EDUCATION, EMPLOYMENT AND SMALL BUSINESS COMMITTEE

Members present:
Ms LM Linard MP (Chair)
Mr JJ McDonald MP
Mr BM Saunders MP
Mrs SM Wilson MP
Mr MP Healy MP
Mr N Dametto MP (via videoconference)

Staff present:
Ms E Jameson (Acting Committee Secretary)
Ms A Groth (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE PUBLIC SERVICE AND OTHER LEGISLATION AMENDMENT BILL 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 10 AUGUST 2020

Brisbane

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The committee met at 12.38 pm.

CHAIR: Good afternoon. I now declare open this public hearing for the Education, Employment and Small Business Committee's inquiry into the Public Service and Other Legislation Amendment Bill 2020. Today's proceedings are being conducted using videoconference and teleconference facilities, so I ask all of our participants and anyone watching the live broadcast to please bear with us if we do encounter any ongoing technical issues. I would like to acknowledge the traditional owners of the land on which we are meeting this afternoon and pay my respects to elders past, present and emerging. My name is Leanne Linard. I am the chair of the committee and the member for Nudgee. Members present in the room are: Mr Jim McDonald, the member for Lockyer and deputy chair; Mr Bruce Saunders, the member for Maryborough; and Mrs Simone Wilson, the member for Pumicestone. Joining us via videoconference is Mr Nick Dametto, the member for Hinchinbrook. I understand Mr Michael Healy, the member for Cairns, will be physically joining us as he has left the videoconference screen.

On 16 July 2020, the Premier and Minister for Trade, the Hon. Annastacia Palaszczuk, introduced the bill to the parliament. The bill was referred to the Education, Employment and Small Business Committee for examination with a reporting date of 28 August. The purpose of this public hearing is to hear evidence from stakeholders who made submissions as part of the committee's inquiry into the bill. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. All those present today should note that it is possible you may be filmed or photographed during the proceedings and that images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent. The program for today has been published on the committee's webpage and there are hard copies available from committee staff.

FLANDERS, Ms Kate, Assistant Secretary, Together

SCOTT, Mr Alex, Branch Secretary, Together

SMITH, Mr Alex, Acting Director, Industrial Services, Together

SWAN, Mr James, Vice President, Public Sector Division, Together (via videoconference)

CHAIR: I welcome representatives from Together. Would you like to make a brief opening statement and then we will open for questions?

Mr Scott: Thank you to the committee for the opportunity to be heard on this important piece of legislation. In terms of our submission today, we basically wanted to reinforce with the committee the fact that we believe that this is an important piece of legislative reform. We would certainly encourage the parliament to move towards the adoption of these amendments. We believe that there is the ability within this process to consider whether the legislation should go further than is currently proposed.

The review of the Public Service Act has been something that we as a union have been arguing for for a number of years. We believe that the current Public Service Act is fundamentally flawed in a range of ways. We certainly congratulated the Palaszczuk government for its decision to have a review undertaken by Peter Bridgman in relation to the nature of the act, although we are disappointed that some of the more substantial elements in relation to public sector reform are having to be done through the phase 2 process rather than phase 1, which is the material in relation to the current amendments.

In terms of the nature of the Public Service Act, what we are really seeking to do is to ensure that workers' rights are protected and that workers are treated fairly within the government. There are a number of changes we are seeking your support for in terms of the current amendments, but we also seeking for the parliament to take a clear view in relation to at what level this legislation should

be adopted and its relationship with significant, substantial subordinate legislation in relation to Public Service directives that go to the heart of the ability for public servants to be treated fairly and that we also ensure we have a permanent Public Service. While the public sector provides very important services across the board to the Queensland community, one of the most important elements of the Public Service itself is to provide frank and fearless advice to the government of the day. We cannot have frank and fearless advice to the government of the day unless we have a permanent Public Service.

Over the last 20 years, it has been an unfortunate trend that we have seen a greater reliance on casual and temporary employment in public sector employment. Some of that has been reversed under this government in relation to a number of directives that have been issued—and there have been steps made in relation to that process—but they have not gone far enough. We are seeking your support in relation to the amendments in this bill but also in our submissions seeking that further steps be taken to ensure we end up with a permanent Public Service that provides frank and fearless advice that will deliver the best possible outcomes to the Queensland community.

We are able to take specific questions in relation to our submission or our broader concerns in relation to the legislation or why the legislation is needed, but I understand that there are some time pressures today and you are running a little bit late. I will keep my introductory statement to that.

