

## DISCUSSION PAPER FOR THE JOINT ASSOCIATIONS

### BAND A PERMANENCY

#### Introduction

The government policy commitment to appoint Band A leaders on an ongoing basis is outlined in the Department's letter to SASSLA of 5 December 2023.

*The department will develop a policy position about giving effect to principal and preschool director permanency outside of the proposed enterprise agreement. Consultation about this will occur with relevant stakeholders in 2024.*

Enactment of the government's commitment as policy rather than as an industrially defined condition is a positive as it opens the door for broad based consultation and exploration of policy options with the Joint Associations.

The aim of this paper is to identify and discuss the key policy issues underpinning the commitment for Band A permanency. The primary value of a structured consultation is that it provides an opportunity to reach understanding and consensus on key policy issues. This paper is designed to surface the key design issues and shape the discussion so that issues can be dealt with methodically and sequentially.

While some reference is made to legal and technical matters, this paper should not be read as an authoritative guide on these matters. It is likely that some matters may require additional information and in constructing a final policy position formal advice may be required.

#### **Structure of Paper**

1. The current system of appointment based on fixed term contracts
2. Ongoing employment – key operational policy Issues
  - Appointment to a classification level or a defined position
  - Fallback provisions
  - Placement rights
  - Term limits
  - Temporary employment
  - People appointed from outside the Department
3. System improvement needed to maximise the policy benefits of ongoing employment
  - Classification and reclassification
  - Recruitment and selection
4. Implementation process

## 1. The Current System of Appointment Based on Fixed Term Contracts

The Education Act 2019 (the Act) uses the term “ongoing” which has equivalence with the term “permanent”. These two terms are often used interchangeably and for the sake of consistency with the Act the term “ongoing” is used in this paper.

In essence of ongoing means that a person has a continuing right to be employed at a classification level and this can only be broken by voluntary decision such as resignation or retirement, or lawful management including transfer or termination of employment.

Under the current system, initial appointment to a Band A position is made following a merit-based selection process. The basic architecture is:

- The position is advertised, and a selection process undertaken.
- A new fixed term contract is established at an assigned Band A classification level
- Where an applicant has ongoing status as a member of the teaching service, a fallback right to a teacher position AST-2 is provided.<sup>1 2</sup>
- Under current policy, a person who applies for a Band A role who is not an ongoing teacher may qualify for ongoing status after 5 years of employment.<sup>3</sup>

At the conclusion of a contract:

- A person may be reappointed to the position.
- If a reappointment is not offered, they may reapply for the role.
- If they are not reappointed, or win the position on merit, they can enact their right to fall back to a teaching role if they hold an ongoing status.
- They can finalise their employment through resignation or retirement.

Under the current system, there are no employment rights to continuing employment at a Band A classification level outside of the conditions established in the fixed term contract.

The main criticisms of the current use of fixed term contacts are:

- A lack of certainty about future work roles and remuneration.
- Variability and lack of consistency in merit selection and reappointment processes.<sup>4</sup>
- Access to Employment rights such as LSL at the end of contract.<sup>5</sup>
- Time consuming nature of the process for both applicants and other persons involved in the selection and reappointment process.

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<sup>1</sup> Teaching Service means the teaching service constituted under Part 9 of the Act.

<sup>2</sup> The only exception to this rule is a very small number of people who have industrial fallbacks defined at Deputy or Assistant Principal Levels.

<sup>3</sup> Refer Review of appointment letters in in Exchange of Letters dated 30 April 2020 attached to the 2020 Enterprise Agreement. The status is a member of the Teaching Service not the level of the fixed term contract.

<sup>4</sup> Refer SASSLA letter, Review of Three Cases dated 17 August 2020.

<sup>5</sup> Refer SASSLA Letter, Payment of Long Service Leave to School and Preschool Leaders dated 23 December 2019.

## 2. Ongoing Employment – Key Operational Policy Issues

Where a person is appointed as an ongoing employee their work role is considered ongoing at a specified classification level. This means that a person is employed at a classification level and retains that level unless they resign or relinquish their position, gain employment at a different classification level, are reassigned to a higher classification level role under lawful managerial authorities, or are lawfully terminated.

