



Recruitment and discipline processes

A review of agency use of human
resource flexibilities

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Commissioner's foreword



Flexible workforce management processes and practices are important to attract and build a capable, future focused and sustainable workforce. It has been recognised that the public sector still has some way to go in getting this balance right and that the rules-based approaches that have developed over time need to change. The Public Sector Commission has responsibility for the overarching workforce management frameworks while Chief Executive Officers (CEOs) are responsible for employment matters within their respective agencies.

In the current fiscal environment it is becoming increasingly important that workforce management practices are flexible and adapted to fit the circumstances to achieve timely and effective outcomes. Human resource areas play a major role in achieving this through providing the level of support and expertise needed to build the skills and confidence of line managers.

In 2011 some significant changes were made to the recruitment and disciplinary frameworks which were intended to facilitate the shift away from an overly prescriptive focus to more flexible approaches in managing the workforce. The focus of this review was to examine whether there has been any significant change in the approaches being taken within agencies to recruitment and disciplinary processes as a result of the 2011 changes. It also sought agency feedback on further changes that the Commission could make to frameworks and its role in providing support and assistance to agencies in these areas.

The recruitment flexibilities introduced in 2011 provide a mechanism to fill jobs through more timely and cost-effective means. Timeliness is critical in recruitment, as lengthy and protracted processes reflect poorly on the agency, absorb unnecessary resources and often result in losing the best potential applicants. Within a public sector context this flexibility also needs to be balanced, however, with ensuring that recruitment decisions are equitable and based on merit.

Unlike recruitment activities, disciplinary matters arise far less frequently but when they do agencies need to have the flexibility to respond in a manner that is timely and appropriate to the complexity and seriousness of the allegations.

It is evident that there has been concerted effort from agencies to move to more flexible

approaches to recruitment and discipline, but there is still some way to go. Agencies need to be forward thinking as to how they are positioned to meet future challenges. This will require a more strategic approach to workforce management issues, including recruitment, and making use of the flexibilities that are available. Where expected standards of integrity and conduct are not met, agencies also need to have the right skills and expertise to efficiently and effectively identify and address that conduct, in accordance with the relevant disciplinary frameworks.

The Commission is committed to continuing to work with agencies and Human Resources Managers (HRMs) to improve our capability in these areas. The Commission will strive to continue to improve the support and assistance it provides to agencies in relation to workforce management issues, including a new recruitment training package and initiatives to build the capacity of agencies to address employee misconduct. This review reinforces the need to strengthen public sector human resources functions as a source of expertise and guidance for agencies, and the Commission will be progressing a body of work in this area.

I wish to thank those agencies and recruitment consultants involved in the consultation process, and encourage all CEOs and HRMs to review the findings and consider what further changes could be made to policies and practices within your agency to work towards achieving greater efficiency and better outcomes.



M C Wauchope

PUBLIC SECTOR COMMISSIONER

Executive summary

Background

Changes to the *Public Sector Management Act 1994* (PSM Act) in 2010 and subsequent Commissioner's Instructions (CIs) sought to strike the right balance between enabling CEOs to manage their organisations while ensuring there is an appropriate level of accountability for the way the public sector as a whole is administered.

In early 2011 the Commission released a new *Employment Standard* (which amalgamated four former public sector standards) and CIs on filling a vacancy and discipline.

CI No. 2 - Filling a Public Sector Vacancy included both new flexibilities and flexibilities that existed prior to 2011, many of which were not well known or utilised by agencies. The new flexibilities introduced included:

- targeted advertising
- appointment without advertising or a competitive assessment of merit
- shared appointment pools
- a discretion for CEOs to permanently appoint seconded, acting or fixed-term employees, provided criteria were met.

In addition, agencies have been encouraged to take more flexible approaches to job application requirements, shortlisting and selection processes, to take into account different job roles and requirements.

The discipline CIs simplified the disciplinary process, provided greater flexibility to employing authorities to determine the level of formality of the process depending on the complexity and seriousness of the issues, and allowed employing authorities to pursue disciplinary matters for former employees.

The Commission ran a significant education and awareness program throughout 2011/2012 on the practical application and implications of these changes.

This review was undertaken to determine how well the flexibilities have been understood and used by agencies and whether there has been a consequential positive impact on the public sector recruitment and discipline practices. The review also sought to obtain agency feedback on further potential changes or support that the Commission could provide to agencies in dealing with recruitment and discipline matters.

