

**REPORT ON THE IMPACT OF THE FINDINGS AND
RECOMMENDATIONS OF THE COMMISSIONER FOR PUBLIC SECTOR
STANDARDS ON THE SELECTION PROCESS FOR EXECUTIVE
DIRECTOR COMMUNITY DEVELOPMENT, FESA**

IN CONFIDENCE

Public Sector Commissioner
August 2009

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EXECUTIVE SUMMARY

Background

In her report *Parliamentary Series Report Four – Management of Recruitment* (OPSSC report), which was tabled in Parliament on 6 May 2009, the Commissioner for Public Sector Standards (CPSS) reported that the process used by the Fire and Emergency Services Authority (FESA) in appointing Mr David Caporn to the position of Executive Director Community Development was not compliant with:

- the Recruitment, Selection and Appointment Standard; and
- section 8 of the *Public Sector Management Act 1994*.

On 18 May 2009, the Premier requested that the Public Sector Commissioner examine the matters raised by the CPSS and provide him with advice on:

- (i) whether the disciplinary process commenced by the Commissioner of Police should continue;
- (ii) the legal status of Mr Caporn's appointment and his ongoing employment as Executive Director Community Development at FESA; and
- (iii) the implications of the opinions, findings and recommendations contained in the report for FESA and, if relevant, the public sector in general.

Focus of the review

It is not the intention of this review to reinvestigate the compliance matters examined by the CPSS or to confirm or contradict findings made by the CPSS. Rather, the focus was to consider the specific implications of the findings and recommendations made by the CPSS with respect to the appointment of Mr Caporn to both FESA and the broader public sector.

The review considered information included in the OPSSC report as well as additional material provided by the Chief Executive Officer of FESA. Comment was sought from the Commissioner of Police and the Chair of the FESA Board, and legal advice was sought from the State Solicitor's Office.

Conclusions

The review concluded:

- There is no statutory basis for completing the process commenced by the Commissioner of Police in relation to Mr Caporn.

However, the issue of completion of disciplinary matters initiated against public sector officers where there are employment changes should be considered further.

- The appointment of Mr Caporn to the position of Executive Director Community Development, FESA is valid.
- The process used by FESA was consistent with accepted principles of public sector recruitment and selection. However, there were matters that could have been handled in a manner that would have enhanced the integrity of the process. FESA has already acknowledged this.
- Comments made by the CPSS serve to remind agencies of the need to anticipate public interest and scrutiny when unique situations arise and to ensure that the integrity of the selection process is not seen to be compromised, particularly where a process involves a senior position. Agencies should ensure, however, that such individuals are not disadvantaged or denied procedural fairness.

In addition, while the need to uphold integrity in recruitment and selection processes is critical, it should not be interpreted as requiring highly prescriptive processes.

Recommendations

It is recommended that:

- No further action be taken in relation to the appointment of Mr Caporn as Executive Director Community Development, FESA.
- Options for dealing with unresolved disciplinary matters where there has been a change of employment from one public employing authority to another, or resignation and re-employment, be considered as part of the current public sector reform program.

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1. INTRODUCTION

This review was undertaken at the request of the Premier following the release of the report *Parliamentary Series Report Four – Management of Recruitment* by the Commissioner for Public Sector Standards in which it was reported that the process used by the Fire and Emergency Services Authority in appointing Mr David Caporn to the position of Executive Director Community Development was not compliant with:

- the Recruitment, Selection and Appointment Standard; and
- section 8 of the *Public Sector Management Act 1994*.

2. BACKGROUND

2.1 The Position: Executive Director Community Development

The appointment process that was the subject of the Office of the Public Sector Standards Commissioner (OPSSC) review was for the position of Executive Director Community Development at the Fire and Emergency Services Authority (FESA). This is a Class 1 Senior Executive Service (SES) position reporting to the Chief Executive Officer.

2.2 The Appointee: Mr David Caporn

In 1994 Mr Caporn was a Detective Sergeant, Major Crime Squad in the Western Australia Police. At the time of his resignation in February 2009, he was an Assistant Commissioner.

In October 2008 the Corruption and Crime Commission (CCC) released a report entitled *Report on the Inquiry Into Alleged Misconduct by Public Officers in Connection with the Investigation of the Murder of Mrs Pamela Lawrence, the Prosecution and Appeals of Mr Andrew Mark Mallard, and Other Related Matters* (CCC report) in which it stated its opinion that:

- Det Sgt Caporn engaged in misconduct in writing the letter to the Police Prosecutor dated 17 June 1994 containing incorrect and misleading information.

and

- Det Sgt Caporn engaged in misconduct in bringing about the alterations to the statements of various witnesses without any reference to their earlier recollections.

The CCC went on to recommend:

That the Commissioner of Police give consideration to the taking of disciplinary action against . . . and Assistant Commissioner David John Caporn.¹

The CCC did not recommend that criminal proceedings be taken against Mr Caporn.

Following the release of the CCC report, the Commissioner of Police commenced a “section 8 process” under the *Police Act 1892*.

2.3 Public Sector Standards

The Recruitment, Selection and Appointment Standard, which is established in line with the “general principles of human resource management” as listed in section 8 of the *Public Sector Management Act 1994* (PSM Act), states that:

The minimum standard of merit, equity and probity is met for recruitment, selection and appointment if:

- a proper assessment matches a candidate’s skills, knowledge and abilities with the work-related requirements of the job and the outcomes sought by the public sector body, which may include diversity;
- the process is open, competitive and free of bias, unlawful discrimination, nepotism or patronage; and
- decisions are transparent and capable of review.

2.4 Events leading to an audit by the Office of the Public Sector Standards Commissioner

The position of Executive Director Community Development at FESA was advertised on the WA Government Jobs Board, the FESA website and Seek.com on 2 January 2009 and in *The West Australian* on 3 January 2009. The closing date was 16 January 2009.

Interviews were held on 22 and 29 January 2009. Mr Caporn was recommended for the position subject to the normal breach period, which ended at 5.00pm on 9 February 2009. No breach of standard claims were lodged and Mr Caporn was appointed to the position.

On 11 February 2009 *The West Australian* printed an article headed “Mallard cop quits for fire job”, in which it reported that:

WA’s most controversial police officer, David Caporn, has ended his 32-year career to begin a \$130,000-a-year job as a senior executive with the State Government’s Fire and Emergency Services Authority.

