing to this outcome may be related to awareness-raising efforts, tailored women in leadership programs and broader cultural shifts.

In April 2017 the Government committed to a 20 per cent reduction in the number of SES positions as part of its broader public sector renewal agenda.\textsuperscript{45} This will result in a total decrease of approximately 104 of 521 officers and 129 of 646 funded SES positions by 31 December 2017.\textsuperscript{46}

On 20 September 2017 the Government further announced its intention to introduce legislative changes removing existing ‘right of return’ provisions for SES officers and health executives appointed under part 9 of the \textit{Health Services Act 2016} (WA). Early termination payments for SES officers have also been reduced.\textsuperscript{47}

Some CEOs have highlighted the need for overarching narratives to drive positive perceptions across the sector to support the future leadership talent pipeline, and the need to ensure chief executives can establish the right leadership to drive their organisations forward.

The Panel has observed little evidence of concerted effort to improve mobility or build capability within this cohort. These two factors are critical for attracting and retaining future leaders, and ensuring the public sector has the appropriately-skilled leadership to meet government priorities going forward.

SES mobility can facilitate improved efficiency and effectiveness, development of individual leadership capabilities, and collaboration. However, previous reviews\textsuperscript{48} have identified several factors limiting SES mobility, including:

- a lack of willingness by CEOs to release valued SES officers to other agencies
- the assumption career progression is more likely achieved by longevity within an individual agency
- the establishment of technical and role-specific SES positions within agencies, resulting in a loss of generic and transferable capabilities
- disparate classification levels between agencies for similar roles.

In 2009, the Economic Audit Committee (EAC) recommended:

- the establishment of cross-agency SES leadership groups to drive policy directions in specific ‘outcome areas’ (in part addressing the apparent lack of SES collaboration)

\textsuperscript{44} Data provided by the Public Sector Commission.
• adopting employment arrangements that encourage mobility of SES officers between agencies
• reviewing the recruitment criteria of SES positions to ensure broad exposure to a range of strategic and operational environments.49

Eight years on, there is little evidence to suggest any significant improvement in SES mobility.

Further, it is not clear whether current arrangements are delivering the best outcomes for attracting, retaining, managing and removing SES officers. There are significant variations between Australian public sectors in respect of the nature of executive employment (i.e. employing authority, appointment to band or position); offer arrangements (fixed term or ongoing employment, termination payment, length of probation, right of return, performance related pay); and other remuneration components (number of classifications and salary increments, superannuation rates, access to fleet car and parking).50

Executive frameworks and reform activities in other jurisdictions may have relevance in the current WA context.

In 2005, a Commonwealth Government management advisory committee outlined an extensive overview of expectations, values, and capabilities required of a modern APS senior executive, well beyond their legislated functions under section 35 of the Public Service Act 1999 (Cth).51

In 2010, a Commonwealth Government review made several recommendations in relation to the APS senior executive that were subsequently implemented, including:

• establishing a senior executive APS 200 group to drive reform in strategic policy, citizen-centred service delivery and cross-sector collaboration
• strengthening leadership accountability
• embedding APS values in performance management frameworks for senior leadership
• improving talent management for top performers.52

A supplementary 2011 review made further recommendations in relation to the assessment of executive classifications, options for downsizing and capping future numbers growth.53 Some of these recommendations continue to inform Commonwealth Government policy decisions in relation to the APS senior executive.54

49 Economic Audit Committee. 2009.
The Victorian Government is conducting a long-term review of its executive officer employment and remuneration framework. It found “current Victorian Public Service (VPS) employment and remuneration arrangements are not best placed to support a high performing executive office (EO) workforce. Fundamentally, current arrangements do not provide transparency, fairness and rigour in classification and remuneration of EOs. In addition, Victoria’s EO employment offer does not incentivise movement from the non-executive public service workforce into the EO classification”.55