CHAIR: Thank you, Alex, for your written submission to the committee. We will open to questions.

Mr McDONALD: Thank you everybody for being here and for making your representation. In regard to casual and temporary employees, I understand that 16.7 per cent of the Public Service is temporary employees and 2.85 per cent is casual employees. Does Together union have a desired ratio of conversion of temporary and casual employees to permanent positions?

Mr Scott: We do not have a ratio per se. Our broad policy position is that we should have a permanent Public Service in the first place. We think that it goes to the fundamentals of the Westminster system to have a higher level of permanency. If someone has insecure employment they are less able to stand up to senior management and to the government of the day and give them advice that they do not want to hear. Our broad position is that, wherever possible, every position should be permanent. We recognise, though, that there are circumstances when there will be a need for short-term temporary requirements to be filled, particularly when we have a significant percentage of the workforce who are now women, who are able to then take advantage of maternity leave, so those positions need to be filled on a temporary basis. What we are concerned about is a more systemic approach in relation to the use of temporary employment more broadly rather than backfilling permanent positions that are not able to be done on a permanent basis. From that aspect, we do not have a percentage criteria for conversion.

Our main objective is to have a higher level of permanency, but, because of the abuse of temporary employment by successive government departments, what we have advocated for prior to this legislation and what we are now seeking to do through this legislation is have a conversion process that is available. Where someone starts as a temporary employee, they have the ability to be made permanent because of the changing nature of the circumstances of their position or of the nature of the work to try and avoid the high level of abuse that has occurred. I cannot confirm those statistics you gave—16.7 per cent or 2.85 per cent. I do not have those numbers off the top of my head and they bounce around a bit depending on the determinations you use. In terms of broadly within the public sector, we are seeing a problem, particularly around temporary employment.

Mr McDONALD: Those figures are from the Public Service Commission in 2019. Following up on that, your submission refers to a genuine operational reason being the reason conversion could occur. I must take heed in saying there is a massive problem with this. When you see figures of 16.7 per cent and 2.85 per cent, it is hard to justify that there is a massive overuse of this. I am interested in the genuine operational reasons for the conversion?

Mr Scott: In terms of the broader question about whether there is a problem, 16.7 per cent does not reflect a consistent pattern across the sector. There are large areas with systemic problems where the percentages are much higher. If you go through at an agency by agency level and also look at the data that is available to us, there are specific areas that are higher. There are some departments which are very good about this. At one end, places like Queensland Treasury and the Queensland Police Service have far fewer temporaries than other agencies which have much higher levels. The pattern is not consistent. In terms of the question about when someone should or should not be converted, we are saying that there needs to be a genuine reason for them being temporary. The default position should be that positions are permanent. It really then comes down to what is a genuine reason for temporary employment?

The basic examples that are normally used in this regard are when someone is replacing someone on maternity leave. If an A02 in Mount Isa goes on maternity leave for two years, that person will come back. There are a limited number of positions in that regional location so there is a genuine reason to have temporary employment while that person is on maternity leave potentially for an extended period of time. The other example normally given in this circumstance is if a bunch of people are brought together to build a bridge. They are employed to build a bridge. They are temporary until the bridge is built, but there is not an ongoing need for them in terms of that sort of infrastructure project.

What we are seeing in a range of agencies is that the lines have become very blurred. In terms of what we are seeing with regard to the act, rather than the directives—previously some of these criteria have been in the directive—is that we need to elevate this to the legislation because we think it is important that parliament determines these things rather than it be determined at a Public Service directive level. We need to make sure that the criteria around when someone is made permanent is established. There has to be a genuine reason for someone to be temporary rather than the current circumstances where there is more of an emphasis on temporary employment and we have to prove why they should be permanent. It should be that they are permanent and if they are temporary there has to be a genuine operational reason—like building a bridge—they cannot be a permanent employee.

Mr SAUNDERS: Thank you for the submission from Together. If higher duty payments mean that public servants are getting paid at the correct level, why does it matter if it is paid through an allowance rather than at a substantial level?

Mr Scott: Higher duties and the challenges around those really comes down to the impact that that has on individuals within the system rather than the straight money. With the acceptance of the committee, I might ask James Swan, our vice-president, to speak directly to that in terms of his experience as a public servant.