In a letter to the Chief Executive Officer, FESA, on 11 February 2009, the Commissioner for Public Sector Standards (CPSS) stated that:

The Office of the Public Sector Standards Commissioner has received enquiries regarding the appointment of Mr David Caporn who had previously been named in a CCC inquiry. It has recently been reported in the media that Mr Caporn has been appointed to a senior position in FESA.

and

¹ Paragraph 14.2 of the CCC report

Given the circumstances and public interest surrounding the appointment of Mr Caporn and his previous employment with the Police Service, OPSSC plans to audit the FESA recruitment, selection and appointment process for compliance with principles of the Act.

The intention to audit the selection process was reported in *The West Australian* on 12 February 2009 in an article headed "Caporn's new job raises anger and review".

2.5 Findings and recommendations of the Commissioner for Public Sector Standards

The report *Parliamentary Series Report Four – Management of Recruitment* (OPSSC report), was tabled in Parliament on 6 May 2009. The report contained the following statement²:

OPSSC reports that this process is not compliant with:

- the Recruitment, Selection and Appointment Standard; and
- s.8 of the PSM Act

because there has been a failure to make a proper assessment due to:

- (i) inadequate panel composition;
- (ii) use of selection criteria not adequate for the position;
- (iii) failure to manage appropriately the impact of the CCC matter;
- (iv) inadequate verification of candidate's claims; and
- (v) poor documentation resulting in a process that was not transparent and capable of review.

The OPSSC report also stated that it "is not able to confirm FESA's compliance with the Code of Ethics".

The CPSS suggested that the selection process could have been suspended while the CCC matter was resolved, or, given FESA's operational needs, Mr Caporn may have been offered a temporary placement while the matter was resolved.

In addition, the CPSS put forward her opinion that:

. . . it is appropriate for the Commissioner of Police, who is probably best equipped to bring this matter to conclusion, to continue with the disciplinary process relating to Mr Caporn. This should be done following consultation with Mr Caporn. The findings of this should then be taken into consideration by any future employer³.

2.6 Action taken by the Premier in response to the report

Following tabling of the report, the Premier indicated that he was forwarding the matter to the Public Sector Commissioner for his advice and would report back to Parliament.

² Page 25 of the OPSSC report

³ Page 26 of the OPSSC report

The Premier subsequently wrote to the Public Sector Commissioner requesting him to examine the matters raised by the CPSS and to provide him with advice on:

- (i) whether the disciplinary process commenced by the Commissioner of Police should continue;
- (ii) the legal status of Mr Caporn's appointment and his ongoing employment as Executive Director Community Development at FESA; and
- (iii) the implications of the opinions, findings and recommendations contained in the report for FESA and, if relevant, the public sector in general.

3. METHODOLOGY

As well as an examination of the information contained in the OPSSC report, the Public Sector Commissioner sought, and was provided with, additional material on the selection process from the CEO of FESA, including the deliberations of the selection panel.

Comment was also sought from the Commissioner of Police and the Chair of the FESA Board.

Advice was sought from the State Solicitor's Office regarding the nature, operation and effect of loss of confidence provisions in the *Police Act 1892* and the extent to which non-compliance with approved procedures might be considered relevant or material in determining the validity of the appointment of Mr Caporn to the Executive Director Community Development role in FESA.

It should be noted that it is not the intent of this review to re-investigate compliance matters examined by the CPSS or to confirm or contradict findings made by the CPSS.

4. CONTINUATION OF THE PROCESS COMMENCED BY THE COMMISSIONER OF POLICE

4.1 Background

As stated in section 2.2, as a result of its investigation into the conviction of Mr Mallard, the CCC expressed an opinion of misconduct in relation to Mr Caporn (then Assistant Commissioner) and recommended that the Commissioner of Police consider taking disciplinary action against him.

4.2 Section 8 process

Under section 8 of the *Police Act 1892*, the Commissioner of Police may seek the removal of a police officer due to a loss of confidence in that officer, having regard to the officer's "integrity, competence, performance or conduct" (section 33L(1) of the *Police Act 1892*).

The section 8 processes allows for a more general consideration of issues, public interest and the reputation of the Police Force than is afforded through the disciplinary provisions of the *Police Act 1892*.

The Commissioner is required to follow a process that involves an investigation, an opportunity for the officer to respond and the preparation of a report for the Commissioner. If the Commissioner reaches the conclusion that he no longer has confidence in the officer, he may recommend the removal of the officer.

Section 33O(1) of the *Police Act 1892* gives the officer the ability to resign within a 28 day period following the removal of the officer. If the officer does resign then subsection 4 allows the officer's "slate to be wiped clean".

If the officer resigns during the process, as did Mr Caporn, there is no statutory basis for completing the process.

It should be noted that the purpose of a section 8 process is to allow the Commissioner of Police to form an opinion as to whether an officer does not meet the standard required to continue to be a police officer. It does not allow for a finding of misconduct and has no meaning outside of the employment relationship. Consequently, even if the section 8 process had resulted in Mr Caporn's removal from the Police Force, such an outcome would not be based on any finding that would have any authority outside of the employment relationship between the Commissioner of Police and Mr Caporn.

4.3 Conclusion

The process commenced by the Commissioner of Police against Mr Caporn is unable to be completed.

In addition, even if it were legally possible, there would be no advantage in completing the process as it involves the Commissioner of Police assessing whether he has confidence in Mr Caporn as a police officer, and such a determination would have no meaning outside the employment relationship between the Commissioner and Mr Caporn.

5. LEGAL STATUS OF MR CAPORN'S APPOINTMENT

5.1 Background

The CEO of FESA is authorised to make an appointment subject to approved procedures. The selection process for the position of Executive Director Community Development was conducted and the required breach of standards period was observed before Mr Caporn was appointed. A contract of employment was entered into between FESA and Mr Caporn.

The audit of the process by the CPSS was initiated after the appointment so there was not an opportunity for FESA to consider the findings or act on any recommendation prior to the appointment (as would occur when a breach claim was lodged by an unsuccessful applicant). In any case, an employing authority is not compelled to follow a recommended remedy to a breach where one is suggested by the CPSS.

Approved procedures are created under section 3(2)(a) of the PSM Act and are administered and maintained by the Public Sector Commission (PSC).

They outline the procedural steps to be taken in regard to classification, appointment and remuneration matters contained within the PSM Act.

Approved Procedure 2 regulates the management of designated SES positions and the deployment of SES officers. It covers the classification of positions and management of vacancies and provides for the use of standardised selection criteria to support mobility and the strategic deployment of SES officers around the sector.