The potential value of ongoing employment is:

- Certainty for individual employees on career and benefits.
- A positive incentive to apply for a Band A role.
- Productivity benefits flowing from capacity to take a long-term view in a role.
- Defines principals and preschool directors as a distinctive professional class and offers opportunities for future policy improvement initiatives and redesign of roles to maximise system impact.

A movement from the current system of fixed term contracts to ongoing appointment brings with it significant policy and operational issues which are discussed below.

### **Appointment to Classification Level or a Position**

The framework established under the Act is that a person is appointed to a specific role at a defined classification level. People may be reassigned to an alternative role where the position is abolished, or the person is reassigned to an alternative position under a relevant managerial authority.

The authority for assigning or reassigning people (referred to as transferring people in the Act) is vested with the Chief Executive.<sup>6</sup>

Under this legal framework, a person does not “own” a specific position e.g. a principal role at a defined school. This is not to say that they may be assigned in a specific role for an extended period, however, there is no absolute right that they retain the position in perpetuity.

**Key Point:** Ongoing appointment under the Act means continuing appointment at a classification level, not ongoing assignment in a defined principal or preschool director role.

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<sup>6</sup> 103 - Transfer within teaching service:

(1) The Chief Executive may transfer officers of the teaching service between positions in the teaching service but not so as to:

(a) reduce an officer's salary without the officer's consent; or

(b) effect promotion of an officer to a position at a higher classification level.

(2) A transfer of an officer of the teaching service under this section does not constitute a breach of the officer's contract of employment or termination of the officer's employment for any purpose.

## **Terms Limits on Length of Employment in a Specific Role**

Term limits do not currently apply for appointments to Band A roles. There will be many instances where people, through established selection or reappointment processes, continue in the same role for extended periods.

Term limits in a specific role can be used as a policy initiative to facilitate movement and to avoid potential negative effects of long-term placements in a specific role. The department's limited placement scheme for teachers, based on reassigning teachers to an alternative school after 10 years' service, was designed with this intent in mind.<sup>7</sup> This system was ultimately abandoned because the relative benefits achieved were significantly outweighed by the direct and indirect costs.<sup>8</sup> A term limit scheme for Band A Leaders would lead to an increase in required placements and the history of the limited placement scheme for teachers suggests that this is not a viable option.

The current demography of the Band A workforce suggests that reasonable movement will be achieved by exit through retirement/resignation and upward promotions. At a systems level this should provide sufficient movement to keep a reasonable flow of vacancies for roles for the foreseeable future.<sup>9</sup> However, circumstances may change, and it would be prudent to explore other options including designing roles to enable increased movement between operational roles and corporate roles and potential use of incentive structures to facilitate movement.

**Key Point:** Term limits are a blunt instrument where there is a high probability that costs will outweigh benefits. However, creating movement in the system to continually create jobs for aspiring leaders and bring fresh ideas and perspectives to schools and preschools will remain a priority. In the immediate future, market conditions should facilitate sufficient movement, however, this is not guaranteed over time. A focus of future policy can be directed to exploration of alternative strategies including job design options and incentive structures that will support movement in the system.

## **Placement Rights**

There has, and will continue to be, circumstances where people are transferred, displaced, or cannot continue in their assigned role for other reasons. In these circumstances placement to another equivalent role is required.

Under a system of ongoing appointment of Band A Leaders, a person has a right to continuing employment at their classification level. In circumstances where they are transferred or unable to continue in their role, they must be assigned to another role commensurate with their classification level. This currently happens where people are under a contract, but the right is defined only within the contract term – under a system of ongoing employment the right is unbounded.

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<sup>7</sup> One of the stated aims for the schemes was to create vacancies for people from the country with placement rights.

<sup>8</sup> Significant direct and indirect costs where high numbers of TPTs and 1500 PATS subject to temporary placements primarily across the metropolitan area.

<sup>9</sup> SASSLA letter of 29 April 2021, reference is made that 43% of Band A leaders are in the nominal retirement window of 55 plus years of age. Additional data modelling is required to provide a forecast for the next five years.

