

Managed Performance

About Commissioner's Standards

The Strategic Human Resource Framework for the South Australian Public Sector issued by the Commissioner for Public Employment supports consistent best practice outcomes in the management of people across the public sector. It is an enduring strategic approach, reflecting quality management and continuous improvement principles.

The Framework provides guidance and information within eight key result areas at three levels:

- Guidelines, which detail the principles underpinning the key result areas.
- Commissioner's Standards, which support the effective implementation of public sector workforce policies and the personnel management standards of the *Public Sector Management Act 1995* (PSM Act), and the protection of key conditions of employment. The standards include relevant delegations, directions and determinations of the Commissioner under the PSM Act.
- Supporting materials and information which assist agencies in the development and implementation of best practice human resource management.

This Standard should be read in conjunction with the *Guideline for Individual Performance Development* and the *Guideline for the Ethical Conduct*, and is linked to the Managed Performance key result area of the Framework.

Managed Performance

Define fair performance requirements and standards of ethical conduct for all employees, provide support for their achievement of identified goals, review performance and provide clear feedback, and agreed rewards and sanctions where appropriate. (eg ethical conduct standards, whistleblowers policy, performance development, disciplinary processes)

Responsibilities of Chief Executives

Chief executives may further delegate in writing any power or function provided within this Standard to a particular person, or to the person for the time being occupying a particular positions, unless otherwise indicated (*direction under Section 22(1)(a) and Section 26 of the PSM Act*). The exercise of delegations by chief executives (or their sub-delegate) must be conducted in a manner consistent with *Part 2 of the PSM Act* and must not be used to reduce existing entitlements or terms and conditions of employment. Care must also be taken in the exercise of the delegations that there are not unintended consequences of reduction to existing entitlements or terms and conditions of employment and that all obligations for consultation have been met.

The PSM Act requires the Commissioner and chief executives to consult with employees and employee organisations before making decisions or taking action that may impact on a significant number of employees of an agency. Such consultation must be meaningful, giving the affected employees/organisation(s) reasonable time to consider the proposed decision/action, and properly considering any representation(s) made by the employees/organisation(s). When exercising delegations on behalf of the Commissioner, chief executives are responsible for ensuring appropriate consultation occurs.



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Performance Management

Minimum Requirements

1. In relation to performance management, chief executives must ensure there is:
 - a performance management system
 - performance management of all employees (including executives)
 - performance management processes, including defining and setting goals, annual development plan, and annual formal performance review.
(*direction under Section 30(1)(a) of the PSM Act*)

Delegations

2. To assist the management and placement of employees as a result of unsatisfactory performance or mental/physical incapacity (including work injuries), chief executives may exercise the following delegated powers, provided the chief executive has established and implemented an agency policy and associated processes for the management of unsatisfactory performance and mental/physical incapacity in consultation with employees and employee organisations.

Chief executives may:

- assign a PSM Act employee from a PSM Act position in one administrative unit to a PSM Act position at their substantive remuneration level in another administrative unit (Section 44(2)), subject to:
 - such an assignment being allowed under the provisions of the PSM Act and determinations/directions of the Commissioner and
 - both chief executives agreeing to the assignment and, where the assignment is for a limited period, which agency will provide the right to ongoing employment at the end of the period
- appoint a non PSM Act employee of an administrative unit to a PSM Act position in the same administrative unit without the need for selection processes (Section 22(1)(d)) where:
 - the non PSM Act employee cannot be placed in a positions within their normal type of appointment or employment and
 - the chief executive believes that the only suitable position to place the employee is a PSM Act position and
 - the appointment would not unduly advantage the person and
 - the person's conditions of employment will be those normally applicable to the position.
- transfer a public sector employee from a position in a public sector agency to a position in another public sector agency (Section 68), subject to the following conditions:
 - public sector employees may be transferred between positions at the same remuneration level (or equivalent levels)
 - the public sector employee's accrued and accruing leave rights will be transferred to the new agency and the transfer will not be considered as a termination of employment with the former agency

- the exercise of the powers will be in accordance with this standard and
- both chief executives agree to the transfer and
- the appointment would not unduly advantage the person and
- the person's conditions of employment will be those normally applicable to the position.