The CPSS reported that the criteria applied in the selection process were inadequate because they did not incorporate required criteria as per the provisions of Approved Procedure 2.

The question of non-compliance with Approved Procedure 2 is significant on two levels. A primary concern of the CPSS was the extent to which the use of criteria provided for a proper assessment of suitability and an assessment of personal integrity. This is discussed in section 6.2. Substantial non-compliance with an approved procedure, however, has the potential to render an appointment invalid as has been found in cases heard before the Western Australian Industrial Relations Commission⁴.

5.2 Application of Approved Procedure 2

In line with the requirements of Approved Procedure 2:

- FESA submitted a request to PSC to advertise and fill the position on 10 December 2008. The job description form (JDF) was included as part of the request and contained an earlier version of the SES selection criteria that had previously been used to select a person to the position.
- A request for redeployment clearance was submitted by FESA on 10 December 2008 and the position was cleared through redeployment by PSC on 11 December 2008.
- Approval to advertise and fill the position was given by PSC on 16 December 2008 and sent to FESA on 22 December 2008.
- The position was advertised on the WA Government Jobs Board, the FESA website and Seek.com on 2 January 2009 and in *The West Australian* on 3 January 2009. The closing date was 16 January 2009.

In taking these steps FESA complied with the vacancy management checks associated with Approved Procedure 2. That an earlier version of the criteria was used was an administrative oversight by both FESA and PSC.

5.3 Differences between the criteria

With respect to selection and recruitment, Approved Procedure 2 states that:

The use of the SES Selection Criteria ensures that a minimum set of essential criteria, reflecting the generic skills required in the SES, are used when selecting SES officers.

Essential selection criteria are skills and abilities which must be possessed by the occupant of the position in order to satisfactorily perform the duties and

⁴ For example *Minister for Education v Civil Service Association* WAIRC 477 of 1997

responsibilities of the position, in keeping with the principles and objectives of the PSM Act. As a minimum, all senior executive officer positions must contain the following essential criteria:

- Shapes and manages strategy
- Achieves results
- Builds productive working relationships
- Exemplifies personal integrity and self-awareness
- Communicates and influences effectively

The selection process for the FESA position, however, used an earlier version of the SES selection criteria that is:

- (1) Provide leadership in the work environment
- (2) Facilitate workforce effectiveness
- (3) Strategically resource the work environment
- (4) Promote effective public policy
- (5) Build and maintain relationships
- (6) Achieve customer focus
- (7) Manage risk management

The OPSSC report states that:

The use of the SES selection criteria would have provided a more robust examination of each candidate's claims with respect to personal integrity and self awareness.

A comparison of the generic SES skills with those applied in relation to the FESA Executive Director position is set out in the following table.

Table 1 - Comparison of generic SES skills with those applied in the FESA Executive Director position

Generic SES criteria	Relevant skill and behaviour descriptors provided in PSC guidelines	Relevant coverage in JDF used by FESA (denotes criterion number)
Shapes and manages strategy	<ul style="list-style-type: none"> • Inspires a sense of purpose and direction • Focuses strategically • Harnesses information and opportunities • Shows judgement, intelligence and common sense 	<ul style="list-style-type: none"> • Promotes a shared vision for the authority (1) • Provides clear strategic direction (1) • Identifying customer needs and achieve customer focus (6) • Facilitate workforce effectiveness through effective communication (2) • Provide high level policy advice (4) • Facilitate workforce effectiveness through ethical decision making (2)

Generic SES criteria	Relevant skill and behaviour descriptors provided in PSC guidelines	Relevant coverage in JDF used by FESA (denotes criterion number)
Achieves results	<ul style="list-style-type: none"> • Builds organisational skill and responsiveness • Marshals professional expertise • Steers and implements change and deals with uncertainty • Delivers intended results • Manages financial and physical resources in a constrained environment 	<ul style="list-style-type: none"> • Facilitating workplace effectiveness through empowerment, motivation and development of people (2) • Creating and monitoring a cooperative management team (1) • Allocating and monitoring resources (3) • Initiate and maintain ethical policy development (4) • Enable the delivery of planned outcomes and services (6) • Provide high level policy advice (4) • Strategically resource the work environment by negotiating the provision of resources, allocating resources, contracting and financial management (3)
Builds Productive Relationships	<ul style="list-style-type: none"> • Nurtures internal and external relationships • Facilitates cooperation and partnerships • Values individual differences and diversity • Guides, coaches and develops people 	<ul style="list-style-type: none"> • Employees must abide by values (which included equal opportunity) – preamble to all criteria • Develop and maintain consultative networks (4) • Build and maintain relationships with diverse groups of people within the public and private sectors and wider community (5) • Empowerment, motivation and development of people; fostering mutual trust and respect (2) • Leads, develops and appraises a successful management team (specific responsibility 5)
Exemplifies personal integrity and self-awareness	<ul style="list-style-type: none"> • Demonstrates public service professionalism and probity • Engages with risk and shows personal courage • Commits to action • Displays resilience • Demonstrates self awareness and a commitment to personal development 	<ul style="list-style-type: none"> • Initiate and maintain ethical policy development (4) • Facilitate workforce effectiveness by establishing and maintaining working relationships through ethical decision making (2) • Build, model and promote ethical culture (specific responsibility 7) • Fosters solutions within an environment of transparency and accountability (Specific responsibility 12) • Manage risk management and prevention functions (7) • Enabling the delivery of planned outcomes and services (6)
Communicates and influences effectively	<ul style="list-style-type: none"> • Communicates clearly • Listens, understands and adapts to audience • Negotiates persuasively 	<ul style="list-style-type: none"> • Facilitate workforce effectiveness by establishing and maintaining working relationships through effective communication (2) • Establishes and maintains effective internal and external relationships (specific responsibility 8)

5.4 Compliance with Approved Procedure 2

If the panel had considered and determined that the necessary integrity standard for appointment had been demonstrated by Mr Caporn, then it can reasonably be concluded that this would be sufficient compliance with

Approved Procedure 2 in relation to “exemplifies personal integrity” and the appointment is likely to be held to be valid if challenged on this ground.

Similarly with the other criteria, that is, if in substance they were considered by the selection panel and the panel determined that they were met, then this would be sufficient compliance with Approved Procedure 2.

5.5 Conclusion

Although the selection criteria used were different to those included in Approved Procedure 2, it is recognised that this was an administrative error. It is important to note that all candidates were assessed against the same criteria.

The OPSSC report stated that the use of the correct selection criteria would have provided a better examination of candidates’ claims with respect to “personal integrity and self awareness”.

