

Public Service and Other Legislation Amendment Bill 2020

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Anastacia Palaszczuk MP, Premier and Minister for Trade make this statement of compatibility with respect to the Public Service and Other Legislation amendment Bill 2020.

In my opinion, the Public Service and Other Legislation Amendment Bill 2020 (the Bill) is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The purpose of the Bill is to progress priority stage one public sector management reforms. The reforms arise from the recommendations of the independent review of public sector employment laws by Mr Peter Bridgman (the Bridgman review) which was commissioned to ensure Queenslanders have the most responsive, consistent and reliable public service possible.

The Bridgman Review, completed in May 2019, concluded that there are significant problems and issues in Queensland public sector employment laws and practices that require resolution to ensure a fair, responsive and inclusive public sector. The Bridgman Review made recommendations aimed at introducing new ways to understand how and why the government employs people, starting from the employee and the work they are needed for and noted that this represents a major shift from the current public sector laws that start with institutions and their managers.

The Bridgman review also complements the review into Queensland Public Sector Workforce Reporting (the Coaldrake Review) and builds on the measures to restore fairness in public sector employment undertaken by the Queensland Government since 2015.

The Bill seeks to progress priorities in two main areas: (1) giving full effect to the Government's commitment to maximise employment security in public sector employment; and (2) providing for positive performance management of public sector employees. The key changes introduced by the Bill will drive effective and consistent application of the existing commitment to maximise employment security. This will be achieved by:

- amending the PS Act with clear language that states that permanent employment is the default basis for public sector employment and that other non-permanent forms of employment should only be used when ongoing employment is not viable or appropriate.
- provide for public service appeals which are currently heard under the PS Act by the Queensland Industrial Relations Commission (QIRC) to be instead heard under the IR Act to ensure transparency and increase consistency in appeal decisions.

- state positive performance management principles that will support managers and employees to work together to support optimal performance,
- clearly state the grounds for disciplinary action, and
- provide for new directives to guide disciplinary actions and processes, investigations and positive performance management.

The Bill also includes minor and miscellaneous amendments to the *Public Interest Disclosure Act 2010* to give effect to the reforms.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the HR Act that are relevant to the Bill are:

- Taking part in public life (section 23)
- Privacy and reputation (section 25)

Taking part in public life (section 23 of the HR Act)

The parts of this Bill that are relevant to this right are Clause 32 to the extent that it provides for a requirement of Australian citizenship to be employed in the Queensland Public Service.

This right affirms the right of all persons to contribute to and exercise their voice in relation to the public life of the State. It ensures that all persons have the opportunity to contribute to the political process and public governance.

This right has been interpreted by the UN Human Rights Committee as providing a right of access, on general terms of equality, to positions in the public service and in public office.

The UN Human Rights Committee has said:

'... affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures.'

This nature of this right includes that the criteria and processes for appointment, promotion, suspension, discipline and dismissal within the public service must be objective and reasonable, and non-discriminatory.

Previously the PS Act had included citizenship and residency requirements for employment as a public service officer. In effect this meant that non-citizens who did not have a lawful right to remain indefinitely in Australia, but had permission to work, could only be engaged as a temporary or casual employee. In other words, it excluded classes of the Queensland community who have a right to work in Australia but may not have permanent residency, such as refugees and asylum seekers.

The purpose of the citizenship requirement in the Bill is to remove these requirements and ensure that the PS Act does not limit permanent employment to Australian citizens only. It also

clarified that those who have a lawful right to work in Australia can be employed on tenure in the Queensland Public Service. The Bill also makes clear that if a person no longer has a lawful right to work in Australia, their appointment will be considered to terminate on the same day.

In this regard, it is considered that these proposed amendments further the objects of the HR Act as they promote the right to take part in public life by ensuring equality of eligibility and access to the public service.

Privacy and reputation

The parts of this Bill that are relevant to this right are:

Clause 29 to the extent that:

- powers of the special commissioner or commission chief executive extend to interviewing a public service employee;
- powers of the special commissioner or commission chief executive extend to interviewing any persons with ‘relevant information’; and
- the chief executive of a public service office, and anyone employed in that office, are required to assist the special commissioner or commission chief executive in their inquiry.

