

SUBMISSION TO
ECONOMIC REGULATION AUTHORITY
INQUIRY INTO MICROECONOMIC REFORM IN WESTERN AUSTRALIA

BACKGROUND

The office of the Public Sector Commissioner is established by the *Public Sector Management Act 1994* (PSM Act). Under s21A of the PSM Act the Commissioner's general functions include promoting the overall efficiency and effectiveness of the Public Sector, for advising Ministers, public sector CEOs and employees on desirable changes and management practices to improve this, and for planning for the future management and operation of the public sector. While most major Government Trading Enterprises and similarly commercial entities are outside the scope of the public sector under the PSM Act (ie the port authorities, electricity corporations, Water Corporation, TAB (Racing and Wagering Western Australia), Gold Corporation, WA Land Authority (LandCorp) and Western Australian Treasury Corporation) most by number (38 departments and 98 statutory authorities) form part of the public sector for the purposes of the PSM Act. Those bodies as at March 2013 employed 138,482 employees. Parliament this year appropriated \$27.6 billion for recurrent expenditure to the general Government sector.

The following issues have been identified within the public sector as potential areas to contribute to microeconomic reform in Western Australia:

APPROVALS PROCESSES

Most major projects require a range of Government approvals to proceed. In 2002 Professor Michael Keating AM prepared a report titled *Review of the Project Development Approvals System*. The report is available on the website of the Department of State Development. This review undertook a detailed analysis of the various approvals required to progress major resource projects to commence. It included observations about State Agreement Acts, native title and environmental approvals, among others. While it focussed on resource projects and did not address major planning, engineering and construction projects more generally, this report provides some useful insights and recommendations that could still offer alternative approaches to better coordinated and faster approvals for major projects.

Key recommendations of that report included for parallel processing of approvals, and for the establishment of a Coordinator of the Office of Development Approvals Coordination. While much progress has been made in the ensuing 11 years through establishment of an Office of Strategic Projects (now located in the Department of Treasury with responsibility for the planning and delivery of major projects that are considered to be of significant importance to the State), better processing of native title claims and of mining tenements, the recommendations of the above review

report may provide the Economic Regulation Authority with further options worth consideration.

The Department of State Development is the lead agency for major resources, industry and infrastructure projects. It is the primary contact and source of information about Government approval processes for proponents of major or State significant projects. It also carries out the role of case manager for projects during the approvals process and is available to facilitate solutions when approvals issues arise.

The Departments of Treasury and State Development are the primary agencies dealing with major projects and the associated approval processes. However, there is an extensive range of other processes undertaken by the public sector that encompass the issuing of approvals, such as those associated with transport and planning.

Although the Public Sector Commission does not have a direct role in these activities, under the PSM Act, the functions of the Commissioner include the promotion of the overall efficiency and effectiveness of the public sector. The timely processing of approvals, compliant with relevant legislation, regulations, policies etc is an issue that the Commissioner has the power to consider.

ACCOUNTABILITY FRAMEWORK

Government agencies operate within a complex accountability framework that reflects community and Government expectations of integrity and responsible behaviour however, it does add to the cost to the operations of agencies.

Political accountability is met through the responsible Minister to the Parliament, through the electoral process to the electorate, and through the Electoral Commissioner. Other public sector accountabilities include:

- financial asset management and procurement accountabilities including the annual Parliamentary appropriation process; annual reporting through the relevant Minister to Parliament under the *Financial Management Act 2004*; compliance with Treasurer's Circulars; audit by the Auditor General; compliance with State Supply Commission policies and Department of Finance requirements; and insurance and risk management through the Insurance Commission of WA
- conduct accountabilities including in relation to official misconduct and corruption to the Corruption and Crime Commission; in relation to management and performance to the Public Sector Commissioner; with respect to lawfulness of conduct, to the courts (both civil and criminal) and to the police; in relation to administrative decision making to the Ombudsman,

to the State Administrative Tribunal and to the civil courts; in relation to information management to the Freedom of Information Commissioner and State Records Commission; employment and related accountabilities to the Industrial Relations Commission, WorkSafe, WorkCover, and the Equal Opportunity Commission.