Mr Swan: Thank you, Alex, and committee. When it comes to higher duties and the offset around paying higher duties to someone while they are doing an extended role—they are a permanent employee in most cases—there is a very human aspect to that that impacts people's lives, particularly if they are on long-term higher duties. Staff can sometimes be acting two classifications above their substantive level for years, reaching the highest income level for the classification. Unfortunately, the recruitment process has its flaws or there are failures in seeking higher duties extension approvals resulting in those in long-term higher duties returning to the substantive position.

In that circumstance, those performing long-term higher duties can take a large pay cut, impacting their families and themselves. There is also a psychological impact of dropping classification. I have heard it described to me as humiliating and demeaning. In such instances, such a long period has lapsed that the person's substantive role has changed, requiring retraining often by a lower classification or by the person who is acting in their role. Quite often, the person backfilling for them is also on long-term higher duties. This can then lead to a toxic and uncomfortable workplace. Just this morning I heard from an area where people on higher duties are currently undertaking a lengthy recruitment process—it has taken most of this year. They have no idea of the outcome and are unsure at this point whether they will be taking a pay cut to train new people. It is very hurtful to staff that they are meritorious enough to be extended every few months for years, however are unable to be converted to permanent. In a lot of cases, these people are reapplying for the same higher duties position through an expression of interest process, generally for each extension. For some people that can be every three months—they are applying for the same job continually. They have demonstrated that they are good for the job because they keep managing to meet the EOI process.

Further, there is the fear, which is mentioned in our submission, in relation to providing frank and fearless advice to government. I often have people tell me that they cannot push an issue far enough because they are on long-term higher duties and are concerned the department will cease it if they make too much noise. Lastly, many people tell me that they are uncomfortable taking any significant holiday leave while on long-term higher duties and, if they do, there is stress that they will be returning to their substantive position. This creates a culture where a group of workers are under a different level of pressure than their permanent counterparts and are unable to take any meaningful break, all of which I have either witnessed personally or have heard from my colleagues in the Public Service. I would say that that is often.

Mr SAUNDERS: Together's submission is that the rights proposed in the amendments should be extended beyond public servants. Why would this be appropriate and which employers would be covered?

Mr Scott: In terms of our submission, the Public Service Act is quite limited in terms of its coverage. There now are a number of significant public sector employers that, for a variety of reasons, have fallen outside the parameters of the rights covered by the Public Service Commission and its directives. The most significant employer in this space is TAFE Queensland. Previously, these people were government department employees. We are not seeking for them to become public servants again for the purposes of the Public Service Act, but, through the amendments and consequential regulations, we are seeking for them the rights and entitlements of other public servants such as Queensland Health workers and a range of other public service workers. Those areas that have been blackspots in relation to the treatment of staff should be addressed. The problem with TAFE was that when they were moved outside of the Public Service under the Newman government the legislation that passed did not extend their rights in this space. They do not have the same rights and entitlements in relation to temporary conversion. They do not have the same rights and entitlements that would come through this act in relation to disciplinary action, investigations and fair treatment.

While in many other regards they have similar industrial entitlements through their award and through their enterprise bargaining agreements, we are suggesting that there are large parts of the public sector such as TAFE, WorkCover and a range of other statutory authorities where workers should have the same rights to fair treatment at work as public servants and other public sector workers. Given the historical arrangements in relation to how legislation has been passed for these different groups, we think that that is an important area that could be reformed and has not been picked up by the current government. The Bridgman review covered some areas.

The legislation is good legislation, but it should be extended in terms of its coverage, particularly into TAFE and WorkCover. From the workers point of view, we think that that is something that they would deeply care about. It would not have any financial implications for those agencies, but it would mean that workers in TAFE, WorkCover and some of the other statutory authorities would have more guarantees in relation to fair treatment than is the case currently—they are basically in a no-man's-land in relation to being caught in the state industrial environment but without the same protections that would apply to the overwhelming number of public sector workers and public servants such as those in Queensland Health.

Mrs WILSON: Do the various government departments and the Public Service Commission keep Together updated with the number of conversions?

Ms Flanders: Yes. The bargaining agreements that we have mean that there are quarterly meetings between union representatives and departmental representatives. One of the requirements in the EBA is that a list is provided—a percentage is most commonly the way it is presented to me. For example, I just received the reports for the Department of Education for this last quarter, and it will say 'This is how many conversions have occurred.'

Mrs WILSON: What do you then do with that information that you have been provided with?