Summary of key findings

Recruitment

- HRMs have a high level of understanding of the recruitment flexibilities available, however the level of understanding by line managers and CEOs varied across agencies. The majority of line managers relied heavily on their HR area for expertise and knowledge, and tended to use approaches they were familiar with unless alternative options were put forward by HR. HRMs have a key role in this regard in supporting more innovative approaches.
- Recruitment consultants indicated that in their experience the flexibilities were not widely used and there was more scope to do so. The consultation process found that there had been occasions when consultants or line managers had suggested the use of one or more flexibilities but if that approach had not previously been ‘tested’ in the agency then HR staff were often reluctant to endorse it.
- HRMs considered that the flexibilities could be more clearly defined and more information on the practical application of the flexibilities would be useful.
- There was a clear correlation between the level of understanding and use of recruitment flexibilities within agencies. The consultation process also highlighted that the flexibilities were more useful and easy to apply in agencies that had specialised occupational groups or positions than those agencies with more generic roles.
- There were some contrasting views on the usefulness of some of the flexibilities, particularly the flexibility to permanently appoint seconded, acting or fixed-term employees. Agencies that were not using this flexibility to any great extent (particularly those agencies which had positions that were externally funded) indicated that they would have greater capacity to use it if the timeframes were more flexible.
- The six month restriction on subsequent appointments from an advertised vacancy was considered overly restrictive and it was suggested that it should be broadened to 12 months, or CEO discretion if the job type is at a higher level or more specialised.
- Shared appointment pools were rarely used and a number of agencies provided feedback on the reasons for not using them.
- A small number of agencies cited breach of standard claims as a factor that caused delays in recruitment processes. Better fast tracking of breach claim findings by the Commission where the claim was out of scope or clearly unsubstantiated was suggested.
- It was evident that innovative approaches in shortlisting and selection processes could be used more widely. The majority of line managers indicated that there has been a noticeable increase in the number of applications being received in recent years and that this made the short-listing process more onerous. In most cases all applications were being assessed against each criterion by all panel members and

the recruitment consultant (if a consultant was engaged) prior to a formal short-listing meeting.

- Interviews were still the predominant method for making selection decisions although a number of agencies had introduced case studies, presentations and skills testing in addition to interviews.
- Whilst agencies were positive about the introduction of further recruitment flexibilities the general view was that they had not made a significant impact on recruitment processes.
- The review identified that the majority of agencies had updated their recruitment policies to reference the CIs but the majority did not provide detail on the flexibilities in CI No. 2 - Filling a Public Sector Vacancy. All agencies included their policies on the intranet and while managers had a reasonable level of awareness of their agency's policies and procedures many indicated that they tended to use recruitment processes they were already familiar without referencing agency policy and procedures.
- The review highlighted that there are inconsistent approaches to manager training and development. There is a need to ensure that all managers within the public sector are provided with a base level of recruitment training by their HR area including practical examples of the use of flexibilities that are relevant to the agency's workforce.

Discipline

The majority of the agencies that were reviewed reported a relatively low number of disciplinary cases.

- All HRMs consulted were aware that disciplinary processes should proceed with minimal formality where possible, but identified that it is sometimes difficult at the outset to determine how serious a matter is.
- All agencies had positive feedback regarding the flexibility of being able to use improvement action and indicated that this option was being used more frequently once the HR area had become more familiar with the provisions and how they could be applied in practice. Counselling was the most common improvement action used.
- The majority of agencies believed that the time taken to finalise less serious discipline matters had improved as a result of the discipline process changes in 2011 but there had been no impact on the timeliness of more serious disciplinary cases.
- No further changes to the disciplinary framework were suggested. The majority of CEOs and HRMs indicated that protracted disciplinary cases were more often the result of the employee lodging a grievance, taking extended personal leave or appealing their case through other avenues or jurisdictions rather than procedural issues.
- There was inconsistent understanding of suspension provisions and the circumstances in which suspension without pay could be considered. This was an area where the Commission could assist by providing practical examples and case studies for publication and further discussion.

- HRMs suggested that forums on more complex disciplinary matters that included case studies and small group 'roundtable discussion' with other senior HR, or industrial staff would be helpful in continuing to improve agency knowledge. The Commission's role would be to arrange and facilitate the forum. The key issues and discussion outcomes could then be published on the Commission website.
- CEOs and line managers emphasised the importance of getting timely advice and good support to be able to deal effectively with minor disciplinary issues before they escalated. The majority of line managers indicated that they had received good support from their HR area on disciplinary issues. In most cases, the HRM or a senior officer in the conduct area took the lead in determining the best approach to handling a disciplinary matter including providing advice on the use of improvement action.
- There were two instances where disciplinary matters related to long-term behavioural issues of an individual had impacted team dynamics and the line managers felt they had not received the level of support they needed from their directors.
- The consultation process highlighted that line managers did not make a clear distinction between substandard performance issues and disciplinary matters and more could be done by HR areas to educate staff on identifying and managing different types of workplace behaviour issues.
- Five of the eight agencies reviewed had a separate discipline policy/procedure while the remaining three agencies included a clause in their code of conduct defining a breach of discipline and the need for employees to report breaches. Of those five agencies that had policies/procedures, the Department of Transport was assessed as a good practice example in terms of capturing the key procedural elements and options, and being easy to follow and understand.
- All line managers who had dealt with disciplinary cases indicated that in the first instance they would seek advice from HR to get an understanding of the key issues and the recommended approach to dealing with matter rather than trying to access information from policies and procedures on the agency intranet.