The application of placement rights has always been a tricky area of policy both in the department and across the public sector more generally. Common areas where problems are encountered are:

- In a school and preschool environment communities have a strong expectation that they will have the opportunity to select the best candidate and will often be lukewarm towards or may directly oppose the placement of a person in the role.
- A high weight is generally placed on the specific context of a role and getting the right “fit” for the role. In these circumstances a high focus is placed on the individual capabilities relative to the position requirements.
- The number of classification levels in the Band A structure (A-1 to A-9 and A-9 plus) means that available options for a direct equivalent positions are limited.

**Key Point:** Ongoing employment provides a right to continuing employment at a defined classification level. However, the “placement right” is bounded by factors including operational requirements, the availability of suitable positions and the assessment of “fit” for the role. How this process will work is an important point of discussion in the consultation phase of policy development.

### **Fallback Provisions to a Teaching Role**

If a person is employed ongoing at a particular classification level there is no requirement to provide a fallback level to a permanent teacher role, as currently prescribed in a fixed term contract.

An issue that will arise with ongoing employment is the right to elect to return to a teaching role. Under the current system a person returns to a teaching role where:

- A Band A contract concludes, and the person has not sought reappointment and voluntarily returns to the teaching workforce; or does not win the position and is placed in a teaching role.
- When a person relinquishes a position within the term of a contract. This does arise from time to time and a precipitating factor will often be personal circumstances.

The incorporation of a right to return to the teaching workforce has a value for two reasons:

- It enables people to exercise personal agency to relinquish a role where they are not capable of continuing in the role.<sup>10</sup>
- It provides a simple system for retaining key capabilities in the system that may otherwise be lost.

The direct and indirect costs of this proposal are more likely to be positive rather than negative.

**Key Point:** Retaining a right to return to a teaching role has a value to individual employees and the Department. This right would need to be included in the final policy. A key point of discussion is how it is described and the boundary conditions that would apply.

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<sup>10</sup> Two cases are cited in SASSLA’s Review of Country Employment Report 2023.

## Temporary Appointment

Under a system of ongoing appointment, the default position of employment is ongoing unless specific conditions are met to enable the use of a temporary contract.

Based on current conditions described for teachers and paraprofessional (SSO and ECW) employees the following policy parameters are a reference point for designating a Band A temporary appointment.

- Replacement of staff on leave or authorised absence.
- Short term e.g. when no selection is made and a person is assigned a role for a limited tenure.
- Genuine operational reason – this would generally apply for non-prescribed reasons e.g. future restructuring proposals that will impact on a school or group of schools.
- Special conditions are offered to an applicant, or through a negotiated placement. This could also be relevant to a potential future application of Executive Principal roles as discussed in the Joint Association Band A Classification and Remuneration Submission September 2022.<sup>11</sup>

These types of criteria provide guardrails that maintain a policy intent for having an ongoing workforce but recognising there are legitimate reasons for temporary employment. Good policy will strike a balance between individual rights, operational realities, and flexibility to respond to changing conditions.

**Key Point:** The conditions under which temporary employment can be offered needs to be clearly described. This is an important policy area that will need to be fully explored and discussed in detail during the in the consultation phase.

## People Appointed to Band A Roles from Outside the Department

Under the current system, people working in the independent system or in other jurisdictions selected for Band A roles are employed on fixed term contracts that do not include the right of fallback to a teaching position. Under current industrial rules, there is a provision for permanency being confirmed after five years employment subject to satisfactory performance.<sup>12</sup>

A future issue is whether a two-tiered system of offering ongoing employment to persons employed by the Department and retaining contract employment to persons recruited outside the Department should be retained. This question touches on a broader question of whether the Department wishes to participate more actively in the open labour market.

**Key Point:** In light of the policy commitment to ongoing appointment to Band A roles, it is timely to review conditions of employment for external applicants and determine whether there is a single universal system, or if different conditions are offered. A key point for discussion is whether the department plans to participate in the open labour market more actively.

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<sup>11</sup> See Joint Association Band A Classification and Remuneration Submission September 2022 Section 4.2, p. 15.

<sup>12</sup> Refer Review of appointment letters in in Exchange of Letters dated 30 April 2020 attached to 2020 Enterprise Agreement.