There is also a growing range of specific purpose accountability agencies, including the Small Business Commissioner; Victims of Crime Commissioner; Commissioner for Children and Young People; Inspector of Custodial Services; Parliamentary Inspector of the Corruption and Crime Commission; Mental Health Commission; Energy Ombudsman; Office of Health Review; Economic Regulation Authority; Salaries and Allowances Tribunal and Building Commission.

It is difficult to measure the benefits of effective governance and accountability, as these tend to be subjective and largely unquantifiable. Clearly there are also compliance costs, which are ultimately born by the taxpayer.

Streamlining public sector accountabilities is submitted to be in principle a desirable outcome. However there are numerous public policy complications and competing issues. Various attempts have been made to rationalise the accountability bodies, including locating the function of child death reviews within the office of the Ombudsman; co-locating various accountability bodies so that they can share back office support; and a proposal (in 2007) to transfer the freedom of information commissioners functions to the office of the Ombudsman.

A key role of the Public Sector Commission, and other central agencies, is to facilitate accountability within public sector agencies. In this regard the Commissioner has a legislative role to assist public sector bodies and their employees to comply with ethical codes, principles and public sector standards. This is seen as the best way to build a sector wide culture of accountability.

The Commission, along with the other central accountability agencies, recognises the breadth of the accountability framework. It is multifaceted and requires the interaction, collaboration and partnerships of public sector agencies for it to work effectively.

The Commission assists agencies with practical accountability through working in partnerships, building sector capacity, delivering accountability programs and projects, encouraging accountable leadership and overseeing the sector to ensure accountability is being achieved.

The Accountable and Ethical Decision Making Program has been developed to raise levels of awareness amongst public sector employees on issues relating to accountable and ethical decision making in the Western Australian public sector. The program, which has been running since 2008, is designed to provide participants

with information about accountability requirements and better equip them to deal with situations or issues that they may encounter.

The need for ethical and accountable decision making has increasingly been recognised by public sector boards and committees, and over the last 12 months the Commission has been more active in capacity building within these bodies. However, much more work remains to be done, particularly given the complex governance arrangements which involve the Minister, the Board, the CEO and the Public Sector Commissioner as the employer of the CEO.

While it is recognised that the accountability framework is extensive there are some basic questions that need to be considered by public servants when making a decision:

- **Am I doing the right thing?** Am I breaking a rule? Is this consistent with the relevant legislation, policies and procedures which apply to my organisation?
- **How would others judge my actions?** How would my colleagues and others whose opinions I respect view my actions? How would I feel if this became public knowledge for example, if this became front page news of the local paper?
- **How could my actions impact on others?** What impacts could this have on my agency, project, position? Could this impact on my colleagues, family and friends?
- **Should I discuss this with someone else?** Should I speak to a trusted and respected colleague or peer, my manager, my Human Resources Director, Senior Integrity Officer, a legal advisor or someone from a relevant accountability agency?

These core questions are frequently posed in the Commission's presentations and training on accountability.

The Integrity Coordinating Group (ICG) comprises the Office of the Auditor General, Public Sector Commission, Corruption and Crime Commission, Western Australian Ombudsman and the Office of the Information Commissioner. It is a mechanism for the State accountability agencies to work in partnership to assist the wider sector without prejudicing their independent statutory roles. Its role is to promote and strengthen integrity in Western Australian public authorities. The ICG supports the building of the capacity of public authorities and their employees to demonstrate integrity when making decisions.

Supporting integrity and to protect individuals the [Public Interest Disclosure Act 2003](#) facilitates the disclosure of public interest information, and provides protection for those making such disclosures and those who are the subject of disclosures. The Act provides a system for the matters disclosed to be investigated and for appropriate action to be taken.

The Act provides protection for people who make disclosures that may result in a proper authority to investigate and take action in relation to the subject matter of the disclosure. The Public Sector Commissioner's functions under the Act include establishing a code of conduct and integrity and to assist authorities and public officers to comply with the Act and code.

