Public Sector Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the *Public Sector Bill 2022*.

Policy objectives and the reasons for them

The policy objective of the Bill is to implement stage two public sector legislative reforms arising from the recommendations of an independent review of public sector employment laws by Mr Peter Bridgman, titled *A Fair and Responsive Public Service for All* (the Bridgman Review).

The Government commissioned the Bridgman Review in September 2019, seeking a report and any recommended changes to public sector laws, policies and procedures to ensure the Queensland public sector was fair and responsive, an employer of choice, and a leader in public administration. The review was completed in May 2019 and concluded that there were significant issues in public sector employment laws and practices that required resolution to ensure a fair, responsive and inclusive public sector. The review made 99 recommendations for achieving these objectives.

The Government accepted all recommendations in full or in principle and, on 6 July 2020, endorsed a two-stage approach to implement the recommendations. Stage one legislative reforms were implemented through the passage of the *Public Service and Other Legislation Amendment Act 2020*. This Act amended the *Public Service Act 2008* (PS Act) to, among other things:

- give effect to the Government's commitment to maximise employment security in public sector employment; and
- provide for positive performance management of public sector employees.

The Bill builds upon stage one reforms and implements stage two legislative reforms. In particular, the Bill gives effect to the Bridgman Review's primary recommendation to provide all public sector employees with a modern, simplified and employee-focused legislative framework that can further the Government's commitment to being fair, responsive and a leader in public administration.

To ensure that public sector employment arrangements are cohesive, the Bill amends other Acts that regulate the employment of particular public sector employees. For example, the Bill will amend the *Ambulance Service Act 1991* and *Fire and Emergency Services Act 1990* by removing the statutory disciplinary frameworks in those Acts, allowing the disciplinary framework in the Bill to operate instead.

The Bill also seeks to strengthen the Government's relationship with Aboriginal peoples and Torres Strait Islander peoples. Specifically, it recognises the role of the public sector in supporting the Government to reframe its relationship with Aboriginal peoples and Torres Strait Islander peoples. In fulfilling this role, public sector entities (and certain other entities) must, among other things, recognise the importance of the right to self-determination to Aboriginal peoples and Torres Strait Islander peoples. Chief executives of these entities are responsible for ensuring that their entities fulfil the role.

The Bill also incorporates amendments to implement and complement the recommendations and findings of the independent review of public sector culture and accountability by Professor Peter Coaldrake, titled *Let the sunshine in: Review of culture and accountability in the Queensland Public Sector* (the Coaldrake Report). The Bill will do this by, among other things, strengthening the independence of certain core integrity bodies by excluding them from the Bill's application.

Achievement of policy objectives

To achieve the policy objective, the Bill will repeal the PS Act and introduce a new public sector employment framework.

Key components of the Bill are grounded in recommendations of the Bridgman Review, the Coaldrake Report, advice of the Public Sector Reform Joint Advisory Committee (JAC) (including representatives of public sector unions and senior central agency departmental officers), and government stakeholders, together with approaches taken in other jurisdictions, including New Zealand public service legislation.

The Bill's provisions for supporting a reframed relationship are grounded in the Queensland Government's 2019 Statement of Commitment, which includes commitments to truth-telling, empowerment, agreement-making and high-expectations relationships.

The Statement of Commitment outlines key principles for guiding a reframed relationship between the Queensland Government and Aboriginal peoples and Torres Strait Islander peoples. The Bill's provisions for supporting a reframed relationship have been developed having regarded to the Statement of Commitment principles.

Among other things, the Bill will:

- clearly outline the entities and employees to which it applies, including by defining the public sector and continuing key existing concepts such as the "public service" where relevant;
- support the Government's commitment to reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples (which includes progressing the Path to Treaty agenda, truth-telling and Healing at its core) primarily through recognising the role of public sector entities and other entities in supporting a reframed relationship and legislating a new planning regime for developing the cultural capability of particular entities;
- create a nation-leading framework requiring chief executives of public sector entities, the police service and other entities to take steps to promote equity, diversity, respect and inclusion, and strengthening accountability for and oversight of those requirements;
- reform recruitment and selection processes, including by clarifying how equity and diversity considerations may factor into recruitment and selection decisions;

- establish public sector employment conditions and arrangements, including those in relation to employment security, with universal application to all public sector employees within the scope of the Bill;
- simplify or amalgamate certain existing concepts and arrangements in the PS Act, including rulings and guidelines (replaced by "directives"), work performance arrangements and interchange arrangements (replaced by "mobility arrangements"), and commission reviews and administrative inquiries (replaced by "public sector reviews"); and
- create an integrated public sector governance framework that includes the creation of a Public Sector Governance Council (council) as the central oversight body for whole-of-sector governance and the Public Sector Commission as the central human resources agency.

Consistent with the Coaldrake Report, the Bill will also strengthen the independence of certain core integrity bodies that do not employ public service employees by not including them in scope of the Bill and establishing alternative mechanisms (a regulation-making power) to enable public sector employment arrangements to be applied to their staff.

The above approach is a balanced and appropriate way of meeting the objectives of the Bridgman Review and the Coaldrake Report, as it ensures that all relevant employees have the opportunity to obtain certain benefits and protections of the public sector employment framework, but in a way that does not jeopardise the independence of certain core integrity bodies.

Alternative ways of achieving policy objectives

The Government considers that introduction and passage of the Bill is the best and only method for implementing the Bridgman Review and to achieve the stated policy intent. The Bridgman Review expressly contemplates repealing and replacing the PS Act with a new legislative regime.

Stakeholders broadly supported the extension of employment conditions and arrangements to the broader public sector through the introduction and passage of the Bill.

Estimated cost for government implementation

As a general premise, costs associated with application of conversion rights, directives, or other public sector employment arrangements under the Bill, will be absorbed by the existing resource allocation for each impacted agency or entity.

Consistency with fundamental legislative principles

While the Bill is generally consistent with fundamental legislative principles, potential breaches in relation to whether the Bill has *sufficient regard to the institution of Parliament* have been identified in relation to the Bill provisions which permit the making of regulations and directives.

Potential breaches in relation to whether the Bill has *sufficient regard to the rights and liberties of individuals* may be raised for the following matters:

- suitability of the employment framework, including criminal history check and disclosure requirements; and
- exemption from consideration of procedural fairness where an employee is suspended from work with pay.

Sufficient regard to the institution of Parliament

Directives

The Bill models its directive making powers on existing PS Act arrangements by empowering the Public Sector Commissioner (commissioner) and the industrial relations Minister (IR Minister) to make directives for public service employees and extends these arrangements to public sector employees. Directives are binding statutory instruments but are not subordinate legislation.

In accordance with section 4(4)(a) of the *Legislative Standards Act 1992* (LS Act), a Bill may demonstrate it has sufficient regard for Parliament if it "allows the delegation of legislative power only in appropriate cases and to appropriate persons".

The Bill permits:

- the IR Minister to make directives about the overall employment conditions of public sector employees, excluding public service officers remunerated at rates at least that of a senior officer, equivalently remunerated fixed term contract public service employees, and public sector executives; and
- the commissioner to make directives about the overall employment conditions of non-industrial instrument employees, including public sector executives and public service officers and fixed term contract public service employees remunerated at rates at least that of a senior public service officer.

The commissioner also has a broad power to make directives about a range of matters included in the Bill, including in relation to the functions of the commissioner and the Public Sector Commission and the ways in which the main purpose of the proposed Act is to be primarily achieved. In addition, the Bill highlights specific matters that the commissioner may or must make a directive about.