From the comparisons set out in Table 1, it is considered that descriptors in the FESA JDF, that is:

- Initiate and maintain ethical policy development; and
- Facilitate workforce effectiveness by establishing and maintaining working relationships through ethical decision making

enabled the panel to examine the suitability of candidates with respect to the requirement to exemplify “personal integrity and self-awareness”.

Similarly, it is considered that the core elements of the generic SES criteria were substantially applied in the selection process and hence there is sufficient compliance with Approved Procedure 2 so as not to render the appointment invalid.

It is noted that in the OPSSC report, the CPSS comments that a finding of non-compliance does not invalidate Mr Caporn’s appointment⁵.

6. IMPLICATIONS OF FINDINGS MADE BY THE COMMISSIONER FOR PUBLIC SECTOR STANDARDS

6.1 Report finding 1: Panel composition

The CPSS is of the opinion that the composition of the selection panel was inadequate.

6.1.1 Justification provided for the finding

The OPSSC report noted that:

- FESA policy stipulates that “the composition of a selection panel is to consist of representation that will ensure all candidates are assessed fairly and equitably . . . use of external panel members (eg; a person from

⁵ Page 26 of the OPSSC report

another agency who understands the role or a person from the customer base) is appropriate in most cases”.⁶

- The panel comprised the agency CEO, another executive director at the same tier (with a higher position classification) as the appointee, and a third employee on the tier below that of the advertised position.
- There was no external panel member.

6.1.2 Opinion expressed by the CPSS

The OPSSC report included the view that:

In recruiting to second tier positions within the public sector, particularly when those appointments may result in public scrutiny, it is imperative that the panel composition is carefully considered to ensure impartiality, avoid any perception of bias and build public confidence in the process. Having a panel with external representatives is a prudent step in senior recruitment and especially so where applicants are known to panel members.⁷

The CPSS suggested that a better balance would have been achieved by expanding the panel to four members to provide some independent perspective.

6.1.3 FESA response

FESA asserts that:

- FESA policy advising the use of external panel members implies discretion and that this discretion was exercised in the interests of efficiency and to ensure that the perspective of key operational stakeholders was involved in the selection process.
- The composition of the panel was considered carefully to provide a high level of expertise in both the strategic and operational requirements of the role and in the process requirements for undertaking a proper assessment of merit.
- The inference that there was a close relationship between any member of the panel and Mr Caporn is rejected. One or more of the panellists knew, in a professional context, or had previously worked with at least two of the shortlisted applicants and five of the non-shortlisted applicants. There was no relationship between any panellist and any applicant that would warrant changing the panel.

6.1.4 Factors relevant to an assessment of the issues

The CEO of FESA has advised that the selection panel was formed prior to the position being advertised.

There was no evidence to suggest that any panel member had a conflict of interest arising out of previous contact with Mr Caporn that would warrant changing the panel.

⁶ Page 19 of the OPSSC report

⁷ Page 19 of the OPSSC report

Good practice guidelines published on the OPSSC website provide a range of perspectives on panel composition and do not mandate the use of panellists that are external to the organisation. The *Right Path to the Right People* online resource suggests that a panel usually has three people and that it would usually have one independent panel member⁸ but does not stipulate this as a compliance requirement. One guide, *Innovative Recruitment*, (p. 48) stipulates under the heading “Tips from the Standards Commissioner”:

The Recruitment Standard does not specify that a selection panel has to be used, but does require that the selection process is open and free of bias and unlawful discrimination.

6.1.5 Observations of the Public Sector Commissioner

Under the PSM Act, the employing authority (usually the CEO) has responsibility for the selection process and the appointment decision. The role of a panel is to provide the CEO with a recommendation in which the CEO can have confidence that both the process that was used and the advice of that panel are sound and comply with the Recruitment, Selection and Appointment Standard. Where the panel includes the CEO, the CEO will need to ensure the process is sound and compliant.

Having a panel member who is external to the organisation in which the selection process is being undertaken is not a guarantee of independence or impartiality. Past relationships, significant differences in the seniority of people on a panel and individual personalities all have the capacity to influence the conduct of an individual on a panel. The critical factors in panel composition are that panellists have an appropriate knowledge and understanding of the work-related requirements of the position and are committed to making a thorough and impartial assessment of merit based on the information available.

Notwithstanding consideration of a specific conflict of interest, in terms of a proper assessment of merit the composition of a panel (where used) should be focused on who is best qualified to assist in the assessment of merit, equity and probity.

6.1.6 Implications for the sector

The implications of the CPSS finding are potentially significant for the public sector. Insistence on larger panels and more formal processes will not, of itself, afford better protection of merit principles and such a trend could frustrate initiatives designed to streamline and simplify selection processes in the public sector. In addition, a requirement for external panel members will not guarantee independence.

Recognition of key principles to be achieved in a selection process is preferred to establishing specific rules on panel composition.

⁸ http://www.opssc.wa.gov.au/recruitment/1_getready/panel/Panelmembers/who.htm

6.1.7 Conclusion

The CEO of FESA was entitled to believe that the composition of the selection panel was adequate and appropriate for the purpose for which it was convened. As such, her actions were reasonable.

The inclusion of a senior officer from another agency may have reinforced the probity controls applied in the process and could have been useful for a second tier role such as this one, irrespective of who applied for the position. It would not, however, have guaranteed a more independent assessment or a different outcome. In addition, the inclusion of a fourth panellist may have delayed the process. The substitution of one of the panellists with an external person may have diminished the quality of the overall assessment against the work-related requirements of the position.

6.2 Report finding 2: Adequacy of selection criteria

The CPSS is of the opinion that the use of selection criteria was not adequate for the position. This finding is also considered in section 4 of this report which addresses the validity of Mr Caporn's appointment in terms of its compliance with Approved Procedure 2.

6.2.1 Justification provided for the finding

Since September 2007 the selection criteria for SES positions have been aligned to five generic core capabilities that have been identified and described as the key leadership and management skills required of members of the SES.

FESA did not follow Approved Procedure 2 in so far as the selection criteria used in the JDF were not updated to incorporate the generic SES criteria. The updated criteria include the criterion "exemplifies personal integrity and self awareness". The CPSS determined that the failure to use and apply this criterion meant that the selection criteria were inadequate.