The Commissioner also delegates this power to chief executives of public sector agencies that are not administrative units.

(delegation under Sections 44, 51 52 and 68 of the PSM Act)

Ethical Conduct

Minimum Requirements

3. Chief executives must ensure there is an agency policy that sets out expected behaviours of all agency employees in line with any Code of Conduct issued by the Commissioner under Section 6(ea) of the PSM Act and other relevant requirements.
(direction under Section 22(1)(a) of the PSM Act)
4. The requirements of Section 2 of the former PSM Act Determination 9 (re access by Members of Parliament to information), together with the requirements of the former Commissioner's Circular 31 (re public servants appearing before Parliamentary committees) remain binding on chief executives until such time as a Premier and Cabinet Circular is issued establishing requirements for public sector employees. These requirements are outlined in Attachments A and B.
(direction under Section 22(1)(a) of the PSM Act)

Delegations

Not applicable.

Discipline

Minimum Requirements

5. In relation to the Whistleblowers Protection Act and the disclosure of public interest information chief executives must ensure:
 - a published agency policy, including processes to make disclosures and for the handling of such disclosures
 - the nomination of appropriate responsible officers to take disclosures
 - the referral of all disclosures related to possible fraud or corruption to the Anti-Corruption Branch
 - the protection of whistleblowers from victimisation.
(direction under Section 22(1)(a) of the PSM Act)

Delegations

6. The Commissioner for Public Employment delegates to chief executives his investigative powers to assist them in investigating matters in connection with the conduct or discipline of employees or to conduct a disciplinary inquiry under Division 8 of Part 8 of the Act. Such delegations may only be exercised if the chief executive has established and implemented an agency policy and associated processes for the management of breaches of ethical conduct.
(delegation of Section 25 powers of the CPE)
7. Where an employee has been given notice of a disciplinary inquiry or has been charged with an offence punishable by imprisonment charged, a chief executive may transfer the employee to another administrative unit with the agreement of both chief executives.
(delegation of Section 59(3) powers of the CPE)
8. Chief executives may approve an additional payment where an employee has been suspended and such suspension is revoked.
(delegation of Section 59(6) powers of the CPE)
9. The Presiding Officer, Disciplinary Appeals Tribunal may nominate a panel of employees under Clause 3(1)(a) of Schedule 3 for the purposes of constituting the Disciplinary Appeals Tribunal.
(delegation of Clause 3, Schedule 2 powers of the CPE)

Previous Directions/Determinations/Delegations

The following directions/determinations are hereby cancelled:

- PSM Act Determination 9 - Ethical Conduct
- PSM Act Determination 10 – Managed Performance
- Commissioner's Circular 15 - Policy on Sexual Harassment
- Commissioner's Circular 31 - Guidelines for Public Servants Appearing Before Parliamentary Committees
- Commissioner's Circular 52 - Employment Outside the Public Service
- Commissioner's Circular 64 - Guidelines for Ethical Conduct
- Commissioner's Circular 69 – Whistleblowers Protection Act

ATTACHMENT | A

Access by Members of Parliament to Information

(Interim Arrangements – Under Review)

This standard provides guidance for situations where Members of Parliament request information that is not publicly available from public servants, officers of statutory authorities and other public employees. While aiming to ensure as much access to information as possible, the standard preserves the traditional principle of political impartiality of public servants and the need to maintain the confidentiality of government business matters.

All requests by Members of Parliament for detailed information from public officials must be submitted to the appropriate Minister, who if in agreement with the request, will initiate the necessary arrangements. Requests should be for detailed information on particular matters, not for briefings by particular officials. If an employee is approached directly by a Member of Parliament for information, the Member is to be referred to the Minister responsible and the Minister informed through the chief executive of the agency that the request has been made.