These provisions of the Bill, may, if enacted limit or otherwise affect the right to privacy and reputation as the Special Commissioner will be empowered to ask any person for information which is relevant to an inquiry, regardless of their status in the public service, and to require public service employees to answer questions. This possible limitation is set out in detail below.

Additionally, it is considered that the proposed amendments to the IR Act are compatible with the HR Act as they protect the right to a fair hearing by ensuring appeals are heard by an independent tribunal established to conciliate and arbitrate industrial matters in Queensland independent of the executive and legislative branches of government.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Powers of the special commissioner

(a) the nature of the right

Privacy and reputation (section 25 of the HR Act)

Section 25 of the HR Act protects the individual from interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The right to privacy is broad and may include matters such as personal information, data collection and correspondence. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Under the Bill, a Special Commissioner or the Commission Chief Executive is given the power to interview any persons with ‘relevant information’ to an inquiry and to interview a public service chief executive and public service employees. This includes a requirement for the chief executive and public service employee to provide assistance that is reasonable required. These provisions have the potential to limit or otherwise affect the person or employee’s right to privacy and reputation.

The purpose of establishing a Special Commissioner under the PS Act is to allow the Premier to appoint a Special Commissioner to undertake inquiries and provide advice on aspects of public administration. To ensure the independence and capability of the Special Commissioner the Bill provides appropriate powers to require documents to be produced, witnesses to appear, and for reports and recommendations to be published.

The purpose of limiting the right to privacy and reputation is to ensure the Special Commissioner is equipped with the appropriate powers to perform their functions independently and to report with appropriate protection and immunity.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

While the provision of the Bill may limit a person’s right to privacy and reputation in some manner, they serve an important purpose of allowing the Special Commissioner to fulfil their functions and undertake inquiries into aspects of public administration

Establishing a Special Commissioner is integral to furthering the purposes of the Bill to ensure a responsive, consistent and reliable public service possible. This is because a Special Commissioner will be empowered to gather intelligence and undertake reports into how the Queensland Public Service can be best positioned to ensure a culture of continuous improvement and responsiveness to a dynamic and changing world.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

These amendments are considered the least restrictive way of achieving the policy intent of appointing a Special Commissioner with appropriate functions and powers to conduct their functions. As mentioned above, the Bill contains sufficient safeguards regarding the purpose for which information can be disclosed and used. For example, the Bill provides that an employee does not need to answer a question if it might incriminate the employee in regard to a criminal offence. It also makes clear that the employee would have a claim of privilege against self-incrimination in relation to a criminal offence if they were asked a question during court action.

Additionally, the risks to a person’s privacy and reputation are limited given the circumstances and purposes for which the Bill permits information can be disclosed and used.

Any potential limitation on the human right of privacy and reputation arising from the Bill is considered to be outweighed by the net benefit of having a Special Commissioner that will act independently to ensure efficient and appropriate operation of the Queensland public service.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

As outlined above, the benefits associated with establishing a Special Commissioner will not only benefit the public service as a whole, but the broader Queensland community by ensuring a responsive and effective government. Any limitation on the right to privacy and reputation is balanced against the importance of ensuring the Special Commissioner is equipped with the appropriate powers to perform their functions independently and to report with appropriate protection and immunity.

- (f) any other relevant factors

Nil.

Conclusion

Establishing the role of a Special Commissioner in public sector employment legislation is a key recommendation of the Bridgman Review and will have a critical role in ensuring Queenslanders have the most responsive, consistent and reliable public service possible.

The powers of the Special Commissioner provided for by the Bill are necessary to ensure the successful carrying out of the Special Commissioners functions and to stimulate responsiveness and change. However, the provisions of these powers do have the potential to limit or otherwise affect a person's, public service chief executive or public sector employee's right to privacy and reputation. This limitation is considered reasonable and appropriate to ensure the Special Commissioner can effectively discharge their role. Any potential impacts are further mitigated by the circumstances and purposes for which the Bill permits information can be disclosed and used.

In my opinion, the Public Service and Other Legislation Amendment Bill 2020 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

The Honourable Anastacia Palaszczuk MP
Premier and Minister for Trade