6.2.2 Opinion expressed by the CPSS

The OPSSC audit suggested that "the use of the SES selection criteria would have provided a more robust examination of each candidate's claims with respect to personal integrity and self awareness".⁹

6.2.3 FESA response

FESA acknowledged that the JDF did not incorporate the updated criteria and explained the error as an administrative oversight, but contended that the position description and criteria applied in the selection process reflected the work-related requirements of the role and that they were properly and consistently applied for all applicants in the selection process.

Subsequent to the OPSSC review, position descriptions for all SES positions at FESA have been reviewed and updated to reflect the generic SES criteria where necessary.

⁹ Page 20 of the OPSSC report

6.2.4 Factors relevant to an assessment of the issues

In accordance with Approved Procedure 2, FESA sought appropriate clearances from PSC. The use of superseded criteria in the accompanying JDF was not picked up and the position was cleared for advertising by PSC.

The JDF used by FESA covered leadership, workforce effectiveness, strategic resourcing, public policy, relationship building, customer focus and risk management. Each of these criteria had statements describing what was required. For example, the second criterion sought an explanation of how a candidate could demonstrate an ability to:

Facilitate workforce effectiveness by establishing and maintaining working relationships through effective communication; ethical decision making; empowerment, motivation and development of people; fostering mutual trust and respect.

The JDF also contained a number of specific responsibilities that would inform the assessment of merit against the selection criteria, such as:

- Builds, models and promotes an ethical leadership culture . . .
- Fosters innovative and creative thinking and solutions within an environment of transparency and accountability.

6.2.5 Observations of the Public Sector Commissioner

In submitting a request to PSC to fill the vacancy, FESA endeavoured to comply with the approved procedures.

It is noted that FESA has reviewed the selection criteria used for its SES positions and that PSC has reviewed its processes to ensure appropriate checking of the SES criteria in JDFs when requests to advertise positions are submitted.

While not strictly conforming to those cited in Approved Procedure 2, the selection criteria used in the process did enable the panel to assess a similar set of abilities, skills and competencies.

The specific responsibilities identified for the position, in combination with the criteria applied for the selection process, provided for extensive coverage of the skills and competencies that are covered in the generic SES criteria (refer Table 1).

6.2.6 Implications for the sector

The SES provides for a group of executive officers that are capable of furnishing high level policy advice and for undertaking managerial responsibilities in agencies. SES officers should be able to be deployed in and between agencies so as to promote the efficiency of the public sector. For this reason, some level of central control over SES classification and recruitment operates through the approved procedure. This includes a requirement that the selection criteria applied in the selection of SES officers have some common elements to facilitate deployment of these officers into different agencies if and as required, with employing authorities being able to determine the emphasis of each criterion to reflect the requirements of the position.

Hence it is important that the generic selection criteria, as defined in Approved Procedure 2, are used.

6.2.6 Conclusion

It is reasonable for the CPSS to draw attention to any breach of Approved Procedure 2. A breach of approved procedures has the potential to compromise a process and render the outcome invalid.

There is, however, sufficient connection between the criteria that were applied by FESA and the generic SES criteria contained within Approved Procedure 2 to have confidence that the criteria used, if supported by a proper assessment of merit against those criteria, would be capable of providing an adequate assessment of the published SES competencies including “exemplifies personal integrity and self awareness”.

6.3 Report finding 3: Managing the CCC matter

The CPSS is of the opinion that there was a failure to manage the impact of the “CCC matter”¹⁰ appropriately.

6.3.1 Justification provided for the finding

The CPSS formed a view that the unfinished and unresolved nature of the CCC matter meant that the panel could not reasonably make a proper assessment of Mr Caporn’s ability in relation to the SES criteria “Exemplifies personal integrity and self-awareness”. Accepting that Mr Caporn was the only candidate assessed as suitable, the CPSS concluded that the panel was not in a position to make an appointment recommendation to the CEO. The report stated¹¹:

Upon receipt of the applications, FESA would have known that one of the candidates was subject to ongoing investigation with his current employer. Under the circumstances it was critical that there was a proper assessment of the conduct and integrity of the candidate. It is difficult to understand how the panel could have completed a proper assessment of this criterion without there being a conclusion as to the CCC matter.

6.3.2 Opinion expressed by the CPSS

The CPSS recognised the impasse that would have existed for the organisation had the panel made its own determination that it could not make a proper assessment on conduct and integrity. The report stated that¹²:

OPSSC acknowledges that it would have been unfair on Mr Caporn to rule him out of an application process on the basis of an unfinished investigation – neither the timing of the investigation nor the timing of the job vacancy were within his control.

Mr Caporn was completely transparent about his situation and should not have been disadvantaged because a conclusion had not been reached. FESA reports that Mr Caporn was the only applicant who could potentially demonstrate

¹⁰ As defined on page 15 of the OPSSC report

¹¹ Page 21 of the OPSSC report

¹² Page 21 of the OPSSC report

meeting all criteria and the only applicant they considered recommending for the position.

The CPSS believed that a different approach to the matter may have represented “a more prudent course of action”. The CPSS also suggested an alternative approach may have been determined if the CEO had taken the opportunity to discuss these matters with the OPSSC, the State Solicitor or with the Public Sector Commissioner. Possible alternative approaches that were suggested by the CPSS were suspending the recruitment process while the CCC matter was resolved or offering Mr Caporn a temporary placement while the Commissioner of Police resolved the CCC matter.¹³

6.3.3 FESA response to this opinion

In response, FESA:

- rejected criticisms implying a failure to assess Mr Caporn’s integrity properly through the selection process;
- highlighted the positive endorsement of Mr Caporn’s integrity and diligence in performing duties in the Assistant Commissioner role, and noted that Mr Caporn’s referee was a Chief Executive Officer with a very clear understanding of SES requirements who provided a comprehensive and positive reference;
- indicated that, had a disciplinary process been undertaken and concluded by the Commissioner of Police, that it would have considered the outcomes and have acted appropriately on the findings of that process; and
- argued that to speculate on the outcome of an incomplete disciplinary investigation would have been inappropriate and that not speaking to the OPSSC, the State Solicitor’s Office or the PSC avoided any appearance that the panel was engaged in speculation in relation to a disciplinary process.

6.3.4 Factors relevant to an assessment of the issues

The panel did consider the CCC matter and believed that they were qualified and suitably informed to make a judgement about the matter in the context of the selection criteria. The panel appears to have drawn on several sources of information in its assessment of Mr Caporn’s integrity and in its consideration of the CCC matter.