COMPLIANCE REQUIREMENTS

The regulatory role of the public sector has developed markedly in its sophistication in response to community expectations and statutory requirements. The forest management plan, which guides the sustainable harvesting of native forests and sets the quantity of sawlogs that can be harvested, legislation to transition the western rock lobster fisheries to a full quota management system, expansion of the Department of Housing's Disruptive Behaviour Management Unit to strengthen and streamline policy and procedures to deal with tenants who caused problems amongst the 40,000 dwellings managed by the department, implementation of the Reform and Development at Resources Safety strategy by the Department of Mines and Petroleum, following independent inquiries and a spate of mining deaths, new petroleum environment regulations which mandate public disclosure of any chemicals introduced into a well or formation; and introduction of new bushfire reduction strategies now being implemented ahead of the 2013 bushfire season, are some examples of efforts to regulate competing and sometimes conflicting priorities.

Carrying out effective regulatory activities particularly where there are competing priorities for scarce resources is a constantly growing challenge for CEOs and public sector bodies.

In an effort to reduce the cost and complexity of compliance requirements, on 30 January 2009, Treasurer Troy Buswell MLA announced the establishment of the Red Tape Reduction Group (RTRG) as one of a number of initiatives aimed at reducing the regulatory burden in Western Australia. The RTRG delivered a report titled *Reducing the Burden – Report of the Red Tape Reduction Group* to the Treasurer in December 2009. The Government publicly released the report on 24 February 2010. The report contains 107 recommendations that provide an ambitious blueprint to significantly reduce the burden of excessive regulation and red tape on Western Australian businesses and consumers. Key recommendations include:

- reforms which aim to reduce the regulatory burden by improving the culture, performance and accountability of government agencies
- reforms which aim to maintain an impetus and mechanisms for on-going red tape reduction by government
- reforms designed to address specific areas of concern raised during the consultation process.

Government has established a Cabinet level regulatory reduction process. The Regulatory Gatekeeping Unit (RGU) has been formed within the Department of Finance to advise on, administer and support the Regulatory Impact Assessment process

Information collected through CEO performance agreements identifies initiatives related to contributing the broad aims of red tape reduction. Red tape reduction has been included in CEO performance agreements as a sector wide initiative for the last three financial years. Strategies put in place by public sector bodies to reduce red tape have included:

- undertaken an associated review or regulatory impact assessment
- developed target timeframes for specific decision making processes
- published or communicated internal policies and guidelines used in decision-making processes (email, intranet, information sessions)
- taken direct action to reduce regulatory burdens or improve regulation making processes specific to a core area of business
- developed online systems to reduce paperwork and/or speed up processes
- undertaken critical path or workflow analysis to simplify tasks, systems and processes.

The Premier announced last year his intention to remove obsolete legislation from the statute book. He plans to implement the concept of a 'repeal day' process whereby Parliament will be presented with the opportunity on an annual basis to consider repealing obsolete and spent legislation. The Premier commenced the process by introducing the State Agreements Legislation Repeal Bill 2012 to remove five obsolete Acts from the statute book.

The Commission recognises the issues and costs associated with the requirements by public sector agencies to comply with a range of legislation, regulations, policies, codes of practice and other instruments and the impact they have on the broader community and business. Getting the balance right between too little and too much is always a challenge but there are numerous examples where agencies have introduced more efficient processes and systems to streamline existing services.

The Commission does not have a great deal of direct contact with the community or business but has extensive interaction across the public sector. There are several examples where the Commission has sought to reduce compliance requirements or improve how the sector performs. These include:

- streamlining the recruitment of people across the sector by the introduction of a Commissioner's instruction that provides more flexibility for CEOs, for example by removing the requirement to always conduct a competitive assessment of merit

- streamlining the disciplinary processes which have been cumbersome and lengthy, recent amendments give the CEO much greater flexibility and discretion in considering the materiality and proportionality of the transgression and instead of requiring a resource intensive investigation can apply improvement actions such as counselling and training
- much of the training and education that the Commission has introduced across a range of human resource and personal development functions are aimed at improving how people work and how an agency functions
- guides and other publications assist the sector to carry out their responsibilities effectively and efficiently. For example *Structural change management* guides agencies where they undertake significant organisational change and *Guidelines for the review of legislation* help agencies through the often complex processes of undertaking such reviews.