### **3. System Improvement Needed to Maximise Operational Efficiency of the System**

To maximise the benefits and efficiencies in moving to a system of ongoing employment for Band A Leaders, change to the classification and the recruitment and selection systems will be needed.

Changes to these systems will have their own sets of challenges and complexities. There are two key points of focus:

- What basic operational changes are needed to support a system of ongoing appointments in the short term.
- What deeper and more significant changes are required to maximise the benefit of ongoing appointments in the medium to longer term.

In relation to these questions, it is better to start with a bigger picture view of reform of the classification and recruitment and selection system and then identify the operational changes needed for the early commitment to ongoing appointment. This is a pragmatic approach that both holds the need for a full view of the reform ambition for classification and recruitment and selection systems with the immediate operational changes needed for a successful short-term implementation.

What is important is to identify, discuss and agree to the minimum operational changes that will be needed to support the early implementation of ongoing employment. This will be a key area of focus in the consultation phase.

#### **The Principal Classification System**

The current Principal Band A structure has nine industrially defined levels (A-1 to A-9) plus one administratively defined level (A-9 plus). For schools, the establishment and variation of the School Size and Complexity Rating (SSACR) system is based around job dimensions (budget and enrolment) with some weighting for complexity associated with the index of disadvantage, and country zoning. The underlying logic is that a measurement of dimensional and complexity values associated with SES status and locality provide a stable and fair base for ranking schools and assigning a classification level.<sup>13</sup>

The model is designed around a floating scale of classifications with relative ranking designed to achieve cost neutrality. The ranking of schools and assignment of a classification level is undertaken every year and a new list of classifications published. Schools can increase or decrease in classification depending on their ranking score.<sup>14</sup>

Measured over time, the classification levels of schools can change considerably. An analysis of the changes in the distribution of classification levels from 2007 to 2022 is detailed in

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<sup>13</sup> The Preschool Classification System has limited movement between levels and is not discussed in this submission in detail .

<sup>14</sup> See Schedule 4 of the 2020 EA Determining Classifications which specifically states that the initial boundary values are chosen to preserve the overall distribution of classifications and that work value relativities will be retained.

The current SSACR system creates two challenges for the implementation and ongoing management of Band A permanency:

1. Under the current business rules, a classification is established for schools each year. Where a contract appointment is made at a specific level e.g. A-5 and the classification level is subsequently reduced to A-4 the initial contract prevails and the A-5 level is honoured for the term of the contract. At the end of the contract the position is readvertised at A-4. The inverse situation of the position increasing in classification does not automatically mean the person in the role will be reclassified upward, although a facility is available to consider exceptional circumstances. This type of model can work under a system of fixed term contracts and advertising vacant roles but with permanent appointment the relationship of the person's classification and the assigned classification level will unravel over time. Two key issues are:
  - Displacement of the person in the role due to changes in classification is unreasonable, impractical and will have a negative cost impact.
  - The increasing dissociation of the position based classification level and the classification of the person in the role over time will significantly compromise the effective functioning of the classification system.
2. For the purposes of placement of people at an equivalent level, the high number of levels creates a problem. It is notable that the two jurisdictions that appoint principals on the basis of permanency, New South Wales and Western Australia, have broad banded classification structures.<sup>16</sup>

### **The Mercer Review**

In 2022, the department engaged the international consulting firm Mercer to review the Band A classification structure. The Review has been completed. The department has not currently made any decisions on the findings of the review. A key finding of the review most relevant to Band A ongoing employment are:

- Six levels of work - a broad banded structure will enable stability and offset problems associated with a floating classification scale.
- A single classification system for of preschool and school.

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<sup>15</sup> Recent Data indicates that over a five year period, 40% of classifications change (subject to confirmation). The Joint Association Band A Classification and Remuneration Submission September 2022 Attachment 1, provides a detailed overview of classifications under the SSACR system from 2007-2022.

<sup>16</sup> WA four levels and NSW five levels for non-teaching principals.