As was reported in the OPSSC report¹⁴, the CEO reviewed the Supreme Court decision in the case of *Cox-v-Corruption and Crime Commission* [2008] WASCA 199, in particular a section which considered the nature of CCC opinions and the determination that the question of whether or not any breach of discipline has been committed was the province of the employing authority not the CCC.

The information itself was relevant in so far as it established the status of CCC opinions in a general sense. The fact that the CEO sought this

¹³ See section 4.3 of this report

¹⁴ Page 22 of the OPSSC report

information in the course of the selection process is evidence that the CCC matter and its implications for the process were considered by the panel.

The panel also considered the action taken by the Commissioner of Police in renewing Mr Caporn's commission, to his previous rank of Superintendent, for a three year appointment commencing on 11 February 2009. The OPSSC review reported that the Commissioner indicated that the action to renew the commission was done in accordance with natural justice.

6.3.5 Observations of the Public Sector Commissioner

The panel appears to have considered the issues, elements and nature of the CCC's opinions in a reasonable manner and made an assessment of Mr Caporn's suitability for the position on the basis of all the relevant information that was available.

It would be unfair to deny Mr Caporn the opportunity to be appointed to a public sector position because the CCC matter was unable to be resolved.

With respect to the suggestion that Mr Caporn be offered a temporary placement, not only was this not feasible because the CCC matter could not be resolved, but there were also technical aspects relating to his appointment as a police officer that may have prevented this.

6.3.6 Implications for the sector

The OPSSC report implies that a panel could not properly assess the integrity of any public officer who was the subject of an adverse opinion by the CCC or the subject of an incomplete or unresolved discipline matter. This has significant implications in terms of the general understanding of procedural fairness.

It should be noted that, for many positions in the sector, the existence of a criminal conviction is not an automatic barrier to employment. Many position application forms require disclosure of criminal convictions and, depending upon their nature, such convictions may need to be discussed with the panel. In such situations, a panel will still make an assessment of merit and integrity, conclude a selection process using all available information and make an appointment recommendation. It would be inappropriate to impose a greater restriction on the employment opportunities available to individuals that are subject to unresolved disciplinary matters than exists for those with criminal records.

The practical consequences of the comments made by the CPSS are significant in that they:

- imply a status to opinions expressed by the CCC that is not supported in law;
- would have an adverse impact on individual rights and procedural fairness that are currently protected through the operation of breach of discipline provisions; and
- have practical implications in terms of the capacity of panels to determine whether or not an individual is the subject of an adverse CCC opinion or

a disciplinary action. Such situations could include circumstances where an applicant does not know, or elects not to declare, that a matter exists.

Nonetheless, the CPSS has highlighted an issue that is of concern for both the public sector and the wider community. It is problematic that a disciplinary matter could lapse or go unresolved simply through a shift of employment from one public employing authority to another, or through resignation and re-employment. This issue might better be considered in terms of a gap in the overall accountability framework rather than as a failing with respect to the case in question.

6.3.7 Conclusion

The selection panel made an informed judgement about the personal integrity of Mr Caporn and the extent to which it was reasonable or appropriate to base an assessment of merit and integrity solely on an issue of conduct raised by the CCC but not yet determined through due process. The panel's assessment of merit and integrity is considered reasonable in that it took account of:

- information provided to the panel through the selection process, including third party endorsement of the candidate's claims and specific statements about the candidates integrity by respected senior public officers;
- the candour and openness that the candidate as demonstrated through his coverage of the CCC matter in his application and interview; and
- the nature of evidence and opinions expressed in the CCC report as well as the legal status of the CCC opinions.

The issue of the handling of incomplete disciplinary matters in situations in which an officer changes employment within the public sector, or resigns and then seeks re-employment within the sector, is a separate issue and should be considered in progressing the public sector reform program.

6.4 Report finding 4: Verification of candidate's claims

The CPSS reported that there was inadequate verification of the candidate's claims¹⁵. This finding by the CPSS relates closely to actions taken in the assessment of merit covered in section 6.3 of this report. This section focuses on the implications of CPSS findings as they relate to the choice, use and management of referee checking when verifying candidate claims.

6.4.1 Justification provided for the finding

The report noted that:

- The panel obtained a written reference from the candidate's first nominated referee who had not been a recent supervisor of the candidate and did not currently work for the Western Australia Police. The referee had been a work colleague for 28 years and Mr Caporn's line manager for a total of three and a half years in the 1980s.

¹⁵ Page 24 of the OPSSC report

- The referee was only asked to comment on the applicant's leadership and management skills, how the applicant dealt with challenges and what the applicant would bring to FESA in terms of strategic direction and management.
- The areas covered in the written reference did not relate directly to the selection criteria.
- There was no reference from a recent line manager.
- In his application, Mr Caporn said he would have no objection if the panel contacted the Commissioner of Police¹⁶.

6.4.2 Opinion expressed by the CPSS

The OPSSC report stated:

The failure to use the required SES selection criteria compromises the capacity to follow up specifically on the SES requirement for:

Exemplifies personal integrity and self-awareness (demonstrates public service professionalism and probity, engages with risk and shows personal courage, commits to action, displays resilience and demonstrates self awareness and a commitment to personal development)

as required by the Public Sector Commission's Approved Procedure Number 2. Given the circumstances of the recommended candidate, inclusion of this criterion and verification of the candidate's claims against it would have represented a critical step in a process where the conduct and the integrity of the individual may have been under question. Further, given the recommended candidate's situation, a reference from a recent line manager would have been essential. In this respect full reliance on one reference from a non-current supervisor was not prudent and not adequate for a proper verification of claims.¹⁷

6.4.3 FESA response to this opinion

In its response in the OPSSC report, FESA stated:

- FESA rejects the criticism offered by the OPSSC of its approach to reference checking. Mr Caporn's referee is a Chief Executive Officer with a very clear understanding of the SES requirements. He gave a comprehensive and very positive reference.
- In its report the OPSSC makes reference to statements attributed to the Commissioner of Police made to it in the course of its audit. During the interview process Mr Caporn referred the panel to a letter addressed to him from the Commissioner of Police in which the Commissioner attested to his positive attributes and commitment to the public service. In the letter the Commissioner states "I should add that my decision not to renew your appointment as an Assistant Commissioner is not in any way based on any deficiency in your performance, integrity or diligence which performing the duties of your office as Assistant Commissioner (or at any other time)". The letter was discussed further at a routine pre-appointment interview. In the light of these positive comments from the Commissioner of Police FESA was confident that it had selected the right person for the job.