In 2013, the NSW Government introduced legislation providing for senior executives to be employed on either an ‘ongoing’ (i.e. continuous employment) or ‘term’ basis (i.e. specified term). The legislation also allows for senior executives to be terminated at any time, for any or no stated reason and without notice. Compensation payments are based on whether the executive was terminated:

- during a period of probation (four weeks’ pay)
- for being surplus to requirement (38 weeks’ pay)
- for unsatisfactory performance (13 weeks’ pay).56

In respect of capability building, the APSC runs a comprehensive training program for Commonwealth Government senior executives via its centre for leadership and learning. Structured training courses are tailored for different levels within the executive, supplemented by a variety of leadership and management short courses and master classes. The APSC also provides an advisory service to individual senior executives in relation to redundancy, retraining and development opportunities, and redeployment and retirement options.57 In addition to inter-agency movements, the APSC also facilitates executive secondments into the private, not-for-profit and non-government organisation sectors.58

Options for reform

Given the issues identified in this paper, it is evident that reform of the current employment framework is needed to ensure the WA public sector workforce is sustainable, flexible and high performing.

Various political and cultural factors mean that solutions lie in both short- and long-term actions. The success of some reform options will depend on alignment to other systems (e.g. budget processes, economic and financial cycles, legislative systems). The reform agenda will also require collaborative leadership from the centre, particularly in the coordination of future system level financial and workforce management reforms.

56 Clause 39 of the Government Sector Employment Regulation 2014 (NSW). No compensation payment is made where an executive is terminated for misconduct.
58 Ibid.
Immediate consideration should be given to strengthening the alignment between the industrial relations function within the Department of Mines, Industry Regulation and Safety (DIMRS) and the workforce management function within the PSC.

Options for consideration include:

1. Transfer industrial relations functions and capability to the PSC, thereby bringing all workforce management matters within a single entity, noting that any potential conflicts with the Commissioner’s current responsibilities would need to be managed.

2. Transfer industrial relations functions and capability to the Department of Treasury (Treasury), as is the practice in NSW and Queensland, noting this option could impact on the contestability of the industrial relations and Treasury advice to Government.

3. Transfer the industrial relations functions and capability to the DPC, noting the range of operational activities could potentially make it a poor fit.

4. Allocate functional leadership responsibility for industrial relations with a clear mandate and authority to drive reform.

Transferring the function to Treasury presents a credible risk that the Government will lose contestability of industrial relations and Treasury advice.

PSLR performs a range of operational activities (e.g. industrial bargaining and advocacy on behalf of agencies), potentially making it a poor fit within the DPC. Establishing the function as an independent office would run counter to the current Government’s preference for a smaller number of departments/agencies.

The primary objectives of an employment framework reform agenda need to be clearly articulated and should include (at a minimum):

- removal of unnecessary internal agency workforce policies and processes
- simplification and clarification of existing provisions in legislative and central government policies and directives
- improving arrangements in relation to performance management and sub-standard performance
- standardising employment arrangements to enable greater workforce mobility within and between agencies and occupational groups
- the pursuit of framework improvements that allow improved workforce scalability.

Immediate progress can be made in respect of:

- consolidating and aligning whole-of-government policy settings and processes, with a view to taking a principled approach to setting these rules
- addressing agency level policies, practices and cultural beliefs about workforce management that inhibit workforce performance.

While agency chief executive officers and chief human resource officers must take responsibility for giving effect to the second point, central government will need to support agencies in addressing these barriers.
The SES needs to be re-established as a strategic, collaborative and mobile leadership group as envisaged under the PSM Act. It should be valued and aspire to a culture of high performance, have a strong clear accountability framework and be remunerated appropriately to attract and retain the right talent.

The Public Sector Commissioner is responsible under section 21A of the PSM Act for “the future management and operation of the public sector”, and is well positioned to provide the necessary stewardship in relation to the SES. Therefore, work should be progressed on the development of a framework that:

- sets clear SES performance expectations and assessment
- supports agency heads in attracting, retaining and developing the best SES leaders.
References


Appendix 1. Overview of the Western Australian Public Sector Employment Framework

The following overview is provided to demonstrate the sheer volume and complexity of rules and regulations that make up the current public sector employment framework in WA. This list does not include the self-imposed rules established within individual agencies.