MACHINERY OF GOVERNMENT ARRANGEMENTS

Boards and committees in the public sector were recently the subject of a detailed review aimed at reducing the number of individual boards and committees. A review and report prepared by The Public Sector Commission in consultation with the Department of the Premier and Cabinet was tabled by the Premier in Parliament in November 2012 revealed that the number of paid boards and committees in government had been reduced from 519 in existence at June 2009 to 332 as of 21 September 2012. The Department of the Premier and Cabinet has relaunched an online public register of paid government boards and committees, containing details of the relevant minister, portfolio and name of the paid government board or committee.

Government boards and committees make a substantial and valuable contribution to the public sector, providing oversight and advice to public sector entities and facilitating an effective link between government and the WA community.

Boards need to employ good corporate governance systems and practices to ensure they effectively perform their functions and responsibilities and comply with their obligations. Boards with a governing role also support good governance within their organisation through the provision of oversight, direction and advice to the organisation.

The Public Sector Commission has been active in preparing a range of good governance guidelines for public sector board and committee members which is available at <http://www.publicsector.wa.gov.au/public-administration/public-sector-governance/good-governance-boards-and-committees> . These seek to ensure that effective appointment, induction and ongoing management practices are in place, and that members have a sound understanding of the role of board members, ministers, departments and statutory authorities, effectively dealing with conflicts of

interest, and their compliance obligations. The Commission has been actively providing training and advice to board members, where requested.

Changes have been made to various departmental structures to better align them with the Government's portfolio priorities. Recent changes have included:

- establishment of a Mental Health Commission separate from the Department of Health, and integration of the Alcohol and Drug Authority into that Commission;
- separation of the former Department of Treasury and Finance into two separate departments;
- separation of the former Department of Regional Development and Lands into two separate departments;
- amalgamation of the former departments of Communities and Local Government into a single Department of Local Government and Communities;
- separation of the former Department of Environment and Conservation into two separate Departments of Environment Regulation and Parks and Wildlife.

The Public Sector Commission provides advice to the Government on potential machinery of government changes and has assisted in the reorganisations involved in implementation of the above changes. In some instances the assistance has extended over several months and includes the provision of strategic support to the new agency.

The Commission recognises both the opportunities and risks associated with structural changes to government agencies. As well as providing advice and support the Commission has published *Structural change management* which assists agencies to plan and implement organisational changes. The guide is supported by several templates which can be used by agencies to develop their own plans and other relevant documents.

Many agencies delivering government provided goods and services have been commercialised, with the introduction of annual statements of corporate intent and strategic development plans, implementing recommendations of 2001 Machinery of Government Review (*Government Structures for Better Results*) chaired by Stuart Hicks which is available at

<http://www.slp.wa.gov.au/publications/publications.nsf/inquiries+and+commissions?openpage>. Legislation establishing most statutory bodies with significant commercial activities has been reviewed and provisions along the above lines incorporated in those Acts.

It should be noted that a number of government trading enterprises and their governing boards fall outside the scope of application of the PSM Act. These comprise the main corporatised government trading enterprises, specifically:

- electricity corporations

- port authorities
- Water Corporation
- Gold Corporation (Perth Mint)
- Racing and Wagering Western Australia (TAB)
- WA Land Authority (LandCorp)
- WA Treasury Corporation.

The above bodies are listed in Schedule 1 of the PSM Act as being entities that are outside the public sector for the purposes of the PSM Act. As such these bodies are not subject to the general rules and principles and oversight by the Public Sector Commissioner that apply to the Western Australian public service and to the broader public sector. This is because such controls and oversight are regarded as incompatible with the effective operation of these bodies in a competitive market. Notably also, these bodies are generally regarded to be constitutional corporations and as such are subject to Commonwealth rather than State industrial relations laws. However the Public Sector Commissioner has a role under several of the Acts constituting the above bodies to assist those bodies to establish appropriate standards and codes of conduct for their staff.