There remains a question as to how the Mercer classification system based points score algorithm can be applied. It is recognised that this is a matter that requires further analysis and discussion.<sup>17</sup>

**Key Point(s):** The current SSACR classification was designed around the system of term limited employment contracts. The introduction of permanency for principal appointments using a 10 level floating system of classifications has a high probability of creating a dissociation between the classification assigned to a particular role and the classification and remuneration of the person in the role. Over time this will destabilise the classification system. The recommendation of Mercer for a broad banded structure provides a clear direction on the future design of a system that can support ongoing employment for Band A Leaders.

### **Recruitment and Selection**

The introduction of ongoing employment for Band A Leaders will place greater weight on the need for rigorous selection processes because the horizon of the appointment extends beyond the time barrier of a fixed term contract.

A recruitment and selection system has two key areas of focus:

- Meeting a minimum standard defined for a role. This is most important for entry point positions where the availability of direct evidence of a person performing in a role is not available and alternative selection techniques may be required.
- The person is a good fit for the role based on contextual features of the job. This goes to the question of the capabilities that are needed to be successful in a specific role and how to test for those characteristics.

A successful recruitment and selection system will encompass both of these elements.

The immediate area of interest is what operational changes will be needed to support the early implementation of ongoing appointment for Band A leaders. A report developed by SASSLA in 2021 provides a clear summary of policy improvement needed and is a useful reference point for discussion. A relevant extract of this report is included as **Attachment A**.

Recruitment and selection systems are complex and the capacity to make deep changes in the short term may be limited. However, it is important to evaluate that the system is “fit for purpose” with ongoing appointment and make practical modifications where needed.

**Key Point(s):** The current recruitment and selection processes are designed around the current system of fixed term contracts. The movement to ongoing appointments provides a significant impetus for reform. The most pressing issue is to identify and implement the operational reforms that can underpin the successful implementation of ongoing employment for Band A Leaders.

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<sup>17</sup> This has been generally discussed in informal discussions with the department.

#### 4. Implementation Process

The foregoing discussion provides an outline of the key operational policy issues and the larger systemic changes needed to maximise the benefit of ongoing appointments for Band A leaders.

The assumption made in the discussion presented in this paper is that the commitment to permanency be implemented as early as practicable. However, a reality of changes of this nature is that the groundwork needs to be done to ensure the policy objectives are realised.

The recommended way of implementing this policy is through a three-stage iterative approach:

1. The operational policies discussed in this paper (and potentially others identified) are discussed and a final position reached in the first stage of the consultation process; this will provide a policy blueprint to work from.
2. Identify the more critical classification and recruitment and selection system issues to support the successful implementation of ongoing appointments. Assess options and prioritise changes that are instrumental to an effective implementation process and identify medium and longer term options to maximise future benefits.
3. Translation rules are developed to enable fair and equitable movement of Band A leaders from fixed term contracts to ongoing appointments.

In relation to (3) above the **translation criteria** would include considerations such as:

- Minimum requirements including appointment based on merit.
- Matters which would defer or proscribe translation e.g. unsatisfactory performance or conduct related processes or decisions.
- Persons who hold a Band A classification level but not actively working in a Band A role e.g. unplaced on workers compensation or extended sick leave or for other reasons.

The advantages of this approach are that it is realistic, practical and maintains fidelity to the expectations created by the policy announcement.

## 1. Systemic Improvement of the Principal Selection Process

Over the last ten years, the policy framework supporting recruitment and selection of Band A leaders has progressively moved away from the very high levels of process prescription to a more principle based approach. SASSLA recognises that this is needed to support more contemporary recruitment and selection practices.

In relation to future directions for recruitment and selection policy, we believe there are two important considerations:

- Reduced process prescription should not mean less rigour in the evidentiary process, or an abrogation of the principles of fairness to employees. In a practical sense, this means that system supports including training, resource materials, evaluation and appeal processes become more important.
- Another important consideration is the changing labour market conditions for principals and preschool directors which results in a thinning of applicant numbers and difficulty in filling some roles. The current systems that support recruitment and selection, including the role description and application processes, must cater for a new pool of less experienced people applying for positions.

