30 July 2018

Mr David Thodey AO

Chair, Review Panel APS Review

Department of Prime Minister and Cabinet

PO Box 6500

CANBERRA ACT 2600

**Re: Submission to the Review Panel of the Australian Public Service review**

Dear Mr Thodey

This submission is made on behalf of the NSW Public Service Commission Advisory Board. The role of the board is set out below and a recommendation made at the end of the submission.

**Public Service Commissioner**

The Office of the NSW Public Service Commissioner and the Public Service Commission were established in November 2011. The Public Service Commissioner is an independent statutory officer with a maximum term of 7 years. The Commissioner is not under Ministerial direction and control in the exercise of their functions, or subject to oversight of a parliamentary committee. The Commissioner reports to the Premier on the exercise of the Commissioner’s functions and is required to report annually to the Premier on the state of the government sector and the Commission’s work and activities.

The Public Service Commission is a separate agency under the *Government Sector Employment Act 2013* (the Act), and the Commissioner is the agency head. The Commission has both an advisory and policy setting role, and has led significant workforce reform across the sector.

**PSC Advisory Board**

The Public Service Commission Advisory Board is established under the Act. The Act sets the purpose of the Board as determining general policies and strategic directions in relation to the functions of the Commissioner, and providing the Premier with advice on any matter relating to the management and performance of the government sector. Attachment A is an extract of GSE Act sections relevant to the Board.

The Board is comprised of a Chairperson and four other people appointed by the Premier who must together have relevant expertise in the public, private, not for profit and tertiary sectors, and three ex officio members, namely, the Secretary of the Department of Premier and Cabinet, the Secretary of the Treasury and the Public Service Commissioner.

The Advisory Board provides the Public Service Commissioner and the NSW Premier with strategic, independent and expert advice concerning the management and performance of the government sector workforce in NSW.

A person cannot be appointed as Public Service Commissioner without the recommendation of the Board. As the Commissioner has significant and broad reaching powers, the existence of the Board provides additional credibility to decisions of the Commissioner and has acted as an oversight body when the Commissioner has made changes to whole of sector policy positions, namely through requiring the agreement of the Board before making changes to Rules under the Act.

The Commissioner has consulted the Advisory Board on matters concerning:

* The model for state of the sector reporting;
* The direction of the reform settings that were given effect through the *Government Sector Employment Act 2013*;
* Draft legislation and rules;
* Future directions to improve the sectors performance in relation to employment of people with disabilities;
* Future directions to improve the sector’s performance in relation to Aboriginal employment;
* Future directions to improve the sector’s performance in relation to gender equity in senior executive roles.

In addition, the Advisory Board has initiated some of its own work and produced resources for the government sector, on issues and challenges, including:

* improved collaboration within the government sector and between government, community and private sectors;
* improving flexibility, diversity and inclusion across the range of roles available in the sector; and
* growing capability with risk management and strategy mapping.

The Board has also made recommendations to the Premier on the finalist and winners of the Premiers awards.

The role of the Board in these projects has supported the Public Service Commission to produce first class products with input from the range of sectors represented on the Board, and the Board members themselves shared their extensive networks, facilitating access to executives and organisations leading best practice in a range of workforce management fields.

**Recommendation**

The Advisory Board, incorporating expertise from the private and community sectors, has played a valuable role in providing cross-sectoral strategic advice and a sounding board both to the Commissioner and on occasion the Premier. Through the Board’s public, private and community sector experience and extensive knowledge, they have added value to resources produced by the Public Service Commission on key workforce issues for use across the government sector.

It is recommended that the Panel give careful consideration to the creation of a similar body at the Commonwealth level. This would ensure that the diversity of interests represented on the APS Review Panel could continue to have a positive impact on the role of the APSC and the ongoing operations of the APS.

Should you wish to discuss the role of NSW Public Service Commission Advisory Board further, please contact Professor Peter Shergold, Chairperson of the Advisory Board at P.Shergold@westernsydney.edu.au. A full list of past and present members of the Advisory Board is at Attachment B.

Yours sincerely

Peter Shergold

Chair, PSC Advisory Board

**Attachment A**

**Extract from *Government Sector Employment Act 2013* relating to Public Service Commission Advisory Board**

**Part 3 Public Service Commissioner and Advisory Board**

**Division 2 Public Service Commission Advisory Board**

**18**   **Establishment and members of Advisory Board**

(1)  There is to be a Public Service Commission Advisory Board.

(2)  The Advisory Board is to consist of the following members:

(a)  a person appointed by the Premier as the Chairperson of the Advisory Board,

(b)  4 other persons appointed by the Premier,

(c)  the Commissioner or a senior member of the staff of the Commissioner nominated by the Commissioner,

(d)  the Secretary of the Department of Premier and Cabinet or a senior employee of that Department nominated by the Secretary,

(e)  the Secretary of the Treasury or a senior employee of the Treasury nominated by the Secretary.

(3)  The members appointed by the Premier are to be persons who together have expertise in human resources management, probity and accountability, strategic planning, budget and performance management and service delivery in the public, private, tertiary and not-for-profit sectors.

(4)  Schedule 3 contains provisions relating to the members and procedure of the Advisory Board.

