

Addressing gender discrimination in the APS

Submission to the Independent Review of the Australian Public Service

John Papadimitriou¹, Canberra ACT, 29 July 2018

This submission contends that gender discrimination may now be at play in appointments to the Senior Executive Service (SES) which, if left unchecked, would hamper achievement of two goals mentioned in the Independent Review's Terms of Reference. They are the need for the Australian Public Service (APS) to acquire and maintain "the necessary skills and expertise to fulfil its responsibilities", and to ensure the "most effective use of taxpayers' money in delivering outcomes".

The submission's key points are:

- employment decisions in the APS should be based on merit, regardless of gender
- the APS gender equality strategy may be providing incentives and comfort for officials to engage in gender discrimination in APS employment processes
- there is also some prima facie evidence of such bias for executive level positions in the APS
- to the extent such gender discrimination exists, is likely to be reduce the quality of SES staff, the overall performance of affected public sector agencies and the morale of staff unjustly overlooked for positions
- there is no legitimate basis on equality grounds for gender discrimination in SES employment decisions
- elements of the gender equality strategy should be rescinded, and new measures considered to guard against gender discrimination in employment decisions.

The merit employment principle

According to the APSC, a high performing public service requires recruitment of the best and brightest individuals from a diversity of backgrounds. To this end, section 10A of the *Public Service Act 1999* provide that the APS makes decisions relating to engagement and promotion based on merit. This requires, inter alia, that:

- all eligible members of the community are given a reasonable opportunity to apply
- an assessment is made of the relative suitability of candidates, using a competitive selection process
- the assessment is based on the relationship between the candidates' work-related qualities and the qualities genuinely required to perform the relevant duties.²

There is little dispute that merit should be the arbiter of appointments within the APS, including to the SES. Importantly, under this approach, the gender of the candidate should not be relevant for determining their success in any particular selection process. Put simply, gender discrimination, whether pro-male or pro-female, should have no place in appointment decisions.

1 I recently retired after more than 30 years in the APS, the last 15 at the Executive Level 2 level within the Productivity Commission. I have never applied for an SES position during my APS service.

2 APSC, 'Merit in recruitment', (<https://www.apsc.gov.au/merit-recruitment>; accessed 1 July 2018)

The over-riding importance of (gender-neutral) merit selection is also recognised in *The Australian Public Service gender equality strategy 2016-19*, which states:

*The principle of merit remains central to APS employment. The strategy aims to create an environment in which merit is applied properly and fairly. This will be achieved through reportable targets, the removal of barriers like hidden bias, and adopting work arrangements that balance choice with operational requirements.*³

Notably, while the strategy contains a range of actions, it rightly stops short of indicating that there should be gender discrimination in employment selection decisions.

Recent evidence of potential gender discrimination in SES employment decisions

Some prima facie evidence has emerged recently to suggest that gender discrimination may be influencing some senior APS employment decisions. Below I mention the BETA study of 15 APS agencies, as well as some changes in SES employment outcomes.

The BETA study of discrimination across 15 APS agencies

Commencing in 2016, the Behavioural Economics Team of the Australian Government (BETA) conducted a randomised control trial to examine, inter alia, the effects of gender identifiers (eg male or female names) on the success of applicants in shortlisting for executive level positions in the Australian Public Service. The full BETA report is available online.⁴

The study involved over 2100 public servants from 15 public sector agencies and assessed whether women and minorities are discriminated against in the early stages of the recruitment process for executive level positions. It also tested the impact of implementing a 'blind' or de-identified approach to reviewing candidates. Note that the trial was for 'executive level positions' in the APS, although there is no obvious reason to presume that the results cannot be generalised to the SES level.

The results indicated that, contrary to there being discrimination against women as had been presumed, de-identifying candidates reduced the probability of women being shortlisted. Likewise, the study found that assigning a male name to a candidate made them less likely to get shortlisted, and adding a female name made the candidate more likely to do so. The study noted that these effects were modest but statistically significant, and "points to the existence of a form of subtle affirmative action taken place among reviewers." (p. 13)

This implies that, currently, female applicants are the beneficiaries of systematic discrimination in shortlisting for executive level APS positions and that males are discriminated against.

3 APSC, 'Balancing the future: The Australian Public Service gender equality strategy 2016-19' (<https://www.apsc.gov.au/balancing-future-australian-public-service-gender-equality-strategy-2016-19>; accessed 1 July 2018)

4 BETA, 'Going blind to see more clearly: unconscious bias in Australian Public Service Shortlisting Processes', June 2017 (<http://behaviouraleconomics.pmc.gov.au/projects/going-blind-see-more-clearly-unconscious-bias-australian-public-service-aps-shortlisting>; accessed 1 July 2018)

Curiously perhaps, despite the study's results suggesting that there is genuine gender discrimination that contravenes the APS merit principle, BETA did not recommend the further use of blind assessments to counteract this. This failure is itself arguably evidence of an institutional bias in the public service. As the lead author of the BETA study acknowledged (while not recommending corrective action):

This project shows the status quo at the moment is to be supportive of hiring more women in the public service.⁵

SES employment outcomes across the APS

APSC data on base classifications by gender indicates that the share of females in the SES ranks across the APS has increased from around 36 percent in 2010 to 43 percent in 2017. There has been a particularly marked increase the share of women in the most senior (Band 3) SES positions, from 25 to 41 percent, over this period.⁶ To the extent that this shift reflects the outcome of unbiased merit-based employment practices and other non-discriminatory measures, it is of course to be welcomed. The BETA study outcome, however, together with some developments associated with the gender equality agenda (discussed next), raise the issue of whether and to what extent female favouritism has also been at play in some of the appointments that underlie this shift.

Why might there be gender discrimination in SES employment decisions?