We offer suggestions on three areas of improvement that we believe will improve recruitment and selection processes. These are covered under three headings:

1. The Principal Position Description
2. Equivalent standards of evidence for reappointment and merit selection processes
3. Systems governance - appeals and audits

## 2. The Current Principal Position Description

General comments on the current principal position description are:

- It is a very complex document with a heavy weighting towards the regulatory and policy requirements of the role. The selection criteria are located on page five, of a six page document.
- It does not present as an applicant friendly document and presents the principal role as particularly complex and onerous. From an external reader's perspective, the role would not be viewed as inviting.
- The regulatory and policy information in the document is important and has value but much of it obscures the core elements of the role and associated selection criteria. The information could be reorganised to give the document a more contemporary look and feel.

The use of the AITSL *Australian Professional Standard for Principals (July 2011)* as selection criteria

The current principal position description has been in place for around ten years.<sup>18</sup> The selection criteria are based on the AITSL *Australian Professional Standard for Principals (July 2011)*. The selection criteria incorporated in the Principal Position Description is below.

*Essential Criteria*

*The selection criteria for all Principal positions are the five professional practices particular to the role of a Principal identified by the Australian Professional Standard for Principals (July 2011):*

- *Leading Teaching and Learning*
- *Developing Self and Others*
- *Leading Improvement, Innovation and Change*
- *Leading the Management of the School*
- *Engaging and Working with the Community*

*It is essential that applicants provide evidence which demonstrates the extent to which the following three leadership requirements, detailed in the Australian Professional Standard for Principals, are met:*

- *Vision or values*
- *Knowledge and understanding*
- *Personal qualities and social and interpersonal skills*

*The Australian Professional Standard for Principals 2011 (the Standards)* are statements that describe the outcomes achieved by a high performing principal in a role. They are not capability statements and were not designed as selection criteria. Their primary use is for the purpose of professional development and performance management for which they have a high utility value.

SASSLA's criticism of the use of the *Standards* in the current Principal Position Description and assessment processes is:

- The five result (outcome) areas in the position description are the five professional practices identified by the *Standards*. Embedded in the five professional practice areas are 18 descriptive elements that define high performance in a principal role. To write a narrative based application that addresses each of the five professional standards referring to the three leadership requirements is a difficult task. The 1,500 word limit adds further challenge.

Case A highlights the inherent problems faced by applicants. In the first panel criticisms were made about lack of evidence in several capabilities related to curriculum change and leadership. Based on feedback from the first panel, the

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<sup>18</sup> It was introduced shortly after the AITSL Professional Standard for Principals was released in 2011.

candidate spent many hours rewriting the application and having it reviewed by peers. The second panel report records new criticisms about the application not providing evidence on articulating the vision, working with stakeholders, and building capacity of staff.

What is highlighted here is that the candidate is writing blind to the priorities and interests of the panel; they only have the general outline of the selection criteria to follow. Two problems flow from this:

- There is wasted effort in trying to write the perfect application unknowing of the potential areas of interest to the panel.
  - The evidentiary weight put on the covering 1,500 word application is misplaced due to fact that the information will primarily be summative and have little evidentiary value. The Curriculum Vitae (CV), which provides valuable information as it is a record of roles undertaken, achievement and self-assessed capabilities, is more relevant.
- The current position description makes no mention of the department's strategic plan and the key role principal's play in implementing the plan. The strategic plan defines what is now important and valued in the role, but the position description is quiet on the capabilities needed by the department in 2022, or the relevant priorities of individual schools. It would be in the interests of the department to update and develop the position description both as a vehicle for articulating the role of the principal and providing clear and relevant information to candidates on the standards against which they will be assessed.<sup>19</sup>
  - The use of the five professional practices identified by the Standard as result areas is problematic for people with limited experience in a school leadership role because they will have no evidence of achievement in many of 18 elements of practice. This may dissuade people with high potential from applying on the basis that they have no demonstrable evidence to present. It also points to a need to develop alternative models of selection and equip panels with contemporary selection skills in selecting candidates on potential.
  - Persons contemplating a Principal role and persons employed outside the Department may be dissuaded from applying for positions based on the sheer complexity of the information and the complex and onerous task of developing an application.

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<sup>19</sup> My observation from the three cases is that aspects of current priority practices such as instructional leadership are evident in the selection process but are not explicitly stated in the position description. A core principle that must apply to all selection processes is that candidates must know what they are being assessed against.