Certain other generally applicable accountability laws do however still apply to the above bodies, including the *Corruption and Crime Commission Act 2003*, *Disability Services Act*, *Electoral Act 1907*, *Freedom of Information Act 1992*, *Public Interest Disclosure Act 2003*, and *State Records Act 2000*.

It is noted that the above listed bodies are established under a range of different legislation, leading to potential inconsistencies and associated compliance cost. A number of reviews have recommended that a single “state owned companies act” should regulate these bodies. Such ‘umbrella legislation’ was raised as part of the WA Inc. Royal Commission report (1992), McCarrey Commission report (1993), Commission on Government reports (1996) and Machinery of Government Report (2001). To date, these recommendations have not been adopted.

MANAGING RISK

The Western Australian Public Sector needs to have the confidence to make decisions in the public interest. It cannot be unduly risk averse, equally a careless attitude is unwanted. Getting the right balance is critical.

The Public Sector Commission has assisted in building this confidence through our training programs which are directed at public sector employees being skilled to use good judgement, often in a sea of ambiguity.

Public Sector employment standards and instructions are regularly revised to ensure that these avoid unnecessary prescription. The PSM Act is based on the footing that employment and day to day management are devolved to agency level. Each CEO is responsible for managing their organisation, and is afforded appropriate flexibility

to respond to service needs within an accountable framework. The philosophy is one of greater decentralisation and of 'let the managers manage'.

Ensuring service efficiency and responsiveness is a key principle under section 7 of the PSM Act. As well as continuing to improve services at an agency level, it also means providing greater choices in service delivery. Continual improvement requires creative thinking and different approaches. The Economic Audit Committee's 2009 report, *Putting the Public First – Partnering with the Community and Business to Deliver Outcomes* identified the need for the public sector to do more to foster innovation and work across organisational boundaries using collaborative approaches to develop policy and deliver services.

Many agencies have started exploring and encouraging innovation, collaboration and greater use of technology to improve their services.

Collaboration in a public sector context refers to working with other agencies, jurisdictions or sectors to explore issues, develop solutions or generate new ideas. Collaborative practice is now becoming central to the way we work, deliver services and produce innovations.

The Department of the Premier and Cabinet's 2011 *Delivering Community Services in Partnership Policy* is an example of an initiative which has been jointly developed by the public and not-for-profit community sectors. It has an emphasis on building genuine partnerships between government and the not-for-profit community sector, articulating a range of funding and contracting options available, and reducing the associated administrative burden imposed on the not-for-profit sector under previous arrangements. This approach demands a move by public sector bodies away from direct service provision to a more collaborative approach of facilitating services, where efficiency and effectiveness can be best achieved by such an approach.

Similarly, there has been a shift to a more mixed service delivery model in a range of areas where some services that have been traditionally delivered by the public sector are now delivered by private sector bodies. Some public hospital and prison services are now delivered by private or not for profit operators, with the public sector becoming a purchaser and manager of those services rather than delivering them directly. This demands new skills on the part of public sector employees.

Innovation is the application of new ideas to improve the efficiency of processes or deliver better services. According to the *Global Innovation Index 2013*, Australia's ranking in the use of innovation to improve productivity had risen from 21st place in 2011 to 19th place in the world. Innovation in a public sector context means providing products and services more efficiently and effectively, facilitating community adoption of new approaches and fostering innovation in the community.

There are a number of agencies, such as the Department of Agriculture and Food, LandGate and Challenger Institute of Technology, with well established innovation

programs that have led to initiatives which significantly improved their organisational performance.

Some initial work on how to foster and stimulate innovation across the WA public sector has already commenced and has been progressed further in 2013. The next step is to identify some common principles and consistent approaches that agencies looking for further guidance and direction can use.

PUBLIC SECTOR COMMISSION

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