**19**   **Functions of Advisory Board**

(1)  The Advisory Board has the following functions:

(a)  to determine general policies and strategic directions in relation to the functions of the Commissioner,

(b)  to provide the Premier, either at the request of the Premier or on its own initiative, with advice on any matter relating to the management and performance of the government sector.

(2)  The Advisory Board has such other functions as are conferred or imposed on it by or under this or any other Act.

**Schedule 3 Members and procedure of Public Service Commission Advisory Board**

**Part 1 Preliminary**

**1**   **Definitions**

In this Schedule:

***appointed member*** means the Chairperson of the Advisory Board or other member of the Advisory Board who is appointed by the Premier.

***member*** means an appointed or ex-officio member of the Advisory Board.

**Part 2 Members**

**2**   **Terms of office of appointed members**

(1)  Subject to this Schedule and the regulations, an appointed member holds office for the period (not exceeding 3 years) specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2)  A person may not be an appointed member for consecutive terms totalling more than 6 years unless the Premier determines otherwise.

**3**   **Remuneration of appointed members**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member.

**4**   **Vacancy in office of appointed member**

(1)  The office of an appointed member becomes vacant if the member:

(a)  dies, or

(b)  completes a term of office and is not re-appointed, or

(c)  resigns the office by instrument in writing addressed to the Premier, or

(d)  is removed from office by the Premier under this clause, or

(e)  is absent from 3 consecutive meetings of the Advisory Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Premier or unless the member is excused by the Premier for having been absent from those meetings, or

(f)  becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(g)  becomes a mentally incapacitated person, or

(h)  is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2)  The Premier may remove an appointed member from office at any time.

**5**   **Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

**6**   **Appointed members not prevented from holding other offices**

If by or under any Act provision is made:

(a)  requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b)  prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

**7**   **Appointed member holds statutory office**

An appointed member holds a statutory office and is not employed in the Public Service.

**8**   **Disclosure of pecuniary or other interests**

(1)  If:

(a)  a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Advisory Board, and

(b)  the interest appears to raise a conflict with the proper performance of the member’s duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Advisory Board.

(2)  A disclosure by a member at a meeting of the Advisory Board that the member:

(a)  is a member, or is in the employment, of a specified company or other body, or

(b)  is a partner, or is in the employment, of a specified person, or

(c)  has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3)  Particulars of any disclosure made under this clause must be recorded by the Advisory Board and the record must be available at all reasonable hours to inspection by any person.

(4)  After a member has disclosed the nature of an interest in any matter, the member must not, unless the Premier or the Advisory Board otherwise determines:

(a)  be present during any deliberation of the Advisory Board with respect to the matter, or

(b)  take part in any decision of the Advisory Board with respect to the matter.

(5)  For the purposes of the making of a determination by the Advisory Board under subclause (4), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not:

(a)  be present during any deliberation of the Advisory Board for the purpose of making the determination, or

(b)  take part in the making by the Advisory Board of the determination.

(6)  A contravention of this clause does not invalidate any decision of the Advisory Board.

**9**   **Personal liability of members**

A matter or thing done (or omitted to be done) by:

(a)  the Advisory Board, or

(b)  a person acting under the direction of the Advisory Board,

does not, if the matter or thing was done (or omitted to be done) in good faith for the purposes of executing this Act (or any other Act that confers functions on the Advisory Board), subject a member of the Advisory Board or a person so acting personally to any action, liability, claim or demand.

**Part 3 Procedure**

**10**   **General procedure**

The procedure for the calling of meetings of the Advisory Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Board.

**11**   **Quorum**

The quorum for a meeting of the Advisory Board is a majority of the members for the time being.

**12**   **Presiding member**

(1)  The Chairperson of the Advisory Board (or, in the absence of the Chairperson, a person elected by the members of the Advisory Board who are present at a meeting of the Advisory Board) is to preside at a meeting of the Advisory Board.

(2)  The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**13**   **Voting**

A decision supported by a majority of the votes cast at a meeting of the Advisory Board at which a quorum is present is the decision of the Advisory Board.

**14**   **Transaction of business outside meetings or by telephone**

(1)  The Advisory Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Advisory Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Board.

(2)  The Advisory Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3)  For the purposes of:

(a)  the approval of a resolution under subclause (1), or

(b)  a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Board.

(4)  A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Board.

(5)  Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**15**   **Frequency of meetings**

The Advisory Board is to meet at least on a quarterly basis each year (but no more than 6 times each year).

**Attachment B**

**Advisory Board members**

**Current members**

* Professor Peter Shergold AC (Chair)
* Mr Martin Laverty (external member)
* Ms Sandra McPhee AM (external member)
* Mr Vince Graham AM (external member)
* Ms Susan Lloyd-Hurwitz (external member)
* Mr Tim Reardon (Secretary, Department of Premier and Cabinet)
* Mr Michael Pratt AM (Secretary, The Treasury)
* Ms Emma Hogan (Public Service Commissioner)

**Former members**

* Ms Katie Page (external member)
* Mr Paul McClintock AO (external member)
* Ms Maree O’Halloran AM (external member)
* Mr Chris Eccles (former Director General, Department of Premier and Cabinet)
* Mr Blair Comley PSM (former Secretary, Department of Premier and Cabinet)
* Mr Rob Whitfield (former Secretary, The Treasury)
* Mr Graeme Head ( former Public Service Commissioner)