Recommendations

For agencies	
Recommendation 1	Agencies to take a more proactive approach in identifying which recruitment flexibilities are most relevant to the agency's needs, how these could be applied in practice and included in agency workforce plans.
Recommendation 2	Agencies to undertake their own education and awareness raising campaigns that include practical examples of the application of recruitment flexibilities within the agency context to ensure that such practices are well understood by decision makers.
Recommendation 3	Agencies to ensure their internal recruitment policies and procedures: <ul style="list-style-type: none"> • are easy to follow and understand • reference any legislative and/or regulatory frameworks governing them • are regularly reviewed to ensure they remain relevant and up to date (every two years recommended).
Recommendation 4	Agency HR areas to take a more collaborative approach in working with line managers to achieve timely and flexible recruitment outcomes.
Recommendation 5	Agencies to build the capacity of managers to identify and manage unacceptable workplace behaviour, and understand the distinction between substandard performance and disciplinary matters, as outlined in the <i>Managing workplace behaviour - A guide for agencies</i> published on the Commission website.
Recommendation 6	Those agencies subject to Part 5 of the PSM Act to build familiarity of relevant staff with CI No. 3 – Discipline – General, the accompanying <i>Guide to the Disciplinary Provisions contained in Part 5 of the PSM Act</i> , and <i>Disciplinary investigations under Part 5 of the PSM Act – A guide for agencies</i> .
Recommendation 7	Agencies to consider the use of key integrity risk area audits to identify potential areas for systemic integrity or disciplinary issues.

For Public Sector Commission

Recommendation 8	The Commission to improve the availability of, and access to, website information and advice on the practical application of recruitment flexibilities and public sector recruitment practices in general.
Recommendation 9	CI No. 2 – Filling a Vacancy to be amended to more clearly define the recruitment flexibilities.
Recommendation 10	The Commission to develop recruitment guidance material to support agencies with manager induction programs and ongoing manager training and development in recruitment processes.
Recommendation 11	The Commission to include information on recruitment reporting within agencies in the proposed recruitment products.
Recommendation 12	The Commission to consider feedback provided by agencies regarding potential additional flexibilities in reviewing CI No. 2 - Filling a Vacancy and issues concerning timeliness in finalising breach of standard claims.
Recommendation 13	The Commission to facilitate forums and/or roundtable discussions for HR and industrial relations practitioners to assist in dealing with more complex disciplinary matters.

Background

Recruitment flexibilities

In February 2011, CI No. 1 - Employment Standard and CI No. 2 - Filling a Vacancy were released relating to public sector recruitment processes. These CIs introduced the following recruitment flexibilities not previously available:

- targeted advertising whereby jobs are advertised within the agency and/or to a particular external group of candidates or regional area
- the ability for a CEO to decide not to conduct a competitive assessment of merit and to make an appointment provided an individual assessment is made and certain criteria are met
- the ability for agencies to collaborate and share resources to advertise and fill vacancies through shared recruitment pools
- the ability to appoint fixed-term contract, acting and seconded employees to permanent positions provided wording to that effect is included in the original advertisement and required timeframes are met.

There were also other recruitment flexibilities that were previously available prior to 2011 included in CI No. 2 – Filling a Vacancy. A matrix which includes all recruitment flexibilities currently available to agencies and the criteria that must be met to be able to utilise the flexibility is included in Appendix 1.

Other recruitment flexibilities that are not included in CI No. 2 - Filling a Vacancy but which public sector agencies have the discretion to determine according to agency needs are:

- job application process—what form the application should take and how the application is lodged with the agency
- shortlisting process—processes used to determine shortlisted applicants
- selection process—processes used to determine preferred and suitable applicants.

Amendments were also made to *the Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*, which incorporated a greater role for agencies to resolve breach of standard claims before forwarding them to the Commissioner and the introduction of a minimum breach period for some employment decisions to four days.

Discipline flexibilities

Amendments to the PSM Act made in late 2010 reduced the legislative procedural requirements for disciplinary processes and encouraged a more flexible approach whereby the formality of the process is determined according to the seriousness and complexity of the matter. In March 2011, these legislative changes were supported with the release of CI No. 3 - Discipline - General and CI No. 4 - Discipline - Former Employees. These instruments streamlined processes, allowed greater discretion in the way in which suspected or actual breaches of discipline are managed and more flexibility in terms of outcomes.

The specific changes introduced were:

- a significant re-write of Part 5 of the PSM Act to, inter alia, remove the prescribed three stage investigative process, which included a formal investigation followed by an inquiry
- removal of all but one of the regulations prescribing how the disciplinary process would be conducted, including the investigation and inquiry phases
- the ability to determine the level of formality that should be applied to processes for suspected breaches of discipline provided that the approach is consistent with the common law principles of procedural fairness, the Discipline Standard and any other legislative requirements.
- the ability at any point in the process to exercise judgement as to whether an issue should be dealt with as:
 - a disciplinary matter
 - a matter requiring improvement action
 - no further action be taken, taking into consideration the facts, seriousness and nature of the particular incident
- improvement action includes:
 - counselling
 - training and development
 - issuing a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory and
 - any other action of a similar nature
- the ability to pursue disciplinary action for a former employee no longer employed in the public sector or a former employee employed elsewhere in the public sector.

Approach

The following eight agencies were selected to be involved in the review:

- Department of Agriculture and Food (Agriculture)
- Department of Mines and Petroleum (DMP)
- Department of Commerce (Commerce)
- Department of State Development (DSD)
- Department of Transport (Transport)
- Department of Fire and Emergency Services (DFES)
- South West Institute of Technology (SWIT)
- Mid-West Regional Development Commission (MWRDC).

The consultation process involved HRMs, and for the agencies in the metropolitan area, also included CEOs and line managers who had recently undertaken recruitment processes. The three most commonly used recruitment consultancies on the Common Use Arrangement contract (CUA): 10410 - *Provision of Human Resource Services* were also consulted.

We also examined the recruitment and discipline/conduct policies and procedures for the eight agencies involved in the consultation processes to identify what extent the flexibilities were clearly articulated in the agency documents used by managers.