It is considered that the powers and responsibilities of the IR Minister and commissioner make them highly suitable to make directives about permitted matters.

The inclusion of directive making provisions is justified on the basis that the empowering provisions are not designed to erode legislated protections. Rather, matters to be included in directives are aimed at facilitating the application of arrangements contained in the proposed Act or supporting administrative flexibility of legislated provisions.

The Bill's interaction clauses, which provide that legislation (including subordinate legislation) and industrial instruments prevail over a directive to the extent of any inconsistency, provide a safety net against a directive usurping legislated arrangements and other statutory entitlements.

The Bill's consultation requirements for the making of directives, including that failure to consult or to make reasonable attempts to consult with affected parties has the potential to invalidate a directive, protect employee rights included in the primary legislation and promote transparency. Similarly, the legislative requirement to publish directives on relevant government websites ensures sufficient transparency and accountability is achieved.

Consistent with fundamental legislative principles, the above safeguards ensure delegated legislative power, through the use of directives, is only permitted in appropriate cases.

The Bill imports an existing PS Act arrangement, which permits the commissioner to make a directive about action a chief executive may take, including termination of employment, where an entity has surplus staff, and applies this arrangement to the public sector.

The ability to alter the Bill's statutory power in relation to treatment of surplus employees, through a directive, may be regarded as a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament. However, it is noted that the primary legislation permits termination of employment and the ability to apply a directive is intended to afford greater opportunities to develop alternatives to termination or impose additional conditions where termination is necessary.

It is also noted that this specific directive making provision includes an additional safeguard which requires chief executives to act in a way that is compatible with the main purpose of the Act and how the main purpose is primarily achieved, which includes the objective of "*maximising employment security and permanency of employment*".

In addition to the justifications that apply specifically in relation to the creation of a directive to deal with surplus employees, the aforementioned arguments regarding the suitability of the commissioner to make a directive and the consultation and publication requirements further justify the delegation of this legislative power to a directive.

Regulation

The current PS Act and the *Public Service Regulation 2018* (PS Regulation) permit the application of certain Act provisions, including with modification, to prescribed entities (declared public service offices).

Consistent with this approach, the Bill specifically calls out certain Bill provisions which will not apply sector-wide such as secondment and transfer or redeployment, that may be applied to other public sector employees employed in public sector entities prescribed by regulation. Relevant regulation making powers permit the application of Act provisions, with modification, to public sector entities. The ability to modify Act arrangements recognises that establishing legislation which applies to certain public sector entities may contain unique arrangements and modification of the proposed Act arrangements may be necessary so that the Act's arrangements can be appropriately applied to a particular entity.

The inclusion of regulation making powers which will facilitate the retention of existing arrangements is necessary to ensure that the enactment of new legislation does not result in a diminution of current standards.

The Bill also includes a regulation making power to permit access to appeal arrangements, including with modification, for transfer decisions for employees of a public sector entity. This regulation making power is necessary to maintain a current arrangement included in the PS Regulation which permits appeal arrangements to be applied with modification to certain public sector entities. Without the ability to apply this arrangement with modification, these employees have no access to corresponding appeal rights. It is therefore argued that importing this arrangement into new legislation seeks to preserve an existing right rather than diminish it, and as such demonstrates sufficient regard for the rights and liberties of individuals.

Permitting the modification of primary legislation through subordinate legislation may give rise to concerns that the Bill does not have sufficient regard to the institution of Parliament under section 4(4) of the LS Act. However, it is noted that any regulation made under this provision will be subject to the fundamental legislative principles that apply to the making of subordinate legislation at section 4(5) of the LS Act. It is also noted that when a regulation is made under the Act, the regulation will be subject to further scrutiny to ensure compliance with the fundamental legislative principle that applies to the making of subordinate legislation.

The Bill permits the making of regulations to include information or other measures which is in addition to that included in primary legislation. For instance, the Bill sets out matters that must be included in an entity's equity and diversity plan and permits the inclusion of any other measure prescribed by regulation. This regulation making power anticipates that additional information, such as matters considered to be too detailed to be appropriate for primary legislation or matters that may become known at a later date, may be prescribed by regulation. This regulation making power is consistent with section 4(5) of the LS Act in that the power to make subordinate legislation will exist in an Act and that the matters to be included in the regulation are consistent with the policy objectives of the authorising law.

Sufficient regard to rights and liberties of individuals

Suitability of employment framework

The Bill retains and extends to the public sector the existing public service suitability of employment framework, comprising:

- employment screening, including arrangements which apply to the performance of child related duties; and
- arrangements for disclosure of criminal history and disciplinary action.

While this framework may give rise to concerns that the legislation does not have sufficient regard to the rights and liberties of individuals in accordance with section 4(2)(a) of the LS Act, it is considered that criminal history checks and required disclosures are justified as they are aimed at reducing risks to users of services provided by the public sector.

The suitability framework is further justified on the basis that it responds to the trust the community places in the public sector, including community expectations that the public sector will employ "fit and proper" persons.

Exemption from consideration of procedural fairness where an employee is suspended from work with pay

The Bill does not require adherence to procedural fairness where an employee is suspended with normal remuneration, either on disciplinary or non-disciplinary grounds. This position is justified as the employee retains the benefit of receiving remuneration. Other arrangements included under the suspension provision aimed at protecting the rights and liberties of an employee who is suspended from duty with normal remuneration include:

- that an employee's continuity of service is taken not to be broken because of the suspension;
- before suspending an employee, the employee's chief executive must consider all reasonable alternatives available to the employee such as the employee performing alternative duties; and
- the employer must provide the employee with a notice advising of the dates of the suspension and other matters relevant such as the effect that alternative employment the employee may engage in while suspended will have on the employee's entitlement to remuneration.

Summary dismissal and other ending of employment

The Bill includes an express provision to clarify that the Act does not limit or affect a common law right to terminate an employee's employment, including summarily, or prevent an employee's employment contract from ending by operation of law.

The Bill includes an example of:

- a common law right to summarily terminate an employee's employment, if the employee engages in serious misconduct, including if the conduct of the employee causes a serious and imminent risk to the reputation of the public sector entity in which the employee is employed;
- a common law right to terminate an employee's employment, being where an employee has repudiated an employment contract, for example where the employee has abandoned their employment; and
- when an employment contract may end by operation of law, being where an employee's employment contract is bought to an end where the employee is imprisoned due to the common law principle of frustration.

The provision further clarifies that nothing in this provision is intended to derogate from the State's contractual rights as an employer under the common law.

It is noted that the proposed arrangement has the potential to increase the likelihood that common law principles relating to ending employment contracts (including for abandonment and imprisonment) are preserved and this may strengthen an agency's ability to rely on the common law in particular circumstances.

It is also noted that through the proposed arrangement an employer may consider an employment contract is frustrated (automatically terminating by operation of law) if an employee is imprisoned and cannot attend work for a significant period. In these cases, unfair dismissal is most likely unavailable as there is no "decision" of the employer.

While the proposed amendments may lead to concerns over whether the provision has sufficient regard to the rights and liberties of an individual, it may be argued that certain

common law protections, including in relation to frustration of employment, already exist although they are not specially referenced in current legislation. In these instances, the proposed provisions clarify certain arrangements rather than diminish existing rights and/or liberties.

The provision is also justified on the basis that employee protections may be available under the *Industrial Relations Act 2016* (IR Act), including through the unfair dismissal regime.

Consultation

Regular and ongoing consultation was undertaken with key union representatives through a Joint Advisory Committee (JAC) process established by the Government to obtain advice and feedback about the Bill's development. JAC members included Together Queensland, Queensland Council of Unions, Queensland Teachers Union, United Firefighters' Union Queensland, Queensland Nurses & Midwives' Union, United Workers Union, and the Australian Workers' Union.