Each request will be treated by the Minister on its merits. Requests may be refused on the grounds that they may require an excessive use of resources, or that the information concerned must remain confidential to the Government, or that the issues involved are so politically sensitive that if information is to be provided it would be more appropriate for it to be given by a Minister, rather than a public servant.

When authorised by their Minister, employees may provide factual explanations of existing or proposed policies, legislation or programs, including the administrative arrangements and procedures involved in their implementation.

Employees will not be expected or authorised to express opinions on government policies, policy options or matters of a party political nature. Such matters should be raised only with Ministers.

Ministers may approve briefings for Opposition spokespersons. Such briefings are given on the understanding that comments made by employees will not be attributed to them publicly or in a Parliamentary debate.

When an employee considers that questioning by a Member of Parliament goes beyond the authorised scope of this standard they should indicate this to the Member. Before responding the employee must raise the matter with the relevant Minister and chief executive.

ATTACHMENT | B

Guidelines for Public Servants Appearing before Parliamentary Committees

(Interim Arrangements – Under Review)

Introduction

The Committee system can, in very general terms, be seen as an extension of the Parliament as regards powers and privileges. It is one of the major means by which the Parliament carries out its examination of Government activity.

Committees have the power to send for persons, papers or records. In the case of scrutiny of the affairs of Government, this is done in the knowledge that public servants are called to give evidence of activities carried out under the direction and responsibility of the Minister. This accords with the basic principle that for activities of Government, the Minister answers to the Parliament; employees, through the chief executive or Authority, are responsible to the Minister.

Procedures

Arrangements for an official to appear before a Parliamentary Committee should be made through the Chief Executive Officer or Authority who should, in turn, inform the Minister. Committee Secretaries should ensure that witnesses are adequately briefed regarding the details of hearings (eg scope of the enquiry, whether the oath will be taken, seating arrangements, whether questions will be presented in written as well as verbal form).

Employees called as witnesses should adopt a co-operative and frank approach and should submit pertinent and precise evidence. This should be done with an awareness of the need to preserve the confidentiality of policy advice to Government and to maintain a politically impartial public service. Where such considerations are involved witnesses (supported and guided if necessary by a Committee Chairperson should ensure that such questions are referred to Ministers).

As an extension of the need for fair reporting by Committees, findings which differ from, or criticise, submissions by witnesses, should be incorporated in a final report which discusses both points of view in a balanced way.

It is necessary that the Committee clearly defines, with reasonable notice, the nature and extent of matters to be raised, so that thorough and appropriate preparations (including written submissions where possible) can be made. The chief executive or Minister should consult with the committee Chairperson if further time is required, or if it is considered that inappropriate witnesses have been requested, or that evidence should be heard in camera (eg where there is danger of prejudice to private or corporate interests).

Some Committee members have occasionally conducted informal discussions with witnesses to obtain further information related to investigations. Such meetings pose a problem as information so obtained should not be included in final reports in the same way as is formal evidence. To avoid potential confusion, information meetings should therefore be discouraged. In cases where they do arise, witnesses should observe the same standards as would apply to a formal hearing.

Witnesses should not comment, nor be expected to comment, on matters beyond their expertise or responsibility, especially where other departments or agencies are involved. Deferment should be arranged to enable consultation with the appropriate people or organisations.

The primary emphasis of questions and submissions is expected to be on administrative and technical decisions and actions. Committees require a public servant to provide factual and background information to assist in clarifying issues being investigated. This could include coverage of appropriate procedures, technical details and standards, relevant experience, and similar matters.

Matters of party politics or policy advice to Ministers should not normally be commented on. However public servants being questioned on their areas of responsibility may be required to provide factual explanations of existing policies or legislation, and may, with Ministerial approval, provide similar information on proposed policies or legislation.

In cases where a witness, or a Committee feels that it is inappropriate that certain information or opinions should be divulged, a postponement should be proposed pending consultation with the Minister, or for the seeking of further information. A public servant or a committee Chairperson may consider it advisable to defer an answer and instead consider a written submission, such submission being subject, if necessary, to questioning at a later meeting.