Recruitment

Issues examined

The objective was to determine whether agencies fully understood the recruitment flexibilities, had incorporated these flexibilities into agency policies and to what extent the flexibilities were being utilised. The consultation process also sought agency views on any potential barriers or difficulties they had experienced in using or attempting to use the flexibilities and recruitment processes in general.

Recruitment processes are generally undertaken by line managers with support and guidance provided by agency HR staff. Recruitment consultants are being engaged in the majority of agencies and therefore also play a role in scheduling recruitment timeframes, guiding the process and writing selection reports.

For each agency the following issues were examined in relation to recruitment:

- whether the flexibilities were understood by all management levels across the agency
- the extent to which the agency was utilising the flexibilities and any issues hindering the use of flexibilities
- whether the agency's recruitment policy and procedures included the flexibilities contained in CI No. 2 - Filling a Vacancy and whether these were clear and easy to understand
- how recruitment processes within the agency were working in practice and the agency's view on whether the flexibilities currently available had improved recruitment practices
- reporting frameworks used within the agency to monitor recruitment activities and ensure that selection processes were completed within reasonable timeframes
- agency views and comments on further potential flexibilities or recruitment process changes and the support and assistance provided by the Commission
- general observations and conclusions.

Key findings

Understanding of flexibilities

As expected, HRMs had the highest level of understanding of the recruitment flexibilities. The level of understanding by CEOs and line managers varied to a much greater degree.

While some line managers were more experienced with recruitment processes than others, this did not necessarily equate to a high level of understanding of the flexibilities. One experienced manager stated that 'you become familiar with the processes that you want to use'.

In general, CEOs and line managers rely on their HR team for expertise and knowledge of recruitment practices.

The DMP had used the flexibilities to a larger extent than the other agencies reviewed and demonstrated the greatest level of understanding across all three management groups—from the CEO to the HRM to the line managers.

The consultation process highlighted a need to establish a more consistent understanding of recruitment flexibilities among public sector decision makers to ensure all options are fully considered and applied where suitable.

Use of flexibilities

The most frequently used recruitment flexibilities were:

- recruitment pools
- subsequent appointments from advertised vacancies
- appointment without advertising or competitive assessment of merit for temporary vacancies less than six months
- expressions of interest for vacancies greater than six months
- permanent appointment of seconded, acting and fixed-term employees.

The following flexibilities had been used, although to a lesser extent:

- targeted advertising
- appointment without advertising or competitive assessment of merit for specialist positions and appointment of a previous employee.

The full list of flexibilities is provided at Appendix 1. Feedback and observations on their use from the agencies and recruitment consultants involved in the review are outlined below.

1) Targeted advertising

There was some confusion about the use of targeted advertising. Most agencies interpreted targeted advertising to mean placing advertisements in specialist publications, such as local newspapers, as well as undertaking general advertising (i.e. Jobs WA). While this is a form of targeted advertising, it is not the same as the meaning given to it in CI No. 2 – Filling a Vacancy (see Appendix 1), which limits advertising to employees within the agency and a selected group or groups of external candidates.

Feedback from one of the CUA recruitment consultants confirmed that targeted advertising is not well understood or utilised by agencies.

2) *Quarantining*

While quarantining had only been used by one of the agencies consulted as part of the review, a CUA recruitment consultant advised that it was used frequently by agencies undergoing organisational restructuring processes.

3) *Expressions of Interest greater than six months*

Some agencies used this flexibility more than others, mainly for vacancies up to 12 months or vacancies of six months duration with a possibility of extension. A HRM in one agency stated that while the flexibility had been used, it was not a practice that was encouraged as it was perceived by internal employees to be contrary to merit and equity principles.

4) *Appointment without advertising or competitive assessment of merit*

This flexibility has been widely used for temporary vacancies less than six months, but had not had much use for the other circumstances in which it could be applied. That is:

- where an employee is transferred at level within the public sector body in which they are employed or another public sector body
- for Level 1 applicants or trainees referred by the Commission
- where the employing authority is satisfied that advertising will not attract a competitive field due to specialist nature of position
- where a position is critical, has a whole-of-government focus and is for no more than 12 months
- where public service officer is appointed to a further office no higher than the current office or classification
- where a previous permanent employee of an agency is appointed to a vacancy the same/similar to a previous role.

It was generally acknowledged that there was the potential for greater use of this flexibility where an agency had specialist roles.

While the use of 'appointment of a previous employee' has been limited, it was still considered a useful flexibility to have. This is because it provides for employing authorities who have vacancies that match a previous permanent employee's skills and level to reemploy them.

5) *Subsequent appointments following a merit selection process – general appointments and suitability lists*

Subsequent appointment from a merit selection process was used by some of the agencies. Most had a standard practice of placing wording in their job advertisements to indicate the possibility of further appointments. One of the CUA recruitment consultants reported observing an increase over recent years in the number of agencies including the possibility of subsequent appointments in their advertisements.

Another consultant advised that this flexibility was used commonly and very effectively by agencies but there was scope for improvement in the way some HR areas kept track of it to ensure it was fully utilised.

There seemed to be some confusion about the use of suitability lists. A suitability list is a list of suitable applicants from a general vacancy or pool recruitment process that is maintained by one agency and accessible by other agencies. Feedback from the consultation process showed that most considered suitability lists to be internal agency-only lists, rather than lists that can be shared with other agencies.