To facilitate informed feedback, JAC members were provided with drafts of the Bill (including an Initial Exposure Draft in April 2022 and a Further Exposure Draft in July 2022), explanatory papers accompanying the Initial Exposure Draft and discussion papers on specific policy issues and drafting options. JAC members participated in workshops conducted by the Department of the Premier and Cabinet throughout April and May 2022, as well as fortnightly JAC meetings to assist development of the Bill.

Feedback from JAC members included that the Bill should:

- impose positively-framed, action-based responsibilities on chief executives to promote equity, diversity, respect and inclusion in the public sector, including in relation to matters of gender pay equity;
- build equity and diversity considerations into recruitment and selection provisions;
- appropriately balance work performance and personal conduct principles applicable to public sector employees against positively-framed responsibilities for public sector managers and chief executives;
- strengthen employment security and maximise permanency of public sector employment; and
- avoid regulating, through a specific statutory regime, the end of employment in cases where the employment is abandoned or the employment contract is frustrated due to an employee's imprisonment.

The Queensland Teachers Union consulted members of their Rainbow Action Group, comprised of LGBTIQ+ members and their allies, in relation to the development of the Bill's equity and diversity requirements. This group was predominantly comprised of employees of the Department of Education and TAFE Queensland.

In January and February 2022, targeted Aboriginal and Torres Strait Islander stakeholders, including community representatives from the Local Thriving Communities Joint Coordinating Committee, Yarrabah Leaders Forum, the Public Service Commission First Nations Leaders Group and the Business Innovation Reference Group, were consulted on how the Bill should support the State to reframe its relationship with Aboriginal peoples and Torres Strait Islander peoples. These stakeholders broadly supported the inclusion of principles for a reframed

relationship in the preliminary chapter of the Bill, and strongly advocated for accountability and governance mechanisms.

A consultation draft of the Bill was released in April 2022, along with accompanying papers, which sought the views of Aboriginal and Torres Strait Islander stakeholders previously consulted, and the Queensland Aboriginal and Torres Strait Islander Coalition, on the proposed principles for a reframed relationship, key terms, and accountability and governance arrangements. Relevant statutory authorities, government departments, community groups, peak organisations and highly regarded community leaders and advocates were consulted. Stakeholders were generally supportive of the Bill but recommended the application of separate definitions of "cultural capability" in recognition of the unique historical issues facing Aboriginal peoples and Torres Strait Islander peoples in Queensland, which has been incorporated into the Bill. Stakeholders also supported strengthened principles to better promote human rights and recognition of Aboriginal peoples and Torres Strait Islander peoples as the First Australians, as well as stronger accountability provisions. Stakeholder feedback has been largely incorporated in the Bill. In September 2022, the same Aboriginal stakeholders and Torres Strait Islander stakeholders were further consulted and supported the reframed relationship provisions of the Bill.

All government departments were consulted on the development of the Bill. Departments and other agencies were consulted through information sessions in April and May 2022 and ongoing targeted engagement as required. Line agencies were responsible for ensuring relevant portfolio entities were consulted.

The Bill reflects and balances feedback from stakeholders, while also giving full effect to the Government's policy objectives.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and the extent to which it is uniform with or complementary to legislation of the Commonwealth or another State is not relevant in this context.

However, approaches in other jurisdictions, including in New Zealand public service legislation, were taken into consideration in the development of the Bill. The Bill was informed by an analysis of approaches to other public employment legislation across Australia. South Australia, New South Wales, Victoria and the Australian Capital Territory have adopted similar approaches in adopting singular Acts that provide a legislative basis for employment in the broad public or government sector and administration of the core public service.

With regard to the Bill's provisions for supporting a reframed relationship, the New Zealand *Public Service Act 2010* (the NZ Act) explicitly recognises the role of the New Zealand-public service to support the Crown in its relationships with Māori under Te Tiriti o Waitangi/the Treaty of Waitangi, and places responsibilities on public service leaders to develop and maintain cultural capability and understanding of Māori perspectives. Similarly, this Bill places responsibilities on chief executives to support a reframed relationship between Aboriginal peoples and Torres Strait Islander peoples and the State. This regime is the first of its kind within Australian public sector legislation.

The NZ Act also informed the Bill's holistic approach to recruitment and selection. In accordance with the Bridgman Review, the Bill retains the primacy of merit, while reconciling this with the role that recruitment and selection plays in supporting equity, diversity, respect and inclusion in public sector employment. The Bill achieves this by recognising that recruitment and selection in the public sector is focused towards selecting the person best suited to the position, which is informed by the NZ Act approach.

Notes on provisions

Chapter 1 Preliminary

Part 1 Introduction

Clause 1 provides the Act may be cited as the *Public Sector Act 2022* (Public Sector Act).

Clause 2 provides for the commencement of the Act.

Clause 3 provides for the main purpose of the Act. Key themes incorporated in the main purpose include:

- the role of the public sector in serving the people of Queensland and the State;
- the importance of ensuring an integrated public sector where entities work together, where appropriate, to achieve a superior output with the best use of resources; and
- the importance of fairness, including in the employment relationship.

Clause 4 provides guidance on the way in which the main purpose of the Act is to be achieved.

Clause 4 reflects the three core parties in the public sector employment relationship being:

- public sector employees including public sector managers;
- the Government; and
- the public, that is, the community.

Clause 4 also recognises the public sector's role in reframing the Queensland Government's relationship with Aboriginal peoples and Torres Strait Islander peoples including by recognising the importance of self-determination and actively promoting perspectives of Aboriginal peoples and Torres Strait Islander peoples.

Measures aimed at achieving the main purpose of the Act are categorised under the following four priority areas:

- ensuring the public sector is responsive to the community it serves;
- creating a public sector aimed at supporting and recognising the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination;
- creating a public sector that ensures fairness in the employment relationship and fair treatment of its employees;
- establishing a high-performing, apolitical public sector through effective stewardship.

Clause 5 clarifies that another Act or regulation may:

- apply particular provisions of the Bill to an entity that is not a public sector entity or to the chief executive or employees of that entity; or
- provide for the way in which such provisions are to apply, including, for example, that they apply with or without change.

The clause defines the "chief executive" of an entity as including the individual responsible for the day-to-day management of the entity or the entity's affairs, whether or not the individual is subject to the direction of, or reports to, a governing body of the entity.

Part 2 Interpretation

Division 1 Dictionary

Clause 6 states that the dictionary in schedule 2 defines particular words used in the Act.

Division 2 Key terms

Division 2 defines key terms used in the Bill.

Clause 7 defines the "public sector" as the sector that consists of public sector entities and public sector employees who are employed in public sector entities.

Clause 8 defines a "public sector entity" as:
- a public service entity;
- an entity, other than a public service entity, prescribed by regulation as a public sector entity;
- a registry or other administrative office of a court or tribunal of the State; or
- an agency, authority, commission, corporation, instrumentality, office, or other entity, other than an entity mentioned above, established under an Act for a public or State purpose.

The term "public sector entity" is broad and is intended to capture all forms of entities established under an Act for a public or State purpose. This extends to, for example, many statutory offices, boards, committees, councils, bodies and groups. However, the term does not capture statutory offices held by individuals.

The Bill abandons the concept of a "public service office" under the PS Act. Instead, these entities, as well as existing departments, are captured as public sector entities. For example, each of the following entities will be a public sector entity under the Bill:
- the Department of Education;
- Queensland Health;
- a hospital and health service established under the *Hospital and Health Boards Act 2011* (HHB Act).