¹⁶ It should be noted that Mr Caporn said this in an additional statement he made regarding the CCC matter in his application. He said he would have no objection to the panel contacting the Commissioner of Police "to validate my statements about this issue". (Emphasis added.)

¹⁷ Page 24 of the OPSSC report

The CEO of FESA made the following comments in response to a request from the Public Sector Commissioner for information as to the way in which the panel formed a view about the suitability of for Mr Caporn to the position:

- There had been a number of discussions between the CEO of FESA and the Commissioner of Police that included a reference to Mr Caporn. The CEO stated that the Commissioner had always indicated to her his confidence and trust in Mr Caporn's capabilities, ethics, integrity and professionalism.
- The selection panel took into consideration a letter from the Commissioner of Police to Mr Caporn in November 2008 advising Mr Caporn that he would not be reappointed as Assistant Commissioner (but would have his commission renewed to his previous rank of Superintendent). Included in the letter was the statement:

I should add that my decision not to renew your appointment as an Assistant Commissioner is not in any way based on any deficiency in your performance, integrity or diligence which performing the duties of your office as Assistant Commissioner (or any other time).

The selection panel took this as a positive attestation.

- During the interview, Mr Caporn asked the selection panel not to contact the Commissioner of Police as the latter did not know Mr Caporn had applied for the position at FESA. If the panel felt it was essential to contact the Commissioner, Mr Caporn asked that he be informed first. The panel considered all the information it already had and decided it would not contact the Commissioner in order to maintain the confidentiality requested by Mr Caporn.

With respect to the referee report, it is noted that the referee was provided with a list of the selection criteria (without the descriptors) and the key responsibilities of the position. The referee was asked to comment on three areas in the "context of the foregoing" (that is the criteria and responsibilities). The referee was also provided with the opportunity to provide additional comments. All the comments made by the referee were extremely positive and included a statement saying he would recommend Mr Caporn for the position.

6.4.4 Factors relevant to an assessment of the issues

In terms of implications of findings made by the CPSS, the significant issues relate to the management of the verification process and what specific compliance requirements, if any, should be stipulated in the management of referee checks.

With respect to the referee check for the FESA position:

- The panel did not contact Mr Caporn's current line manager, the Commissioner of Police, for a reference.
- During the interview, Mr Caporn asked the panel not to contact the Commissioner of Police as it was not known that he (Mr Caporn) had applied for the position.
- With respect to the OPSSC comment that Mr Caporn had no objection to the panel contacting the Commissioner of Police, an examination of his

statement shows this was in relation to his claims regarding the CCC matter.

- From a number of conversations she had had with the Commissioner of Police (not related to the selection process), the CEO of FESA had concluded that the Commissioner was supportive of Mr Caporn.
- The referee was a CEO who had been a work colleague of Mr Caporn for approximately 28 years and was likely to have been aware of the process commenced by the Commissioner of Police following the recommendation of the CCC.
- The referee was not asked to comment directly on Mr Caporn with respect to the selection criteria. He was, however, asked to make comment in the context of the criteria and key responsibilities of the position. The referee's comments were all positive, including a comment about Mr Caporn's work ethic, personal values and integrity.

6.4.5 Observations of the Public Sector Commissioner

In public sector recruitment it would be considered good practice to contact the current line manager of an applicant but it is understood that there will be genuine circumstances where a candidate does not want this to happen. For example, a person may not want to signal interest in alternative employment in case it jeopardises opportunities in his or her current employment if the application is unsuccessful.

In situations such as this one in which the recommended applicant was the subject of an adverse opinion by the CCC, it could be said to be of particular importance that the views of the applicant's current line manager be sought. In this case, however, the panel was confident that it knew the views of the line manager and had no difficulty respecting the wishes of the candidate not to contact his line manager. Such a decision, and the reasons for the decision, however, should have been documented in the selection report (see section 6.5).

In order to verify a candidate's claims, it is not necessary to require a referee to address all or any of the selection criteria directly. What is important is to make sure the candidate has the necessary skills and attributes for the position and to verify the claims the candidate has made. Simply quoting the selection criteria may not elicit the information sought.

In the case in question, although the areas the referee was asked to comment on were not directly related to the selection criteria, he was asked to make his comments in the context of the criteria and the key responsibilities of the position. The referee's comments covered a wide range of what he considered to be Mr Caporn's attributes and, as such, covered much of what was in the selection criteria. In addition, the referee was likely to have been aware of the CCC report and had the opportunity to express concern, which he did not.

6.4.6 Implications for the sector

Verification of applicants' claims is an important aspect of proper assessment but there are a number of ways in which this can be done. Establishing through policy (or through a compliance precedent) a strict set

of procedures for determining who is suitable to use as a referee or how referee reports are to be obtained could be restrictive.

It is good practice to contact an applicant's line manager, particularly for a senior position. It is recognised, however, that there may be circumstances when this is agreed by the panel not to be necessary. In such situations, the reasons for the panel's decision should be made clear.

6.4.7 Conclusion

While OPSSC's concern with respect to Mr Caporn's line manager not being contacted to verify his claims is understood, the panel had deliberately decided against doing so. It is understood that a major factor in this decision was discussions the CEO had had with the Commissioner of Police over the previous 18 months from which she concluded that the Commissioner would support Mr Caporn's appointment. The decision of the panel not to contact Mr Caporn's line manager and its reasons for not doing so should, however, have been documented.

6.5 Report finding 5: Poor documentation

The CPSS found that there was poor documentation resulting in a process that was not transparent and capable of review.

6.5.1 Justification provided for the finding

The report noted that:

- The selection report contained limited explanation of the rationale behind the ratings of the applicants.
- In providing feedback to applicants, panel members indicated they referred to their interview notes for more specific information.
- These notes were destroyed following the conclusion of the breach period.

6.5.2 Opinion expressed by the CPSS

The OPSSC report stated:

If the selection report is the only document retained for official records, then it needs to capture the material facts and provide transparency regarding the reasoning of the panel to enable an external person to understand how the conclusion was reached. It is the view of OPSSC that the selection report alone, without the supporting notes, is inadequate.

Given that key records were destroyed, it was important that the judgements behind the reasons for the decision made by the panel be included in the final report.¹⁸

¹⁸ Page 24 of the OPSSC report

6.5.3 FESA response

FESA acknowledged that, with the benefit of hindsight, the judgements made by the panel in relation to the CCC matter should have been recorded in the selection report.