6) *Subsequent appointments following a merit selection process – appointment pools*

Recruitment pools were considered useful for high volume generic positions that had a high turnover rate.

The CUA recruitment consultants advised that pools are used frequently and effectively by most agencies. However, one consultant noted that pools can sometimes result in delays in time to recruit, particularly when large numbers of interviews and reference checks are required.

Feedback on the use of pools within agencies was generally positive although one agency advised managers sometimes want to re-interview applicants if they were not part of the original recruitment process.

None of the agencies reviewed had used a shared recruitment pool with another agency. While two agencies had a graduate program which was jointly managed, selection of recruits for the program was undertaken separately by each agency. Agencies provided the following reasons for not using shared recruitment pools:

- vacancies are often agency-specific
- agency perspectives on the most important attributes for the role often do not align
- pools could result in competition between agencies to secure the more highly ranked applicants and the lower ranked applicants were often those that met the essential requirements but did not demonstrate potential to progress beyond the immediate role advertised.

A CUA recruitment consultant advised that agencies generally do not consider shared recruitment pools to be a viable recruitment option.

7) *Permanent appointment of seconded, acting and fixed-term employees*

Feedback on the usefulness of this flexibility varied. Several agencies raised the issue of timeframes for the use of this flexibility being too restrictive. CUA consultants also indicated that in their experience this flexibility was not well understood and there was the capacity for greater use of it by agencies.

Better publicising of the practical use of this flexibility and a review of the timeframes for its use is recommended.

Use of good practice examples

The consultation process highlighted that the use of recruitment flexibilities can vary significantly from agency to agency and certain flexibilities will be more relevant to some agencies than others. The education and awareness raising recommendations in this report focus on providing practical examples of agency use of flexibilities in website information, guides and forums.

For education and awareness raising to be effective there needs to be a cultural shift at the agency senior leadership level to guide and support HR and operational areas to make the most of the flexibilities available, and lessen unnecessary risk adverse behaviours of recruitment decision makers.

Policies and procedures

Agencies were asked to submit their recruitment policies, procedures and guides as part of the review process. The examination revealed that policies for two of the agencies were significantly out of date. Of the eight agencies that were reviewed approximately half had a single recruitment policy, three had a combined recruitment policy and procedures document and one agency did not have a recruitment policy. For those agencies that had separate procedural documents the level of detail in the documents varied considerably.

The submitted documents were examined to determine the extent to which they referred to CI No. 1 – Employment Standard and CI No. 2 - Filling a Vacancy. For those agencies that had updated their policies since 2011 the majority included a simple reference to the CIs rather than detailed information on flexibilities contained in CI No. 2 – Filling a Vacancy.

The recruitment policies and procedures were discussed with line managers as part of the consultation process. While managers were aware of where to find their agency's policies and procedures, they indicated they did not use them to any great extent. Some managers relied on their past experience while others preferred to seek verbal advice from their HR team rather than be fully conversant with policies and procedures.

Due to the operations, size and needs of agencies being so diverse a standardised approach to policy and procedures is not advisable. Therefore, agencies should continue to use their own discretion about what internal documents are required to ensure effective and efficient business operations. However, where policies and procedures are used they should be as simple and easy to understand as possible, and kept up to date. They should also reference any legislative and regulatory frameworks governing them and the date that any changes came into effect.

Support for managers

The level of support available to managers regarding recruitment was explored as part of the review.

The majority of agencies provided managers with training, although the type of training varied from panel-specific training to wider whole-of-recruitment process training. In some agencies training is mandatory for recruitment panel chairs and/or panel members.

Some agencies also offer induction programs for managers, which cover recruitment. One new manager commented that such a program was not available in her department but would have made her first experience in management a lot easier if it had been.

Managers rely heavily on their HR teams for recruitment support. In some of the larger agencies, HR staff are embedded in divisions and business units. Most agencies also use external HR consultants to assist with recruitment processes.

The majority of managers advised that their HR teams were approachable, supportive and responsive. There were a small number of agencies where managers had contrasting comments. For example, one manager indicated that their agency's internal HR expertise required further development. Another indicated that HR staff needed to be less rules-focused and to get a better understanding of the outcomes the line manager was trying to achieve. HR staff and the line manager can then explore solutions or options collaboratively.

The review highlighted a need to ensure that all managers are provided with a base level of recruitment training and development within the public sector. Larger and medium sized agencies were well-equipped to do this but smaller agencies indicated that it would be useful to have some broad guidance material for induction and training.

Impact of flexibilities

There was a diverse range of views on whether the recruitment flexibilities had positively impacted an agency's ability to resource the workplace.

One agency believed the flexibilities had been instrumental in building its workforce. The others considered that the recruitment flexibilities had not made a significant impact on recruitment approaches and processes.

The consultation process identified a correlation between understanding and use of flexibilities and their potential impact on workplace resourcing. This correlation strengthens the need to establish a more consistent understanding of flexibilities among public sector decision makers. DMP is a good example of the impact that the recruitment flexibilities can have in an environment where their understanding and use is high.

CUA consultant feedback suggested that agencies were initially positive about the CIs when they were introduced but overall the perspectives and practices within the sector had only changed slightly, not significantly. It was concluded that agencies could be taking better advantage of the flexibilities and doing more to embrace new approaches.