There is a range of possible explanations as to why gender favouritism in senior APS employment decisions may have emerged in recent years.

Clearly, feminism as a political movement has been successful in raising consciousness about the different roles traditionally played by men and women, and some⁷ of the different opportunities and constraints those roles created. Second wave feminism rightly focussed on equal opportunity and

5 ABC Online, 'Blind recruitment trial to boost gender equality making things worse, study reveals', (<http://www.abc.net.au/news/2017-06-30/blind-recruitment-trial-to-improve-gender-equality-failing-study/8664888>; BODNT; accessed 1 July 2018)

6 APS Statistical Bulletin 2016-17, Table 5, *All employees: base classification by Gender, 30 June 2000 to 30 June 2017*. Note that the female shares of SES positions are slightly higher when assessed by paid classifications (as in Table 6 of the Bulletin) rather than base classifications.

7 Understandably, feminist writers have tended to focus on the opportunities for males and the constraints for females created by the ("patriarchal") social system. While this perspective tends to dominate public discourse, it should be noted that there is a less-well-known counter discourse, which contends that various forms of male privilege have their female counterparts, and that on numerous indicators — including health expenditure, health status, consumption (as distinct from income), life expectancy, incarceration rates, likelihood to suffer from violent assault, propensity to be injured, maimed or killed at work, child custody outcomes, and rates of suicide — the patriarchy in fact appears to disadvantage men relative to women. It is also argued that in the world of work, feminist commentators typically focus on the very small number of high-status men at the top of occupational pyramid, above the "glass ceiling", but ignore the situation of the many millions more men trapped in the "glass cellars" of the labour market. They also fail to account for the legitimate, non-discriminatory reasons that can explain differences in pay and employment profiles between genders. (For an early exposition of these arguments, see W. Farrell, *The myth of male power: why men are the disposable sex*, Simon and Schuster, 1993.)

sought to remove any discrimination against women in employment. In more recent times, third wave feminism appears to have shifted the focus to give more emphasis to equality of outcomes. It is in this context that we have increasingly seen a push for gender employment targets. ‘Reportable targets’ are included in *The Australian Public Service gender equality strategy 2016-19*.

Although the strategy stops short of explicitly advocating gender discrimination, it is plausible that the strategy provides an incentive (and psychological comfort) for such discrimination to be used to help achieve those targets, particularly if the more legitimate non-discriminatory measures in the strategy (such as adopting more flexible working arrangements) are insufficient. The endorsement of the strategy by the head of the Department of Prime Minister & Cabinet (PMC), Dr Martin Parkinson — who is also a “Male Champion of Change” — no doubt adds to the comfort that those responsible for recommending or appointing SES officers would take from engaging in gender favouritism, consciously or subconsciously.

At the level of individuals within organisations, it is understandable that some public servants may have sympathy for the view that women have historically been, and continue to be, discriminated against in pay and promotions. This may in turn influence the support they give to females relative to males in making recommendations for promotion and when sitting on selection panels.

It is also plausible that a number of public servants, particularly those who see themselves and/or like to be viewed as “progressive”, have accepted the same claim and are now also engaging, consciously or subconsciously, in female favouritism. The creation of the Male Champions of Change arguably illustrates the potential for very senior executives to engage in “progressive action” at the expense of inequity towards later generations of males.⁸

Does gender equality justify discrimination?

One element of the “case for change” set out in the APS gender equality strategy is the disproportionately higher number of males in the SES, and particularly at the higher (and rarer) Band 2 and Band 3 levels, relative to females in the public sector generally. This has historically been the case, even if the gap has narrowed over time.

However, equality is not the same as equity. Equality of outcomes would only be equitable (in the sense of reflecting the outcome of an equal opportunity system) if men and women were identical in their talents and experience, commitment to work, interests, values, work/life preferences, and so on. There is no reason to presume that this is (or even should be) the case.

That there may be legitimate (non-discriminatory) reasons for a higher number of men than women in the SES and its upper echelons was pointed out in a PMC *Gender Pay Gap Analysis* (obtained by the ABC under FOI⁹). It showed that those differences could be explained by merit-related matters

8 For a discussion of this phenomenon, see J. Albrechtsen, ‘Champions of change will make life miserable for men at work’, *The Australian*, 31 August 2016.

9 ABC News Online, ‘PM’s department tries to work out why males get top jobs, accidentally finds women outperform men’ (<http://www.abc.net.au/news/2018-07-06/women-outperforming-men-pay-gap-prime-minister-and-cabinet/9938440;4690>; accessed 1 July 2018). This story includes an embedded copy of ‘PM&C Gender Pay Gap Analysis’.

including the historical propensity of males, on average, to invest more than females in human capital formation and to make work-life balance choices that give more weight to their careers than do women.

None of this is to argue against the non-discriminatory elements of the APS gender equality strategy, such as the removal of barriers like hidden bias (if and wherever it exists), and adopting work arrangements that balance choice with operational requirements.

But the elements of the strategy that effectively seek to “force” an equality of outcomes have the potential to lead to inequitable discrimination and to result in a lower quality of SES officers being appointed overall, and an undermining of the sufficiency of merit as the selection criterion of relevance, thereby adversely affecting the morale and effectiveness of the APS.

Recommendations

In view of the above, I encourage the Independent Review to:

- reaffirm the importance of merit-based employment principles in the APS
- undertake (or recommend the commissioning of) further research to ascertain the extent of any gender discrimination and subconscious bias in appointments across the APS
- affirm the non-discriminatory actions in the APS gender equality strategy
- recommend the removal of ‘reportable targets’ from that strategy, and that the strategy include an explicit statement that gender discrimination is not to be used to achieve gender equality outcomes
- recommend reconsideration of the adoption of blind employment assessments to help counter gender discrimination in APS employment shortlistings.