Legislation and legal instruments

- **Public Sector Management Act 1994**
  - Public Sector Management (Redeployment and Redundancy) Regulations 2014
  - Public Sector Management (General) Regulations 1994
  - Public Sector Management (Breaches of Public Sector Standards) Regulations 2005
  - Public Service Regulations 1988

- **Industrial Relations Act 1979**
  - Industrial Relations Commission Regulations 2005
  - Industrial Relations (General) Regulations 1997
  - Industrial Relations (Industrial Agents) Regulations 1997
  - Industrial Relations (Superannuation) Regulations 1997

- **Minimum Conditions of Employment Act 1993**
  - Minimum Conditions of Employment Regulations 1993

- **Long Service Leave Act 1958**
  - Long Service Leave Regulations 1997

- **Employment Dispute Resolution Act 2008**
  - Employment Dispute Resolution Regulations 2008

- Occupational and/or enterprise-specific Awards made under part 2 division 2A of the Industrial Relations Act 1979

- Occupational and/or enterprise-specific Industrial Agreements made under part 2 division 2B of the Industrial Relations Act 1979

- Employer-employee agreements made under part VID of the Industrial Relations Act 1979

- Common law contracts of employment

- Orders of the Western Australian Industrial Relations Commission, including:
  - Location Allowance General Order 20 of 2017
  - State Government Wages Employees Long Service Leave General Order 1982
  - State Wage General Order
  - Termination, Change and Redundancy General Order 2005

- **Fair Work Act 2009 (Cth)**

- **Corruption, Crime and Misconduct Act 2003**

- **Salaries and Allowances Act 1975**
  - Salaries and Allowances Regulations 1975

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59 The Government’s policy position is that all public sector matters are conducted in the State industrial relations system.
Whole-of-government policy settings and directives

- **16 Commissioner’s Instructions** on matters relating to the Commissioner’s functions or the application of the Public Sector Management Act 1994.
- **34 Public Sector Commissioner’s Circulars** that communicate public sector management policy or arrangements or mandatory compliance obligations that do not originate from the Public Sector Commissioner’s functions or the Public Sector Management Act 1994.
- **Five Public Sector Standards in Human Resource Management** related to employment, performance management, redeployment, termination, and discipline.
- **Six Administrative Instructions** related to official communications, sick leave, effects of grants of leave and period of suspension on salary and leave entitlements, weekend attendance at work, official information, and media and public communications.
- **Six Approved Procedures** outlining required procedural steps in relation to approved classification system and procedures, senior executive service, approved contracts for services procedures, determining remuneration for specialist procedures, attraction and retention incentives, and CEO performance agreement and assessment.
- **Instruments of Delegation** as enabled under section 23(1) of the Public Sector Management Act 1994.
- **The Western Australian Public Sector Code of Ethics**.
- **20 Public Sector Policy Statements** communicating government directions on a range of issues: including (but not limited to) public sector wages policy settings, industrial action, leave liability management, collective bargaining, modes of employment, termination of employment, right of entry, and redeployment and redundancy.
- **129 Circulars to Departments and Authorities** that provide industrial relations instruction, information and advice.
- **Circulars for Chief Executive Officers** on relevant industrial relations matters.
- **Premier’s Circulars** that relate to policies of the Government of the day, and whole-of-State legislative/policy requirements. Examples of current workforce-related circulars include:
  - 2017/07 – Family and Domestic Violence – Paid Leave and Workplace Support
  - 2017/04 – Review of Payment of all Existing Attraction and Retention Benefits
  - 2017/03 – Coordination and Governance of Public Sector Labour Relations
  - 2016/02 – Contracts for Services – Consultants
- **Treasurer’s Instructions** related to employment records, records of attendance and time worked, conversion of rates, pay records, pay period and pay in advance, deductions, transfer of employees, and portability of unfunded superannuation liability.