Timeliness of recruitment processes

Time to recruit was still considered to be an issue by some of the consultation group, although the reasons provided varied.

Some attributed recruitment delays to internal processes, mainly related to delays with recruitment panels or managers who had competing operational priorities and did not always give priority to recruitment processes.

The following were also identified as causing recruitment delays:

- breach claim processes in instances where a breach claim is lodged

- the impact of redeployment processes, particularly for positions where registered redeployees do not meet essential job selection criteria
- internal HR approval processes
- the time taken to produce selection reports which justify the actions and decisions taken.

A number of those consulted commented about the potential to lose good applicants when recruitment processes take too long. This was supported by a CEO who advised that they had likely lost two overseas applicants for senior positions due to process delays.

Consultants believed that agencies had been making attempts to streamline processes and be more flexible with recruitment over the past few years but the level of improvement had been minimal rather than significant.

Application, shortlisting and selection processes

Over half the agencies reported that they had simplified their job application processes by requiring only a resume and covering letter. One HRM and a CUA consultant observed that this can sometimes make selection processes difficult, because recruitment panels cannot then refer to written applications if applicants are not good interview performers.

Staff selection processes were discussed as part of the consultation process. Of the agencies that participated in the review, selection processes were still predominantly interview-based. Some agencies had been more active than others in using non-standard selection methods, such as scenarios, assignments, presentations, psychological assessments and second meetings with teams. However it was identified that innovative approaches should not be overly onerous for applicants.

The review highlighted that there is inconsistent knowledge and understanding of the range of practices that can be applied in selection processes. More guidance from the Commission in this area would assist agencies to better understand the options available to them and how they can be applied in practice. The Commission is developing a number of products to assist agencies in this regard.

Reporting frameworks

Agencies were asked to provide any reports that they produced in relation to recruitment activity for the period January to December 2013. The request revealed that the use and reporting of recruitment metrics varied among agencies. Some HR areas collected and reported data and information to their corporate executive on a regular basis, while others did not. The type of reporting can also vary between agencies. For example, some reported working days rather than calendar days for time to fill and some categorised data into time with HR, time with recruitment panel. Therefore, it was not possible to compare data across agencies or calculate averages across the agencies.

While it is accepted that each agency's recruitment metrics 'dashboard' may differ, there would be benefit in the Commission providing guidance to agencies on a more standardised approach to calculating timeframes and other recruitment metrics used in

agency reporting. This will also allow the Commission to monitor recruitment activity, in terms of quantitative measures, across the sector. This information could be included in the Commission's proposed recruitment guide.

In addition, reporting will have individual agency benefits. In particular, it will enable those agencies not currently monitoring recruitment to gain a better understanding of where efficiencies may be gained. It can also assist agencies in considering whether their recruitment practices are helping to meet strategic human resourcing goals identified in workforce plans.

Barriers to flexible recruitment

The following were identified as potential barriers to flexible recruitment:

- lack of understanding by managers about the options available
- reluctance by managers to adopt new processes
- recruitment panel members being concerned about meeting the Employment Standard but not really understanding how it can be achieved in practice
- managers being resistant to innovation or not having the confidence to 'test' more flexible approaches due to concerns about breach of standards
- perceptions that recruitment needs to be a rigid process, even if this isn't the case.

Organisational culture was also raised by CUA consultants as a potential barrier. It is considered that many agencies are overly cautious and while managers might be encouraged to try 'new ways' of recruiting, a culture can exist that does not embrace change or does not actively support new approaches.

These are barriers that senior leadership and internal support for line managers could assist in overcoming by understanding and promoting available recruitment flexibilities.

Further flexibilities

The consultation group was asked to identify possible further flexibilities that could be introduced with regard to recruitment. The options suggested were:

- extending the circumstances for appointment without advertising or competitive assessment of merit to better enable:
 - employment of diversity groups identified within agency workforce plans
 - employment in regional areas where agencies have demonstrated a difficulty in recruiting staff.
- increasing the options available for subsequent appointments from an advertised vacancy, in particular, allowing for a recruitment process to be used to fill positions at a lower level, as well as positions at the same level
- introducing the capability to appoint an officer part-time to a higher office, whilst maintaining a substantive (lower level) position part-time in the same agency
- introducing the capability to promote an officer to a higher level

- providing CEOs with discretion to make appointments outside the timeframes prescribed in CI No. 2 - Filling a Vacancy, if they were satisfied that the reasons for doing so were not inconsistent with the Employment Standard
- better fast tracking breach claim outcomes where a claim is outside scope or lodged by a claimant who has a previously history of lodging breach claims that have not been substantiated
- providing CEOs with the discretion to waive the redeployment process under particular circumstances (e.g. where there are no registered redeployees with a key job requirement such as statutory planning experience).

The Commissioner will consider these and any other options that could be introduced to further improve the flexibilities available, within the context of the principles of human resources management enshrined in the PSM Act.

Commission advice and assistance

Views on the advice provided to HR staff and consultants by the Commission on filling vacancies and recruitment issues were generally positive. Approximately two thirds of HRMs and consultants found the Commission to be very helpful and the advice given to be useful and practical. The remainder felt that the Commission needed to be more practical and less cautious in its approach to providing advice, for example by providing definitive views on proposed agency approaches or examples of where the flexibilities had been used effectively in other agencies, rather than simply suggesting options.