Subclause (2) excludes particular entities from the definition of "public sector entity". These entities are:
- a local government;
- a corporation owned by a local government, or a subsidiary of a corporation owned by a local government;
- the parliamentary service established under the *Parliamentary Service Act 1988*;
- the Governor's official residence and its associated administrative unit;
- the Executive Council;
- the Legislative Assembly;
- a court of the State;
- the police service to the extent that it does not include staff members mentioned in the *Police Service Administration Act 1990*, section 2.5(1)(a) or 2.5(1)(b)(ii);
- a community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and other Matters) Act 1984*;

- a school council established under the *Education (General Provisions) Act 2006*;
- a parents and citizens association formed under the *Education (General Provisions) Act* 2006, chapter 7;
- a university established under an Act;
- a co-operative under the Co-operatives National Law (Queensland) for primary producers that is not in receipt of moneys of, or financial assistance from, the State;
- an association incorporated under the *Associations Incorporation Act 1981*;
- a government owned corporation, unless a regulation prescribes it to be a public sector entity;
- a national system employer within the meaning of the *Fair Work Act 2009* (Cwlth), section 14, including a national system employer mentioned in section 30N of that Act;
- the council established under clause 240 of the Bill;
- a taskforce established under clause 195 of the Bill;
- another entity prescribed by another Act not to be a public sector entity;
- another entity, or part of another entity, prescribed by regulation not to be a public sector entity.

The exclusions in subclause (2) recognise that the Bill should not apply to some entities because of the special nature or function of those entities, or the statutory context in which they are established or operate. For example, the Bill does not apply to incorporated associations under the *Associations Incorporation Act 1981* because these are not-for-profit entities whose activities often benefit the community.

However, another Act may apply particular provisions of the Act to the entities mentioned in subclause (2) and their chief executive even though they are not public sector entities (see notes above in relation to clause 5).

Subclause (3) clarifies that entities that are part of a department are not a separate public sector entity. This means, for example, that Queensland Ambulance Service is not a distinct public sector entity because it is part of Queensland Health.

Subclause (4) clarifies that a "court" includes a court of record. This ensures that tribunals and commissions established as courts of record are excluded from the definition of "public sector entity". For example, neither the Queensland Civil and Administrative Tribunal nor the Queensland Industrial Relations Commission is a public sector entity. However, the registries of these entities are public sector entities (see clause 8(1)(c)).

Clause 9 defines a "public service entity" as a department or an entity mentioned in schedule 1. This is a new defined term which captures the various types of public sector entities that employ or otherwise have public service employees. The first category of entity consists of departments of government as defined in clause 10 (see below). The second category of entity consists of entities that are currently public service offices mentioned in schedule 1 of the PS Act. The new definition enables the Bill to clearly distinguish provisions that apply only to entities that have public service employees (i.e. public service entities), from provisions that apply to all public sector entities.

Clause 10 defines a "department" as a department of government declared under clause 197. This is consistent with the existing meaning of the term "department" under the PS Act. However, unlike the PS Act, references to "department" in the Bill are limited departments of

government and do not apply to existing public service offices under the PS Act. These entities will instead by captured by the other limbs of the definition of "public sector entity".

Clause 11 provides that the "public service" consists of persons employed under chapter 4 or 5 in departments or other public service entities. This definition is consistent with the existing meaning of "public service" in the PS Act.

Clause 12 defines a "public sector employee" as a public service employee or a person employed under another Act or law in a public sector entity. In essence, and subject to some exceptions, the term captures any individual who is employed under the Act or another Act or law in a public sector entity. Importantly, although all public service employees are public sector employees, not all public sector employees are public service employees.

Subclause (2) excludes particular individuals from the definition of "public sector employee", subject to subclause (3). These include individuals who have been historically excluded from the ambit of public service legislation and other individuals who are not intended to be captured by the Bill, such as:

- persons appointed to an office if the salary of the office is provided for, or calculated in accordance with a salary provided for, under the *Judicial Remuneration Act 2007*, the *District Court of Queensland Act 1967* or the *Magistrates Act 1991*.
- members of boards;
- chief executives appointed by a board; and
- persons employed under a law of a jurisdiction outside Australia.

The subclause allows another Act or regulation to exclude additional persons from the definition.

Subclause (3) provides that, despite subsection (2), a person is a public sector employee if:

- they are appointed as the chief executive of a department, the Public Sector Commissioner or a special commissioner; or
- another Act provides they are to be, may be, or are employed or appointed under the Act.

The effect of the subclause is that these individuals are public sector employees even though they are otherwise caught by an exclusion in subclause (2). In particular, subclause (3)(b) is intended to ensure that the exclusions in clause 12(2) do not undermine the operation of Acts that provide for the employment or appointment of an individual mentioned in clause 12(2) under the PS Act (and in turn, this Act). This means, for example, that an individual who is appointed to an office by the Governor in Council is capable of being a public sector employee despite clause 12(2)(a)(ii). Subclause (3)(b) ensures that an individual is always a public sector employee if an Act states they are or may employed under this Act.

Subclause (4) provides that public sector employees are generally employees for the IR Act. However, subclause (5) makes clear that this does not limit or affect clause 141, which provides that particular matters are not industrial matters for the IR Act.

Clause 13 defines a "public service employee" as a person employed under chapter 4 or 5 in public service entity as:

- a general employee;
- a fixed term temporary employee;

- a casual employee;
- an officer;
- a senior officer;
- a senior executive; or
- a chief executive.

The clause clarifies that the commissioner and each special commissioner is also a public service employee.

The definition in clause 13 is consistent with the existing definition of "public service employee" in the PS Act. The clause recognises that public service employees are employed not only in departments but also other public service entities.

Clause 14 defines a "public service officer" as an officer, senior officer, senior executive or chief executive, and the Public Sector Commissioner and each special commissioner. This definition maintains the existing definition of "public service employee" in the PS Act, whilst providing clarity about the nature of the Public Sector Commissioner and special commissioner roles.

Clause 15 provides an overview of a public sector employee's conditions of employment. The provision is intended to assist readers in understanding the various sources that may govern a public sector employee's employment. The sources listed are not exhaustive and may also include, for example, organisational policies and procedures incorporated into the contract of employment. Subclause (3) clarifies that a public sector employee's conditions of employment may be affected by other Acts, including, for example, the *Human Rights Act 2019*.

Clause 16 explains the meaning of the term "chief executive" when used in relation to a public sector entity. The clause defines the term differently depending on whether the public sector entity is a department, a public service entity mentioned in schedule 1 or another public sector entity. Relevantly:

- the chief executive of a department is the individual appointed under the Bill as the chief executive of the department (see notes below in relation to chapter 5 of the Bill);
- the chief executive of a public service entity mentioned in schedule 1 is the head of the entity (mentioned in schedule 1); and
- the chief executive of another public sector entity is either the individual prescribed by a regulation (subclause (c)(i)), or otherwise, the individual responsible for the day-to-day management of the entity or the entity's affairs, whether or not the individual is subject to the direction of, or reports to, a governing body of the entity (subclause (c)(ii)).

Subclause (c) seeks to identify the individual within the relevant public sector entity that performs functions most similar to a departmental chief executive, in circumstances where governance and leadership structures across the public sector vary widely. It is anticipated that the definition in subclause (c)(ii) will capture most of these individuals. However, the regulation-making mechanism in subclause (c)(i) may be relied upon where the application of subclause (c)(ii) would lead to an ambiguous result or misidentify the relevant chief executive.