Ms Flanders: We use that to inform the discussion at the quarterly meeting between our union representatives and the department and to talk about why is it this many and not more? For example, with the Department of Education we also see statistics about new engagements. We have particular concern where the Department of Education—I think we highlighted this in our submission—consistently employs 90 per cent of new engagements on temporary, casual or higher duties. We talk about that as an issue and say, `That seems extraordinarily high for a new engagement in a state school which you know will be an ongoing activity.' That data informs that discussion so you are not coming to the meeting with no knowledge. You hopefully get the reports a couple of weeks prior so you can talk about it.

Mrs WILSON: Are you able to advise when you were consulted in relation to the bill before us now?

Mr Scott: I am a member of the joint advisory committee. The Palaszczuk government announced a review of the Public Service Act by Peter Bridgman. That took about a year and a half. The report came down. From my recollection, it was December last year that a joint advisory committee was established to start to go through the Bridgman recommendations. From memory, there were about 97 recommendations—it was certainly a substantial number. We were consulted in terms of that process and we were asked our views in relation to the prioritisation between phase 1 and phase 2 of that process. As we understand it, the government went through the normal cabinet process. The Bridgman review brought had been brought down, but they had not responded to it. We were then asked our views before government adopted a final position. We were then consulted around what the legislative program in terms of issues would look like. In terms of the legislation itself, I would to check my diary in terms of that. We were advised when it was issued, but I did not see it prior to that. I am not sure where other people might have been.

CHAIR: I sorry that we do not have more time. I would have loved to ask your views around positive performance management, but your submission was detailed. We very much thank you for the contribution that you have made and for your advocacy on behalf of public servants throughout Queensland. Thank you for joining us.

CLIFFORD, Mr Michael, General Secretary, Queensland Council of Unions

KEYS, Ms Rebecca, Queensland Public Sector Coordinator, United Workers Union

MARKS, Mr Jared, Industrial/Legal Officer, United Workers Union

MARTIN, Dr John, Research and Policy Officer, Queensland Council of Unions

CHAIR: Thank you for joining us. Would you like to make a brief opening statement?

Mr Clifford: Thank you for having us here today. Our submission is before you. From the Queensland Council of Unions' perspective, we have provided a broad overview. I know that many of our affiliates have provided you with very detailed analyses and commentary on the bill, and we support the various submissions of affiliates of the Queensland Council of Unions. There is just one aspect that I would like to call out in my opening comments, and that goes to the way the bill deals with the issue of job security.

We applaud the attempts of the government to improve job security in the Public Service. It is an issue that concerns the union movement broadly. It is something that we have been campaigning on for some time and will continue to campaign on to ensure people have the certainty they need for themselves and their families and to engage in their local and broader economies. The bill prioritises tenured employment and we support the comments. We had the benefit of hearing Mr Scott in the previous presentation to the committee talking about the importance of being able to give frank and fearless advice.

I would refer to another issue, which is the importance of providing people with certainty in their lives. We think there is a lot of uncertainty in the current environment with COVID. At any time it is important to provide people with certainty so they can plan their lives for themselves and their families. It is also important so they can spend in our small businesses and bigger businesses, and if they have uncertainty they are unlikely to do that. Again in a COVID context, as well as any context, it is important that we ensure people feel they have the certainty to provide for their families, to spend money and to get things like loans, which many casual employees or people on contracts cannot do. We applaud the government for the steps in the direction of providing employment security.

There are just two issues that we think should be improved in that respect. One relates to the right of appeal. People in the conversion process can appeal a decision to not convert their employment to permanent after two years. We do not see why that should not happen after one year. Being in uncertain employment for 12 months is a very long time. The fact that people can put up their hand and ask for a conversion after 12 months is to be applauded, but if the objective is to provide tenured employment—and there are very specific arrangements that say why a person should be converted to permanent employment—we do not see why you should not be able to appeal a decision not to convert after 12 months. We think that part of the bill should be altered.

The last one I will mention is that the chief executive makes a decision about conversion, but if the chief executive makes no decision about conversion it is taken that the conversion should not occur. That seems to us to be odd and again contrary to the objectives of the bill. If the objectives are to give tenured employment, to give people certainty and security, no decision should not lead to a person having to continue to live with that uncertainty. The bill specifies certain things that should be considered, and if those things are considered and it is deemed that you will have ongoing employment, then you must make that person permanent or give that person tenured employment. Again it seems odd that if you do not make a decision—you make no decision—then that person is disadvantaged.