It should be noted that while Commission staff are able to provide examples, options and advice, the final decision-maker as to the appropriate recruitment process for the circumstances is the agency concerned. Agencies are also able to contact the Commission for peer review of their HR policies and procedures. Agencies that had involved the Commission in the early stages before recruitment began and continued to seek advice during various stages of the process had more positive views than those that had sought advice after a recruitment process.

Discipline

Discipline activity trends

Disciplinary matters arose in 49 per cent of public sector entities over 2013/14. The majority (78 per cent) of disciplinary matters were completed within six months, a further 14 per cent took six to 12 months to complete and five per cent of disciplinary cases took more than 12 months to finalise.

Issues examined

The objective was to determine whether changes made to disciplinary processes had resulted in a more simplified approach and provided greater flexibility to employing authorities in dealing with minor matters and behavioural issues. The consultation process also sought agency views on any difficulties or issues that commonly occur in dealing with disciplinary matters and any potential further changes to procedural requirements.

Discipline processes differ from recruitment in that they vary depending on the nature and complexity of the issues. Therefore each process needs to be tailored accordingly. The majority of agencies used consultants from *CUA 14610 – Human Resource Services* to conduct discipline investigations, however three agencies are now making more use of the HR area to complete investigations for less serious matters.

For each agency the following issues were examined in relation to discipline:

- the type of disciplinary issues that had arisen in the agency over the past three years and the extent to which the agency had tailored processes according to the nature and seriousness of the matter
- any issues that frequently arise in dealing with disciplinary matters that cause problems or delays
- the level of support being provided to line managers in the agency who were involved in disciplinary matters
- whether the agency had a discipline policy or procedure and the extent to which they were used by line managers
- agency views on whether the 2011 changes to the discipline processes had had a positive impact and how well disciplinary processes within the agency were working

- agency views and comments on current procedural requirements included in the CIs and the support and assistance provided by the Commission
- general observations and conclusions.

Key findings

Types of disciplinary issues and approaches used

- The types of disciplinary issues being dealt with by the agencies reviewed ranged from ongoing behavioural issues (both minor and serious), misuse of government property or information, dishonesty in regard to claiming of entitlements, disregarding or disobeying procedural requirements and serious breaches involving fraud, misrepresentation and corrupt behaviour.
- For line managers, employee behavioural issues such as bullying, aggressive behaviour, refusing to talk to or acknowledge others and ignoring directives were cited as the most common and difficult to deal with disciplinary issues.
- CEOs emphasised the importance of dealing with minor behavioural issues as early as possible, as inaction or delay often resulted in further acts of inappropriate behaviour or more serious ongoing behavioural issues, team dysfunction and loss of productivity.
- CEOs in two agencies and some line managers believed that the ‘pendulum had swung too far in favour of employees’ in terms of dealing with conduct issues. The view was that managers become overly concerned about being seen as ‘caring’ rather than ensuring standards of conduct are upheld. Providing more clarity in terms of what managers have the right to do was suggested as being needed to address this.
- Some line managers indicated that when employees raised issues of concern regarding the behaviour of another colleague they often were unwilling to go ‘on record’ or be involved in any investigation so it made these cases difficult to pursue.
- The consultation process highlighted that line managers did not make a clear distinction between substandard performance issues and disciplinary matters and more could be done by HR areas to educate staff on identifying and managing different types of workplace behaviour issues.
- DMP had been proactive in identifying the key integrity risk areas for the agency and then initiated audits around these risks to pick up systemic issues. This was proving effective and had picked up on a serious disciplinary matter which may not have been identified otherwise.

Use of discipline flexibilities

- All HRMs consulted were aware that disciplinary processes should proceed with minimal formality where possible, but identified that it is sometimes difficult at the outset to determine how serious a matter is. This is because allegations might cover a wide range of seemingly minor issues or more serious issues might be uncovered as a result of the reporting of what appears to be a minor issue.

- All agencies had positive feedback regarding the flexibility of being able to use improvement action and feedback indicated more use was being made of this approach as HRMs become more familiar with the provisions and how they can be applied in practice. However, one CEO believed that improvement action did not usually result in sustained long-term behavioural change.
- Counselling was the most common improvement action used. DFES indicated that it had established practices that involved HR staff, the 'Employee assistance program' provider and line manager meeting at regular intervals. This ensured that the issues and desired outcomes or behavioural changes were clearly identified and agreed before counselling commenced and progress was monitored. DFES indicated that good outcomes were starting to be achieved from these processes.
- In serious cases where it takes more than six to nine months to complete the investigation and decide on actions, there were some concerns raised regarding suspension on full pay and the fact that this is costly for the agency. More information about the circumstances in which suspension without pay or on partial pay could be applied and practical case studies on this issue was suggested.

Delays in finalising disciplinary cases

- The majority of CEOs and HRMs considered that protracted disciplinary cases were usually the result of the employee lodging a grievance, taking extended personal leave or appealing their case through other avenues or jurisdictions to stall progress and outcomes from the disciplinary process.
- Other causes of delayed processes involved situations where disciplinary investigations were done by a CUA consultant and the findings were inconclusive or unclear, which required rewriting of the report.