Clause 17 explains the meaning of the term "chief executive" when used in relation to a public sector employee. The clause defines the term differently depending on whether the public sector employee is a public service employee or another public sector employee. For a public

service employee, the chief executive is generally the chief executive of the public service entity in which the employee is employed as a public service employee. This reflects the fact that a public service employee will always be employed in a public service entity. For a public sector employee, other than a public service employee, the chief executive is the chief executive of the public sector entity in which the employee is employed as a public sector employee.

Subclause (2) provides an exception to the general rule above for determining the chief executive of public service employees of public service entities mentioned in schedule 1. This maintains existing arrangements under schedule 1 of the PS Act by providing that the chief executive of such employees is the head of the relevant entity, as mentioned in schedule 1.

To provide certainty in the Queensland health system context, subclause (3) specifies the chief executive for particular health service employees, health executives and senior health service employees in accordance with who is the relevant chief executive for employees under the HHB Act.

The use of separate definitions of "chief executive" in clause 16 and clause 17 reflects the differing contexts in which the term is used throughout the Bill. The definition in clause 16 is intended to identify the chief executive for provisions that refer to the "chief executive of a public sector entity" and similar. The definition in clause 17 is intended to identify the chief executive for provisions that refer to "a public sector employee's chief executive" and similar.

Clause 18 explains the relationship between chief executives and public service or public sector employees. Subclause (1) states that the chief executive of a department is, for the State, responsible for the employment of public service employees of that department. Subclause (2) states that public service employees of a department are responsible to that department's chief executive in relation their employment. Similar provisions apply to chief executives and employees of public sector entities other than departments. These provisions are intended to clarify that chief executives are not the legal employer of public sector employees, but instead exercise employment functions either for the State (where their entity constitutes the "State"), or otherwise, for their public sector entity (where the entity is distinct legal person).

Part 3 Reframing of State's relationship with Aboriginal peoples and Torres Strait Islander peoples

Division 1 Purpose of part

Part 3 introduces a new framework to give effect to the State's commitment to reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples.

Clause 19 outlines the purpose of the part, which is to ensure particular entities (namely, "reframing entities") support the State Government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples, and to develop the cultural capability of certain of those entities (namely, "prescribed entities"). Generally, the purpose is to be achieved by ensuring reframing entities take active steps to recognise the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination and to foster a culturally capable workforce and culturally safe workplace by developing the cultural capability of the entities.

Clause 20 defines the terms "cultural capability" and "reframing entity" for the part.

"Cultural capability", of an entity, is defined as the integration of knowledge about the experiences and aspirations of Aboriginal peoples and Torres Strait Islander peoples into the entity's workplace standards, policies, practices and attitudes to produce improved outcomes for Aboriginal peoples and Torres Strait Islander peoples.

Cultural capability and cultural safety are steps on a continuum towards the aspirational goals of "cultural competence" and "cultural security" respectively. Given the current status quo in Queensland's public sector, the Bill establishes a baseline for reframing entities to achieve cultural capability and therefore cultural capability has been defined. Other terms have intentionally not been defined, however as reframing entities mature on the journey to cultural competence and cultural security, there may be further opportunities to characterise these concepts as part of the entity's operational workplace standards, policies, and practices.

A "reframing entity" is defined as a public sector entity, the police service, an entity prescribed by another Act, or an entity prescribed by regulation.

Division 2 Responsibilities

Clause 21 outlines matters for supporting the State government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples. Subclause (1) acknowledges that reframing entities, as providers of public services to the people of Queensland, have a unique role in supporting the State government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples. Subclause (2) outlines how reframing entities fulfill this role, stating that they do so by:

- recognising and honouring Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland;
- engaging in truth-telling about the shared history of all Australians;
- recognising the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination;
- promoting cultural safety and cultural capability at all levels of the public sector;
- working in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them;
- ensuring the workforce and leadership of the entities are reflective of the community they serve, having regard to chapter 2 (Equity diversity, respect and inclusion) and chapter 3, part 3 (Recruitment and selection);
- promoting a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples; and
- supporting the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.

Subclause (2)(a) acknowledges that a key step toward reframing the relationship is recognising and honouring Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland.

Subclause (2)(b) acknowledges that truth-telling is a critical step to enable healing in response to the acts of violence, assimilation and cultural destruction committed against Aboriginal

peoples and Torres Strait Islander peoples. Truth-telling also provides an opportunity for Aboriginal peoples and Torres Strait Islander peoples to share their identity and cultural heritage, kinship ties and connection to Aboriginal tradition or Island custom.

Subclause (2)(c) acknowledges that recognition of the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination is a key step toward reframing the relationship.

Subclause (2)(d) recognises that promoting cultural safety and capability should occur at all levels of the public sector, including in leadership roles.

Subclause (2)(e) seeks to promote greater accountability by actively promoting, including and acting consistently with the perspectives of Aboriginal peoples and Torres Strait Islander peoples.

Subclause (2)(f) recognises that the delivery of culturally responsive services requires a public sector workforce and leadership that reflects the communities that reframing entities serve.

Subclause (2)(g) recognises the need to promote a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples.

Subclause (2)(h) acknowledges the need to recognise the aims, aspirations and employment requirements of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in all aspects of the public sector.

Subclause (3) provides that the chief executive of a reframing entity is responsible for ensuring the entity fulfils its role in supporting a reframed relationship. This ensures that there is accountability for each reframing entity achieving its role.

Subclause (4) clarifies that:
- an act or decision is not invalid merely because a person fails to comply with clause 21; and
- nothing in clause 21 creates in any person a legal right or gives rise to a civil cause of action.

Division 3 Plan and audit

Division 3 introduces a statutory planning framework for developing the cultural capability of particular public sector entities and other entities (namely, prescribed entities).

Clause 22 defines a "prescribed entity", for division 3, as a department, a hospital and health service established under the HHB Act section 17, the police service, an entity prescribed by another Act, or an entity prescribed by regulation.

Clause 23 requires the chief executive of a prescribed entity, as part of the entity's workforce planning, to make a "reframing the relationship plan". The plan must be informed by clause 21 and must identify measures for developing the cultural capability of the entity when:
- providing advice to the State government; and
- delivering services to the community.

The requirement that plans be made as part of entity workforce planning is intended to ensure that such plans are entity-specific and are developed having regard to the circumstances, functions and objectives of the particular entity. The intent is that no two plans should necessarily be the same.

Subclause (2) states the reframing the relationship plan must be published on the prescribed entity's website or, if the entity does not have a website, in another publicly available way the chief executive of the entity considers appropriate.

Subclause (3) states that, as soon as practicable after the end of each financial year, the chief executive of the entity must conduct an audit of the entity's performance as measured against the reframing the relationship plan.

Subclause (4) states that the chief executive of a prescribed entity:
- must review the reframing the relationship plan annually;
- may amend the plan at any time; and
- is responsible for the implementation and outcomes of the plan.

The power to amend the plan at any time may be exercised, for example, to address matters arising from an audit under subclause (3) or a review under subclause (4)(a).

The requirements in clause 23 are directed toward developing a prescribed entity's cultural capability for outward purposes, i.e. in the provision of advice to the State government and the delivery of services to the community. Practically, however, achievement of this outcome is likely to require the development of the entity's internal cultural capability, including in relation to any Aboriginal peoples and Torres Strait Islander peoples in the entity's workforce.

Unlike division 2, the planning requirements in division 3 only apply to a subset of the public sector (namely, prescribed entities). This is to ensure that such requirements are limited to entities that have the appropriate resources, support structures and operational capabilities to meaningfully discharge the requirements.