Those are the issues around secure employment we would bring to the attention of the committee and ask the committee to turn their attention to, and we would seek for those two issues to be rectified. I will leave my opening comments there, Chair.

Mr Marks: Thank you for the opportunity to speak today. In very general terms, we feel the bill does reasonably well with changing the tone of the act by providing new ways for employee issues to be dealt with in a positive and constructive way, at least in the first instance. We are hopeful this is going to cause a cultural shift and a change in attitude within the agencies that we routinely deal with. I do want to add to a specific point made in our submission, and it goes to the issue around the time frames for discipline and investigation processes.

That is dealt with in the bill in clauses 36 and 44, which effectively require that directives are made that provide periodic internal reviews which are aimed at ensuring a timely resolution of those matters. In our submission recommendation 3 suggests that stronger wording than 'timely resolution'

be used, but I note that we did not propose any wording as such. In part, that is because there are a number of ways this could be done. It occurred to me that a fairly minimal change could be made that might be quite effective. If the word 'timely' in 'timely resolution' was replaced with 'expeditious', so it would read that 'it is to ensure that the expeditious resolution of discipline or in the case of suspension matters' to really just explain why. 'Timely' connotes that something is done at your convenience or at an opportune time. I do not think that is really what we are trying to address. As the word 'expeditious' is more about fast and efficient, I think that is much more in line with what we are trying to achieve to deal with this issue of protected time frames. That is all I have to add for now.

CHAIR: Thank you to both the QCU and United Workers Union for the contributions you have made and your written submissions, but also for coming to the committee this morning. We are somewhat time limited. There is one question I was going to put to Together—which appeared before you—that I would like to put to you. Together focused a lot on conversion and the need—Michael, you spoke about this strongly in your opening statement—around continuity of employment and permanency. What I am interested in is the thoughts of QCU and the United Workers Union with regard to the performance management culture that currently exists in the Public Service and whether the bill will go some way—I appreciate you have raised time lines—to proving that if that is required. An overview of your comments in that regard would be greatly appreciated.

Dr Martin: We commend the bill insofar as its objective. Performance management is not merely a disciplinary issue. I think a longstanding problem is that you only manage someone's performance if it is bad, which then becomes punitive, which is sort of contrary to the purpose of performance management. Its stated purpose is to improve individual performance but also improve organisational performance. The idea is if you have a performance management plan which is consistent with your organisation's objectives, if you are only using performance management as a punitive disciplinary tool then that does not do a lot towards improving performance. I think from that perspective we would commend at least that objective.

Whether or not the bill is capable of turning around those attitudes that may exist in some agencies remains to be seen, and obviously educational processes would be necessary to go with that, I would think, to ensure the maximum advantage there. From the perspective of it being other than just a stick to hit a worker with, we would commend that.

Mr Marks: I would echo Dr Martin's comments. Effectively, the positive performance principles are great in terms of they are providing a lens that is to deal with these issues in a positive and constructive way. It is inviting not only a more consultative approach to dealing with performance but it is also focusing on what can be done to assist that person and then recognising when they actually do well. These steps are fundamentally necessary before you get to any sort of discipline in a performance setting. In most cases someone is trying their best to do the best they can, and facilitating some kind of support to get them to where they are going is a much better and more constructive approach than effectively punishing them for their failures. An effect of that as well is what it does to someone's confidence and so on and so forth, which is sort of a self-fulfilling prophecy in that you end up with someone who is dysfunctional, whereas you could have taken another approach that would have been more productive.

Mr McDONALD: In the United Workers Union submission you specifically raise concerns about non-permanent positions for teacher aides. We just heard from Together that 90 per cent of new employees were temporary or casual positions. Can you offer some suggestions or recommendations about how that issue can be resolved?

Ms Keys: Thank you for the question, because it is a really important one. You will see from the figures that we provided in our submission that probably more than a third of teacher aides are in precarious employment in the department despite the fact that some of them have been there for 20 years, which is obviously a major issue that needs to be addressed. What we see as being the two biggest issues relate to where the funding is from for some of these positions. We have a particular concern in relation to the clause as drafted that says that a person can be employed temporarily to fill a position for which funding is uncertain or unknown.