FESA also:

- noted OPSSC's published guidelines "Tips from the Commissioner" that stated:

When creating minimal documentation for a selection report, don't try and replicate in selection reports what is already contained in the selection team's notes. Instead, refer to their notes and make a point of keeping all the assessments and notes made by decision makers until after the breach review period has closed to ensure that, if necessary the decisions are defensible.

- contended that any fair minded reader of the report would be left in no doubt as to the analysis undertaken on the merits of the applicants who reached the interview stage;
- stated that there was nothing untoward in the destruction of the panel members' notes after the breach period. This is standard practice in FESA and in other agencies and is contained in OPSSC's "Tips from the Commissioner".

6.5.4 Factors relevant to an assessment of the issues

- In its online tool *Right Path to the Right People*, under the heading "Tips from the Commissioner", the OPSSC states:

Documentation about the selectors' processes and decisions **should describe** clearly and concisely **the selection methods used** and demonstrate that the claims of all applicants were properly assessed. Long descriptions or verbatim transcripts are not necessary, provided an independent reader can easily follow what took place. Such a practice would meet the Recruitment Standard that requires decisions to be transparent and capable of review.

When creating minimal documentation for a selection report, don't try to replicate in selection reports what is already contained in the selection team's notes. Instead, refer to their notes and make a point of keeping all the assessments and notes made by the decision makers until after the breach review period has closed to ensure that, if necessary, the decisions are defensible.

- There is nothing to suggest that the selection panel was doing anything untoward in the way the selection report was prepared or by not keeping the panel's notes after the breach period.

6.5.5 Observations of the Public Sector Commissioner

Although the documentation in the selection report was in line with standard practice, given the contention this appointment was likely to raise, it would have been wise to provide more detail in the selection report. FESA has acknowledged this.

6.5.6 Implications for the sector

It is not desirable for selection reports to contain more than minimal documentation as a matter of course. Requiring more detail in the reports could result in a process that becomes too onerous for selection panels and would only increase the time taken to finalise appointments.

6.5.7 Conclusion

While the level of detail in the FESA selection report was in line with the OPSSC guidelines, given the potential for public scrutiny of the process, it may have been wise to provide some information about the judgements made by the panel in relation to the CCC matter. This has already been acknowledged by FESA.

7. CONCLUSIONS AND RECOMMENDATIONS

In response to the request from the Premier for advice on:

- (i) whether the disciplinary process commenced by the Commissioner of Police should continue;
- (ii) the legal status of Mr Caporn's appointment and his ongoing employment as Executive Director Community Development at FESA; and
- (iii) the implications of the opinions, findings and recommendations contained in the report for FESA and, if relevant, the public sector in general,

the Public Sector Commissioner advises:

Process commenced by the Commissioner of Police

- 7.1 There is no statutory basis for completing the process commenced by the Commissioner of Police in relation to Mr Caporn.

In addition, even if it were legally possible, there would be no advantage in completing the process as it involves the Commissioner of Police assessing whether he has confidence in Mr Caporn as a police officer, and such a determination would have no meaning outside the employment relationship between the Commissioner and Mr Caporn.

Status of Mr Caporn's appointment

- 7.2 With respect to the matter of technical non-compliance with Approved Procedure 2, although an earlier version of the selection criteria was used, there was sufficient overlap with the generic criteria to provide for material compliance with Approved Procedure 2 so as not to render Mr Caporn's appointment invalid.

Implications for FESA

- 7.3 The CEO of FESA acted within her authority in conducting the selection processes in the manner that she did and the process was undertaken in a manner consistent with good practice guidelines available at that time.
- 7.4 The selection criteria applied in the process required the consideration of personal integrity factors and the panel, in making their overall assessment of suitability, gave due consideration to the adverse opinions made by the CCC in relation to Mr Caporn.
- 7.5 The approach taken and the evidence used to verify claims in relation to personal integrity (as well as other skills and attributes) was consistent with approaches advocated in good practice guidelines promoted in the public sector.
- 7.6 There were matters that FESA could have handled in a manner that would have enhanced the integrity of the selection process, that is:
- The judgements made by the panel in relation to the CCC matter should have been documented. This has been acknowledged by FESA in its written response in the OPSSC report.
 - The JDF should have been updated to contain the current SES selection criteria. This has been acknowledged by FESA and the JDFs for all FESA's SES positions have been reviewed and updated where necessary. In addition, PSC has also reviewed its procedures so as to check the criteria used before giving approval for the position to be advertised.
 - The inclusion of a senior officer from another agency in this case may have reinforced the perceived probity of the selection process. FESA has accepted the views of the CPSS in its written response in the OPSSC report.

Implications for the public sector

- 7.7 The findings made by the CPSS in relation to the selection process by FESA should be seen as a reminder of the need to anticipate public interest and scrutiny when unique situations arise and ensure that the integrity of the selection process is not seen to be compromised. Equally they should not be interpreted as creating a new set of minimum compliance or procedural requirements for recruitment and selection to public sector positions. Rather, the comments should be considered as advice to CEOs in similar situations.
- 7.8 Matters raised by the CPSS about the completion of disciplinary matters in the instance of a change of employment from one public employing authority to another, or through resignation and re-employment, should be considered further.

Recommendations

It is recommended that:

- 7.9 No further action be taken in relation to the appointment of Mr Caporn as Executive Director Community Development at FESA.
- 7.10 Options for dealing with unresolved disciplinary matters where there has been a change of employment from one public employing authority to another, or resignation and re-employment, be considered as part of the current public sector reform program.



3 September 2009

PREMIER

ADVICE ON APPOINTMENT OF EXECUTIVE DIRECTOR COMMUNITY DEVELOPMENT, FESA – COMMENT FROM COMMISSIONER OF POLICE

I refer to my report entitled *Report on the Impact of the Findings and Recommendations of the Commissioner for Public Sector Standards on the Selection Process for Executive Director Community Development, FESA* that was forwarded to your office on Friday, 28 August 2009.

A confidential copy of the report was provided to the Commissioner of Police. The Commissioner has only now been in a position to consider the report and has advised that he wishes to provide a comment in relation to the first point on page 19 which states:

- There had been a number of discussions between the CEO of FESA and the Commissioner of Police that included a reference to Mr Caporn. The CEO stated that the Commissioner had always indicated to her his confidence and trust in Mr Caporn's capabilities, ethics, integrity and professionalism.

The Commissioner states that Mr Caporn was not discussed in that level of detail and never in the context of employment.

Should you table the report in Parliament, it is recommended that this memorandum be tabled with it.



M C Wauchope
PUBLIC SECTOR COMMISSIONER