Chapter 2 Equity, diversity, respect and inclusion

Part 1 Preliminary

Chapter 2 requires chief executives of prescribed entities to take various actions to promote equity, diversity, respect and inclusion in the public sector, in the police service and in any other prescribed entities for this purpose.

Clause 24 outlines the purpose of the chapter.

Clause 25 defines particular words and phrases used in the chapter.

A key term used throughout chapter is "diversity target group". This term is consistent with the "EEO target group" in the PS Act. The term is intended to have the same meaning as "EEO target group", although has been amended to reflect contemporary terminology. An additional group may also be prescribed by regulation as a diversity target group.

Another key term used throughout the chapter is "prescribed entity". This is defined to mean:
- a public sector entity;
- the police service;
- an entity prescribed by another Act; or
- an entity prescribed by regulation.

The term "prescribed entity" is slightly narrower than the corresponding term "EEO entity" in the PS Act. This is because a prescribed entity includes a public sector entity instead of a "government entity". In practice, the reduction in scope is anticipated to be negligible, and will ensure the consistent application of the Bill's provisions. Acts that currently prescribe an entity to be an EEO entity, such as the *Government Owned Corporations Act 1993*, will continue to operate in that way following consequential amendments.

Clause 26 provides that the chapter applies in relation to a prescribed entity only to the extent the prescribed entity has employees.

Part 2 Equity and diversity in employment

Part 2 of the chapter outlines the duties and obligations of chief executives in promoting equity and diversity in prescribed entities. These requirements build on and strengthen the existing equality and equal opportunity (EEO) requirements in the PS Act.

Clause 27 imposes an overarching duty on the chief executive of a prescribed entity to take reasonable action to:
- promote, support and progress equity and diversity in the entity in relation to employment matters;
- ensure people who are members of one or more diversity target groups are able to pursue careers, and compete for recruitment, selection and promotion opportunities, in the entity; and
- eliminate unlawful discrimination in the entity in relation to employment matters.

Clause 28 supports the overarching duty in clause 27 by creating a new, three-step equity and diversity planning framework. In general terms, the framework requires chief executives of prescribed entities to:
- make an equity and diversity plan for the entity;
- conduct equity and diversity audits; and
- prepare equity and diversity reports.

The requirements to plan, audit and report are ongoing and interconnected. Specifically, it is envisaged that equity and diversity audits and reports will inform the entity's equity and diversity plan, which will in turn be the subject of subsequent equity and diversity audits and reports. The intent is to create an ongoing program of planning, verification and evaluation within each prescribed entity to improve equity and diversity in employment matters. The following paragraphs explain the operation of this framework in greater detail.

Subclause (1) states that a chief executive of a prescribed entity must, as part of the entity's workforce planning, make a document (an equity and diversity plan) that identifies measures for improving equity and diversity in the entity in relation to employment matters.

Subclause (2) expands upon clause (1) by non-exhaustively outlining the measures an equity and diversity plan must identify. Specifically, the plan must identify measures including the establishment of objectives, strategies and targets for the employment of people who are members of one or more diversity target groups, as well as any other measures prescribed by regulation. The reference to members of "1 or more diversity target groups" acknowledges the concept of intersectionality, and in particular, that people may belong to multiple diversity target groups and may experience different or compounded disadvantage because of this.

Subclause (3) requires a prescribed entity's equity and diversity plan to be published on the entity's website or, if there is no such website, in another publicly available way the entity's chief executive considers appropriate.

Subclauses (4)(a) and (4)(b) make provision for the review and amendment of equity and diversity plans. Specifically, the chief executive must review their entity's plan annually, and may amend the plan at any time (whether or not as part of the annual review), having regard to the entity's most recent equity and diversity audit and report. Subclause (4)(c) clarifies that the chief executive is responsible for the implementation and outcomes of the plan.

Subclause (5) clarifies that an equity and diversity plan may address matters about a group of employees that is not a diversity target group. This recognises that there may be other groups of people, other than members of diversity target groups, that would benefit from improvements in equity and diversity in employment matters. People with diverse sexual orientations, gender identities or intersex variations are cited as a non-exhaustive example of such a group, to signal that equity and diversity plans may address matters affecting LGBTIQ+ people (or particular groups within the broader LGBTIQ+ cohort). Ultimately, whether an entity's equity and diversity plan contains measures for these groups (and if so, the specific group or groups included) is a matter for the entity's chief executive. In practice, however, it is intended that these decisions will be informed by the entity's circumstances as well as equity and diversity audits and reports.

Clause 29 contains requirements for chief executives of prescribed entities to conduct an equity and diversity audit and make an equity and diversity report. Each year, a chief executive must conduct an audit (an equity and diversity audit) to gather information about the composition of their entity's workforce, analyse performance against any previous equity and diversity plan, and identify and analyse opportunities to promote, support and progress equity and diversity in the entity. In planning for and conducting an audit, the chief executive must consider clause 24, clause 27 and clause 28. It is intended that consideration of these provisions will assist the chief executive in designing each audit, including in identifying the matters that will be audited.

As soon as practicable after completing the audit, the chief executive must prepare a report about the information gathered in the audit (an equity and diversity report). If the commissioner or chapter 2 special commissioner asks the chief executive for a copy of the equity and diversity report, the chief executive must comply with the request.

Clause 30 empowers the commissioner or chapter 2 special commissioner to request particular information from chief executives of prescribed entities in relation to their compliance with part 2.

Clause 31 empowers the commissioner or chapter 2 special commissioner to make particular recommendations to chief executives of prescribed entities in relation to their compliance with

the obligation under clause 28(1) to make an equity and diversity plan. The power to make recommendations builds upon the Public Service Commission chief executive's existing power to make recommendations under sections 33 and 34 of the PS Act.

These powers collectively enable the commissioner or chapter 2 special commissioner to oversee chief executives' compliance with part 2. The extension of such powers to the chapter 2 special commissioner reflects the expanded role of special commissioners in the Bill (see notes for chapter 6). While the powers are available to either person, it is envisaged that practical responsibility for exercising the powers will primarily fall to the chapter 2 special commissioner in the first instance, and to the commissioner where no chapter 2 special commissioner exists.

Part 3 Culture of respect and inclusion in the public sector

Part 3 of the chapter outlines the duties and obligations of chief executives for promoting and supporting a culture of respect and inclusion in prescribed entities. This is a new part with no equivalent in the PS Act.

Clause 32 defines a "culture of respect and inclusion" in relation to a prescribed entity's workplace as including a culture where:

- all employees feel safe in the workplace;
- the experiences and perspectives of members of diversity target groups, and other groups of employees that are not diversity target groups, are invited and respected;
- a culture of belonging is fostered in the entity's workforce;
- employees in the entity are supported to work together to improve performance and wellbeing of all employees; and
- employees in the entity possess the skills and knowledge, and have access to the systems, necessary to engage in employment matters in a respectful, appropriate and safe way.

Like other provisions in the chapter, clause 32 cites people with diverse sexual orientations, gender identities or intersex variations as a non-exhaustive example of a group of employees that is not a diversity target group. The intent is to make clear that a culture of respect and inclusion includes a workplace culture where the experiences and perspectives of people such as members of the LGBTIQ+ community are invited and respected.

Clause 33 provides that the chief executive of a prescribed entity is responsible for promoting and supporting a culture of respect and inclusion in the entity's workplace. Without limiting that responsibility, the chief executive must ensure the entity's training programs, policies and practices specifically promote and support a culture of respect and inclusion. The clause clarifies that a prescribed entity's equity and diversity plan may outline measures for fulfilling these requirements. For example, an entity's equity and diversity plan may contain measures for promoting a culture in which the experiences and perspectives of people with diverse sexual orientations, gender identities or intersex variations are invited and respected.