The reason that is of concern to us is because there is a large pool of funding that is federal funding that is contributed to the employment of teacher aides. In Queensland that funding is ongoing, but because it comes from a federal bucket rather than a state bucket then it is regarded as being uncertain. There is no reason that those roles are not ongoing, because if those roles were of a temporary nature that would require a complete restructure of the education system. There is no question about the fact those roles are continuing, and you will see from the data that there are many teacher aides who have been in temporary positions for a very long time, but because the funding source is federal that means the department has been able to say, 'I'm sorry, but we won't convert you.' It is our view that that needs to be changed.

That clause in the legislation needs to be changed and we have proposed an alternative, which is that temporary employment should exist to fill a position for which there is no continuing need for the person to be employed in the role or a role which is substantially the same and the role is unlikely to be ongoing. It is our view that if a role is going to be ongoing then a person should be permanently employment, and if they are originally employed temporarily and they have been there for two years and the only reason they continue to be employed temporarily, for example, is because it is a federal funding source, they should be converted because their role continues to be ongoing. Hopefully, that answers your question.

Mr McDONALD: It does very much. I am interested to know of that 30 per cent, do you know what percentage might choose to be and remain on casual employment for the higher wage versus the certainty and the other advantages of permanent employment?

Ms Keys: What we find is that pretty much everybody wants to convert if they can because there is scope to reduce hours if you need to, so there is no benefit in being a casual employee. I have to say in relation to temporary employment that there is absolutely zero benefit, because the only difference is that you do not have permanency. Certainly, in relation to casual employees our agreements provide for hours to be reduced as well as increased, so there seems to be no attraction in staying as precariously employed.

CHAIR: There being no further questions, I thank you on behalf of the committee for both your detailed submissions and the recommendations you have contained in those submissions to guide the committee. We appreciate your time.

COLE, Ms Paloma, Lawyer, Maurice Blackburn Employment and Industrial Law Service, Maurice Blackburn Lawyers

SIVARAMAN, Mr Giri, Principal, Maurice Blackburn Employment and Industrial Law Service, Maurice Blackburn Lawyers

CHAIR: I welcome representatives from Maurice Blackburn Lawyers who are joining us in the room. Thank you for your submission. I will give you the opportunity to make a brief opening statement. We will then turn to the committee should there be any questions.

Mr Sivaraman: I will make a very brief opening statement. I appreciate that you have our submission. Thank you for the opportunity to attend and to present this morning. We applaud the government for the introduction of this bill. To our mind, it highlights the genuine commitment to ensuring that the Public Service of Queensland is founded on principles of secure work, proper worker entitlements and fair performance management systems. It is very pleasing to see a commitment like this for such an important workforce.

We applaud the commitment, but we have made some submissions in terms of areas where we think choices made in the drafting of the bill could be improved. They are detailed in our submission. I want to take you to two points in the submission that I think are of the most importance. The first concern for us is what appears to be an expansion of the ability of the chief executive to suspend someone without pay for an unlimited period of time where they consider it would be appropriate. To be clear, that is before factual findings are made in any investigative process. In our experience, having represented many Public Service employees, investigations can take anywhere from six months to two years which means employees can be suspended for that period of time just in the process of responding to allegations which may ultimately be found to be unsubstantiated. In fact, it is our standard practice when we see Public Service employees who we are seeking advice to tell them, 'This will take at least six months, if not longer.'

Being suspended from work takes a significant toll. Work is central to our sense of identity and purpose. In a sense that has been highlighted recently with so many people having to work from home. Being suspended from work has the impact of uncertainty, a lack of control and a sense of isolation. It can be profoundly detrimental on the wellbeing of people. One of our clients, as an example, was so affected by a suspension that she developed a speech impediment as a result of it. Imagine adding to the stress of all of those things I just described the additional stress of not being paid. It has a really significant and detrimental impact. Whilst we accept that arguably the power previously existed, what has happened now is that it has been given far more prominence in the bill as it is currently drafted. We are very concerned that that will lead to an increase in suspensions without pay.

The second point I want to make or highlight from our submission is that Public Service employees, just like all other employees, are not infallible. They can make mistakes. Our experience has been, particularly in regional areas, that there have been a greater number of our clients who were subject to disciplinary processes who were not compliant with policies, directives or legislation. To our mind, those people, just like anyone else, need swift access to an impartial overseer which in this case is the Queensland Industrial Relations Commission.

The new section 562A of the Industrial Relations Act, which is sought to be introduced by this bill, imposes an additional barrier on people who would otherwise want to go to the Industrial Relations Commission to appeal a disciplinary process in relation to them. There currently exists a barrier—that is, the commission can have regard to whether or not an employee has used an employee grievances directive. Now the case would be, if this bill were to pass, that the commission would have regard to whether the employee followed any processes and any directive, so it becomes much broader in the sense of the discretion allowed to the commission to stop or not determine someone's claim.