### 3. Equivalent Standards of Evidence for Reappointment and Merit Selection

The assessment of Cases A and B, outlined in part one and two indicate two standards of evidence:

- Reappointment - heavily weighted to standard performance data linked to strategic priorities and consultation with stakeholders.
- Merit selection - the *AITSL Standard* which is a result based whole job standard. As noted in the preceding discussions, the *Standard* can be subject to wide interpretation and application.

The conflict between the two standards is highlighted in the discussion in Part 1 of this report. In each case the incumbent principal candidates with solid performance records fail to the point where two do not even meet minimum standard for recommendation for the role. On the evidence available to SASSLA, if the reappointment procedure was applied, each of the three candidates would have had strong claims for reappointment.

The standard applied through the three merit processes was based on a highly selective use of evidence and appears to be mostly opinion based. Not only is this unfair to the candidates, but it also leaves the department exposed to poor selection decisions.

At a policy level, consistency about the “rules of the game” is very important and judgements should be made within those rules. If the primary consideration in decision making is objective and based on validated performance information and data, then this should be universally applied.<sup>20</sup>

Confidence in the system is enhanced if people know what they are being evaluated against and feel they that they are being treated fairly. The more arbitrary and idiosyncratic style of process and decision making evident in the three processes discussed in Part 1 saps confidence and leads to cultural damage over time.

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<sup>20</sup> This includes all performance data including staff and community surveys, PDPs and other information relevant to positive behavioural characteristics.

### Reviewing The Principal Position Description and Selection Processes

SASSLA believes there would be value in reviewing the position description. Some preliminary suggestions are:

- Align the principal's role with the strategic plan.
- Bring the selection criteria to the front of the document.
- Have a small number of essential capability statements for minimum standards (these could follow the architecture of the AITSL Standards but be simplified and described in behavioural terms that are more accessible to people without experience in the principal role).
- Include specific information on school context, priorities, and challenges (could be an attachment).
- Provide information on the process of assessment and the standards that apply including assessment of performance in a role and measuring potential in a role where relevant experience may be limited.

#### 4. System Governance - Appeals and Audits

The departmental Merit Selection Procedure identifies the conditions for internal review as:

- *The employee was not eligible for appointment.*
- *The processes were affected by nepotism or patronage or were otherwise not properly based on assessment of the respective merits of the applicants.*
- *There was some other serious irregularity in the processes.*

To date, none of the appeals SASSLA has been involved with have succeeded. Our experience is that the appeals are assessed on a narrow procedural basis as to whether policy prescriptions have been followed in the selection process.<sup>21</sup>

SASSLA's view is that the criteria for internal review can and should be read more broadly and we believe the current criteria provide scope for considering the validity of evidentiary processes used in a selection process. We believe there may have been grounds in each of the three cases to initiate a successful appeal.

In our view, it is open to the department to conduct deeper inquiries where reasonable grounds exist and to make a determination to commence a new process under the general principles of administrative law. The grounds on which an administrative decision can be disputed include:<sup>22</sup>

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<sup>21</sup> Case C was appealed on two main grounds 1. The failure to properly assess the incumbent's performance in the role 2. The failure to gain equivalent referee information. Case A was not appealed but SASSLA did write a letter to the department highlighting concerns. Both responses from the department stay within defined procedural requirements and see the quality of evidentiary processes as outside the scope of the appeals process.

<sup>22</sup> *Administrative law update: natural justice, appeals on questions of law and administrative discretions* Dr Philip Bender, Barrister (conference paper).

- Failure to consider relevant considerations, that is matters which the decision maker was bound to take into account.
- An exercise of the discretion in bad faith, or in a manner that otherwise constitutes an abuse of the power.
- An exercise of the discretion that is so unreasonable that no reasonable decision maker could have made it.

These criteria provide a basis for constructive discussions on the focus and application of the appeals process.

SASSLA also believes that the more principle-based approach is best supported by regular system audits. System audits would generally assess a sample of selection processes for effectiveness and compliance. Such processes can provide a systematic way of evaluating and improving processes.