Clause 34 empowers the commissioner or chapter 2 special commissioner to request particular information from chief executives of prescribed entities in relation to their compliance with clause 33.

Clause 35 empowers the commissioner or chapter 2 special commissioner to make particular recommendations to chief executives of prescribed entities in relation to their compliance with clause 33(2).

These powers broadly correspond to the oversight powers of the commissioner and chapter 2 special commissioner under part 2. This enables the commissioner or chapter 2 special commissioner to oversee chief executives' compliance with clause 33(2).

Part 4 Miscellaneous

Part 4 of the chapter deals with miscellaneous matters relating to the commissioner and chapter 2 special commissioner.

Clause 36 requires the chapter 2 special commissioner, or if there is no chapter 2 special commissioner, the commissioner (the relevant commissioner), to prepare and give to the chairperson of the Public Sector Governance Council a report about their activities under chapter 2 during the financial year, as soon as practicable after the end of each financial year. The chairperson must give the Minister and the council a copy of the report.

The purpose of this clause is to create a reporting line, from the relevant commissioner to the council and then to the Minister, about the exercise of the relevant commissioner's activities under chapter 2. In this way, the clause contemplates reporting by the relevant commissioner about, for example:

- requests made by the relevant commissioner for a copy of a prescribed entity's equity and diversity report under clause 29(4);
- requests made by the relevant commissioner for information about compliance with provisions of part 2 or part 3 under clause 30 and clause 34;
- recommendations made by the relevant commissioner under clause 31 and clause 35; and
- chief executive responses to any such requests or recommendations, including whether the chief executive complied with the requests and recommendations.

Reporting is via the council chairperson to ensure consistency with the council's function of advising the Minister in clause 247(2)(a), and in recognition that the council chairperson is the chief executive of the special commissioner (see clause 239).

Clause 37 empowers the commissioner or chapter 2 special commissioner to exempt a chief executive of a prescribed entity from any of the following requirements or obligations:

- a requirement to make an equity and diversity plan;
- a requirement to conduct an equity and diversity audit;
- a requirement to prepare an equity and diversity report; or
- an obligation under clause 33(2).

However, the commissioner or chapter 2 special commissioner may give an exemption only if they believe it is not reasonably practicable for the chief executive to comply with the relevant requirement or obligation because of the number of staff or other resources of the entity.

Chapter 3 Public sector arrangements

Part 1 Preliminary

Clause 38 explains the application of chapter 3, stating the chapter applies to public sector entities and public sector employees.

Part 2 Principles

Clause 39 establishes contemporary public sector principles which are designed to respond to the trust the community places in public sector entities to attain the highest standards of conduct as service providers and employers of a significant portion of people in the State. The public sector principles are categorised as those that guide the management of the public sector and those that guide the employment of the public sector workforce.

Principles aimed at the management of public sector entities are guided towards achieving best practice service delivery and the ensuring public sector entities uphold ethical standards.

Principles aimed at the employment of public sector employees are directed towards ensuring public sector entities are employers of choice by reflecting the Government's employment values and commitment to public sector employees, including by responding to current issues such as by promoting permanency of employment for other than non-industrial instrument public sector employees.

Clause 40 refines the existing work performance and personal conduct principles contained in the PS Act. The clause categorises these principles as those that apply to:

- all employees, including managers at any level;
- managers, at any level including chief executives; and
- chief executives specifically.

As with the public sector principles, these principles recognise and respond to the trust the community places in public sector entities by directing all employees towards compliance with the highest standards of conduct. The principles not only seek best practice in work performance by, for instance, directing employees to continuously improving work performance, including through training and development, but also seek observance of employment laws and ethical standards.

In addition to principles directed towards exemplary workplace conduct, these principles also reflect an expectation that the personal conduct of public sector employees will not reflect adversely on the reputation of the public sector entity in which the employee is employed.

To facilitate compliance with the employee centric principles, management focused principles are directed towards ensuring fairness in the employment relationship and include requirements that managers ensure employees are aware of expected standards of conduct, employer values and what constitutes corrupt conduct.

Managers must ensure employees are treated fairly, provided with equitable work environments, afforded developmental opportunities and are proactively managed. Managers are also required to take personal responsibility for their own development as a manager.

It is noted that principles directed at employees also apply to managers who are public sector employees. Managerial responsibility should be viewed in the context of the particular role and level of responsibility assigned to the manager.

Additional principles are assigned to chief executives in recognition of their overall responsibility to the entity for which a chief executive is responsible including a requirement to ensure the entity performs its functions in accordance with the Act's main purpose, including the ways in which the main purpose is to be achieved and the public sector principles.

These principles include that chief executives have an overall responsibility for ensuring that public sector employees have access to fair and independent reviews and appeals. In the regard, it is noted that:

- where employees have a right to request a review on a particular matter, chief executives must ensure internal practices do not discourage employees from making such requests. Requests for reviews include requests made under any directives that contains an ability for a public sector employee to request a review and requests made under chapter 3 part 9, divisions 1, 2 or 3 which relate to: review of non-permanent employment; review of acting or secondment at a higher level; and review of a procedural aspect of a department's handling of a work performance matter, respectively.
- where an employee must make a request for a review to the chief executive and the chief executive must make a decision on the matter, the chief executive is responsible not only for ensuring internal practices do not discourage the employee from requesting a review but also that any decisions made are unbiased, only taking into account relevant matters. Reviews of this nature include reviews which relate to review of non-permanent employment and review of acting or secondment at a higher level.
- chief executives must ensure internal practices do not discourage employees from seeking appeals where they are permitted to do so under chapter 3, part 10.

Other overall responsibilities of chief executives include ensuring managers perform managerial functions and the employment and managements arrangements and functions are operating as they are intended to.

It is noted that the expectations set out in this clause are principles aimed at directing behaviour and that failure to comply with a particular principle will not of itself give rise to disciplinary action. However, failure to meet certain standards included in a principle, such as failing to use public resources appropriately may necessitate positive performance management, such recourse is included in the work performance and conduct part, part 8 of chapter 3, of the Bill.

It is further noted that the aim of the work performance and personal conduct principles are directed towards attainment of best practice service delivery and exemplary ethical conduct, these principles are not intended to encompass matters which are provided for in Queensland's industrial relations framework.

Clause 41 describes how chief executives of entities must perform their functions and discharge responsibilities including that chief executives must observe the public sector principles and comply with relevant laws, industrial instruments and directives.

Part 3 Recruitment and selection

Clause 42 defines the term "employ" for the part.

Clause 43 provides that the part applies to the employment of an eligible person in or to a public sector entity.

Clause 44 requires a person undertaking a recruitment and selection process to undertake the process in accordance with the following principles:

- recruitment and selection processes must be directed to the selection of the eligible person best suited to the position;
- recruitment and selection processes must be fair and transparent; and
- recruitment and selection processes must reflect the obligations under chapter 2 relating to equity, diversity, respect and inclusion.

The clause provides a principles-based approach when undertaking a recruitment and selection process and related decisions, including retaining the primacy of merit while also supporting the consideration of equity and diversity factors under chapter 2.

Clause 45 provides that a person selected for employment in or to a public sector entity must be the eligible applicant best suited to the position. This approach is informed by the approach under the New Zealand *Public Service Act 2020*, which provides that merit-based appointment is achieved by giving preference to the person who is best suited to the position.