They are the two points that we wanted to highlight. I come back to where I started though. We do think the bill is good. We think that it will hopefully help the Queensland government and Public Service, being an employer of choice. The suggestions that we have put forward are things that we think are really important based on our experience to make the bill better. Thank you for the opportunity to make an opening statement. We are happy to take any questions in relation to our submission.

CHAIR: Your submission says a number of times that you feel that—and we will take the positive performance management principles as a key example—that framework would be better contained in legislation rather than in directives. We understand the nature of legislation. It is a fairly

blunt instrument. How much detail do you feel should be contained in legislation versus directives? Where is that happy medium? Why is it that you feel there is better protection for it in legislation than in directives? Can you speak to that?

Mr Sivaraman: Yes, I can speak to that, and Ms Cole will probably supplement what I say. You can have within the act itself a framework. I will give you an example. Protection from unfair dismissal has a particular framework where a number of principles are set out in terms of what is relevant to determining whether it is unfair. Those principles have then since been interpreted in cases. There is a whole jurisdiction around it, and the jurisdiction has much nuance. It comes back to a set of principles. That is a very important thing because a set of principles contained within legislation will have greater force and greater impact in the way in which decision-making is made. I appreciate what you say. Legislation is a blunt instrument. That is why a framework is more important than absolute specificity in terms of determining outcomes. You cannot overprescribe, but you can provide definitive guidance. Do you want to speak further to that, Paloma?

Ms Cole: No. That sums up the view.

Mr McDONALD: There was a joint steering committee put together to advise and work on these changes. Was Maurice Blackburn invited to be part of that joint steering committee at all?

Mr Sivaraman: Not to my knowledge. I do not believe we were, no.

Mr McDONALD: Were you consulted with regard to this bill or prior to its development?

Mr Sivaraman: Not to my knowledge, no.

Mr McDONALD: In your submission you recommend that the special commissioner be required to consult with relevant unions. Can you tell us what that would look like and when you would expect that consultation to occur?

Mr Sivaraman: Consultation in its most basic form is giving people the opportunity to provide input. Whatever process is engaged in, it would just have to be open, transparent and seek input from other parties. We have identified unions in particular because we think that they will have valuable input into the process. I could not be more prescriptive than that. We say that certain people should be given an opportunity to be heard.

Mr SAUNDERS: Has Maurice Blackburn assisted Public Service workers who have disagreed with chief executive decisions regarding their conversion of employment from temporary to permanent? How often would you have been called on to advise customers of these decisions being made? How often have you been asked to help?

Mr Sivaraman: Yes, we have definitely been asked to advise people who argue that they have not been converted to permanent when they should have been, firstly. Secondly, I could not give you a precise number. All I can say to you is that it is a pretty regular thing that we have to do. Thirdly, we have been successful in our appeals on that. In fact, Ms Cole was involved in a proceeding recently. Was it in the Supreme Court?

Ms Cole: We have represented clients in a number of appeals of decisions up to the Court of Appeal specifically in relation to conversion decisions.

Mr HEALY: I note that your submission raises some concerns regarding the application of new section 88IA—that is, it may not apply to persons referred to the Crime and Corruption Commission in relevant circumstances. Could you explain that a little bit? I am interested in what your objectives are there.

Mr Sivaraman: Again, we can only go from our experience. There is this particular carve out in terms of matters that are referred to the CCC. In our experience what often happens is that they get bounced back anyway to the relevant department. It is not actually the case that there is any substantial difference between those matters and any other matters. To deprive those particular people of a protection does not—

Mr HEALY: When it does not work, it is a reference point back. As a result, you are saying that that should be included.

Mr Sivaraman: Yes, that is right.

Ms Cole: Yes. In our experience, people are quite regularly referred to the CCC for allegations that we know are not going to be dealt with by the CCC because they are lower level allegations. We are concerned that all of those people—and it is quite a number of people—are then going to be barred from having that particular protection.

CHAIR: There being no further questions, we will conclude the hearing. Thank you so much for your contribution and for your detailed submission.

Mr Sivaraman: Thank you.

CHAIR: That concludes this hearing. Thank you very much to all of the witnesses and stakeholders who have participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 1.29 pm.