Impact of 2011 disciplinary framework changes

- The majority of agencies indicated that the time taken to finalise less serious discipline matters had improved as result of the discipline process changes in 2011, but there had been no impact on the timeliness of more serious disciplinary cases.
- The majority of HRMs considered that in recent years there are more line managers seeking advice on disciplinary issues and there has been a noticeable increase in willingness by line managers to initiate disciplinary action now that the process is less formal.

Level of support provided to line managers dealing with disciplinary cases

- CEOs and line managers emphasised the importance of getting timely advice and good support to be able to deal effectively with minor disciplinary issues before they escalated. The majority of line managers indicated that they had received good support from their HR area on disciplinary issues. In most cases, the HRM or a senior officer in the conduct area took the lead in determining the best approach to handling a disciplinary matter including providing advice on the use of improvement action.
- The majority of line managers indicated that they had received good support from HR staff. There were two instances where line managers felt they hadn't received the

level of support they felt they needed. In one case this was due to difficulty in getting employees willing to attest to wrongdoing by others in the team, and for the other it was an ongoing employee behavioural issue.

Policy and procedures

- All line managers who had dealt with disciplinary cases indicated that in the first instance they would seek advice from HR to get an understanding of the key issues and the recommended approach to dealing with the matter, rather than trying to access information from policies and procedures on the agency intranet.
- Five of the eight agencies reviewed had a separate discipline policy/procedure while the remainder referenced discipline processes in their Code of Conduct. Of those five agencies, Transport was assessed as a good practice example in terms of capturing the key procedural elements and options, and being easy to follow and understand.

Commission advice and assistance

- Feedback from HRMs indicated that the disciplinary framework was easy to understand and apply therefore no further changes to the framework were suggested.
- All feedback received from agencies regarding Commission advice and assistance on disciplinary issues was positive.
- HRMs suggested that forums on more complex disciplinary matters that included case studies and small group 'roundtable discussion' with other senior HR or industrial staff would be helpful in continuing to improve agency knowledge. The Commission's role would be to arrange and facilitate the forum. The key issues and discussion outcomes could then be published on the Commission website.
- One HRM raised the issue of the 14 day requirement in the CI for notifying employees as not being practical and achievable, particularly in complex cases or cases involving regional staff.

Appendix 1 - Recruitment flexibilities

Flexibility	Conditions/criteria	CI No.2 Reference
1) Targeted advertising* <i>(i.e. where advertising is limited to agency employees, employees of other agencies or selected groups of external candidates)</i>	Permitted where: <ul style="list-style-type: none"> • general advertising is unlikely to result in a competitive field • the employing authority is of the opinion that a competitive field can be obtained through targeted advertising. 	3.3 – 3.4
2) Quarantining <i>(i.e. where existing employees are invited to apply for vacancies at level)</i>	Should only be used to minimise potential displacement of existing permanent public sector employees or disruption to the provision of services resulting from organisational change, such as a restructure.	3.5 – 3.7
3) Expressions of Interest greater than six months <i>(for existing employees)</i>	Permitted where there is no possibility of permanency.	3.8
4) Appointment without advertising or competitive assessment of merit	Permitted circumstances: <ol style="list-style-type: none"> Employee is transferred at level within the public sector body in which they are employed or another public sector body. For temporary vacancies less than six months, where there is no likelihood of extension. For Level 1 applicants or trainees referred by the Public Sector Commission. Employing authority is satisfied that advertising will not attract a competitive field due to specialist nature of position.* Position is critical, has a whole-of-government focus and is for no more than 12 months.* A public service officer is appointed to a further office no higher than the current office or classification.* A previous permanent employee of an agency is appointed to a vacancy the same/similar to a previous role (subject to criteria).* All circumstances require an individual assessment of merit.	4.1 – 4.2
5) Subsequent appointments following a merit selection process: General appointments and suitability lists <i>(i.e. where a recruitment process for a general appointment is used to fill subsequent vacancies)</i>	Permitted where: <ul style="list-style-type: none"> • subsequent vacancies are at the same level and have identical or similar job requirements to the original vacancy • possibility of subsequent appointment to a similar vacancy was stated in advert • selection documentation supported suitability for original vacancy Restricted to six months from endorsement of recruitment decision. If one agency accesses the suitability list of another agency, applicants must consent to details being provided to another agency.	5.1 – 5.3 5.7 – 5.9
6) Subsequent appointments following a merit selection process: Appointment pools and suitability lists	Permitted where: <ul style="list-style-type: none"> • subsequent vacancies are at the same level and have identical or similar job requirements to the original vacancy • selection documentation supported suitability for original vacancy Should run for a specified period of time, unless advertised as an open pool (i.e. no closing date). Appointments should be made prior to the pool's closing date. For shared pools, applicants must consent to details being provided to another agency. If one agency accesses the suitability list of another agency, applicants must consent to details being provided to another agency.	5.4 – 5.9
7) Permanent appointment of seconded, acting and fixed-term employees* <i>(Excludes some fixed-term officers)</i>	Permitted if: <ul style="list-style-type: none"> • possibility was stated in advert, documented in recruitment process and applicant found suitable • person in position generally >12 months and appointment happens < 24 months after advert • performance satisfactory and documented and individual assessment of merit undertaken prior to appointment. 	6.1, 7.1 – 7.2

* Flexibility introduced in 2011 via Commissioner's Instruction No.2 - Filling a Public Sector Vacancy