The concept of "best suited to the position" retains the primacy of merit, while also providing that recruitment and selection has a role in supporting equity, diversity, respect and inclusion in public sector employment. When deciding which eligible applicant is best suited to a position, a person undertaking a recruitment and selection process must consider the person's ability to perform the requirements of the position. This could include consideration of existing merit criteria under the PS Act such as the extent to which the person has abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the duties in question. In accordance with the existing merit criteria, the decision-maker may also consider the way in which the applicant carried out any previous employment.

The clause provides that decision makers may also consider the extent to which the applicant would contribute to fulfilling the entity's equity, diversity and inclusion obligations under chapter 2.

Clause 46 enables the commissioner to make a directive about recruitment and selection under part 3. For example, the directive may include provisions about the way in which recruitment or selection processes in public sector entities must be carried out, the way in which the principles mentioned in clause 44(3) are to be applied and a matter for consideration mentioned in clause 45(2) relating to considerations when determining the applicant best suited to a position.

Part 4 Eligibility for employment

Clause 47 provides that persons who are an Australian citizen, or reside in Australia and have permission under a Commonwealth law to work in Australia, are eligible to be a public sector

employee. This means that all people who have a lawful right to work in Australia (including permanent residents, refugees and asylum seekers) are eligible for employment as a public sector employee. However, if for any reason a person's permission to work in Australia ends, the person's employment is taken to have been terminated by the chief executive on the same day.

Part 5 Suitability for employment

Division 1 Preliminary

Clause 48 provides the definitions of "engage" and "suitability directive" for the part.

Division 2 Criminal history

Clause 49 refers to clause 50 for the meaning of relevant duty for the division.

Clause 50 clarifies that a particular duty is a relevant duty if, under a suitability directive, a chief executive decides that, because of the nature of the duty to be performed, it may be necessary to have regard to the criminal history of anyone engaged to perform the duty. However, the duty is not a relevant duty if it is likely to involve child-related duties or regulated employment.

Clause 51 provides that the division 2 provisions relating to criminal history are subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986* but this does not limit any other law or provision of the Bill under which a person's criminal history may be obtained.

Clause 52 provides authority to a chief executive to ask a person, under the suitability directive, for written consent to obtain the person's criminal history. Prior to asking the person for written consent, the person must first be engaged, or proposed to be engaged, by the public sector entity, or the person may be an existing public sector employee employed in the entity whose duties change, or are proposed to change, to include a relevant duty.

Clause 53 provides that this clause applies if a person does not consent, or withdraws their consent, for the chief executive to obtain the person's criminal history. If the person is currently a public sector employee, the chief executive must ensure the person does not perform a relevant duty. If the person is not a public sector employee, the chief executive is not required to consider the person for engagement to perform a relevant duty.

Clause 54 requires the Police Commissioner to provide a criminal history report to a chief executive at the chief executive's request, if a person has given written consent. The request may include the person's name, and any other name that the chief executive believes the person may use or may have used, the person's gender, and date and place of birth, and the person's address.

The clause provides that the duty that is imposed upon the Police Commissioner to comply with a request to give the chief executive a written report about a person's criminal history applies only to information in the Police Commissioner's possession or to which the Police Commissioner has access.

Clause 55 applies after the person's criminal history report is given to the chief executive. This clause provides that the chief executive must have regard to the person's criminal history in making an assessment about the person's suitability for engagement to perform the relevant duty, or suitability to have their duties changed to include a relevant duty, in accordance with the suitability directive.

Division 3 Child-related duties

Clause 56 provides definitions of "child-related duty", "negative notice" and "registered teacher" for the division.

The definition of "child related duty" is broadly consistent with the current meaning of child-related duties in PS Act section 156. The definitions of "negative notice" and "registered teacher" are broadly consistent with the current meanings in PS Act sections 157 and 158 respectively.

Clause 57 details when a duty to be performed in a public sector entity is to be considered a child-related duty.

A duty is a child-related duty if the chief executive of the public sector entity decides under the suitability directive that:

- the duty is to be performed at a place at or in a role which services are provided only or mainly to children, or
- is to be performed in a role involving providing services only or mainly to children, or
- involves contact with children that is of a type, or happens in a context, that may create an unacceptable level of risk for the children, and
- it is necessary to conduct child-related employment screening under the *Working with Children (Risk Management and Screening) Act 2000* of a person who is being engaged, has been engaged or is proposed to be engaged, to ensure the person is suitable to perform the duty.

A duty is not a child-related duty if it is likely to involve regulated employment. The clause notes chapter 7, and division 4 of the *Working with Children (Risk Management and Screening) Act 2000* provides relevant information in relation to persons to be engaged in duties that are regulated employment.

Clause 58 requires a chief executive of a public sector entity to ensure a person does not perform a child-related duty in the entity unless they hold a working with children authority, or the person is a police officer or registered teacher, and has made a working with children check (exemption) application under the *Working with Children (Risk Management and Screening) Act 2000*.

Clause 59 applies if the chief executive of a public sector entity engages a person who:

- is a police officer or registered teacher; and
- is to perform child-related duties on the basis the person has made a working with children check (exemption) application under the *Working with Children (Risk Management and Screening) Act 2000;* and
- is a public sector employee at the time of being engaged by the chief executive.

If, after the engagement of the employee, the employee's application is withdrawn under the *Working with Children (Risk Management and Screening) Act 2000* or the person is issued a negative notice, the chief executive must ensure the person does not continue to perform child-related duties.

Clause 60 applies if the chief executive of a public sector entity engages a person who:

- is a police officer or registered teacher; and
- is to perform child-related duties on the basis the person made an application has made a working with children check (exemption) application under the *Working with Children (Risk Management and Screening) Act 2000*; and
- is not a public sector employee at the time of being engaged by the chief executive.

The chief executive may only employ the person on probation. The probationary period must not end before the person is issued with a working with children exemption.

The chief executive may only confirm the person's employment after probation if the person is issued a working with children exemption.

The chief executive must not confirm the person's employment after probation if the person's application is withdrawn under the *Working with Children (Risk Management and Screening) Act 2000* or the person is issued a negative notice.

Subclause (3) clarifies that a chief executive's power to impose a longer probationary period or to terminate a person's employment is not limited or otherwise affected by subclause (2) of the clause.

Clause 61 applies if a person's working with children authority is suspended under the *Working with Children (Risk Management and Screening) Act 2000*. The chief executive must ensure the person does not perform a child-related duty in the public sector entity during the period the working with children authority is suspended.

Clause 62 applies if a person's working with children authority is cancelled under the *Working with Children (Risk Management and Screening) Act 2000*. The chief executive must ensure the person does not perform a child-related duty in the public sector entity.

Division 4 Further assessment of persons issued with working with children authority

Clause 63 defines a "prescribed duty". The definition is broadly consistent with the current meaning of prescribed duty in PS Act section 165A.

Clause 64 provides that Division 4 applies if:

- the chief executive of a public sector entity engages, proposes to engage, or has engaged a person to perform a child-related duty or a duty relating to regulated employment (prescribed duty) in the entity; and
- the chief executive of the department in which the *Working with Children (Risk Management and Screening) Act 2000* is administered has issued a working with children authority to the person; and

- the chief executive of the department in which the *Working with Children (Risk Management and Screening) Act 2000* is administered, has advised the chief executive of the public sector entity, under the *Working with Children (Risk Management and Screening) Act 2000* section 235 or 293, that a further assessment of the person may be needed to decide whether the person should be engaged to perform the prescribed duty.

Subsection (2) clarifies that this section does not apply if the chief executive of the public sector entity engages, proposes to engage, or has engaged the person to perform the prescribed duty only under a contract for services, on a voluntary basis or, if the person is a student, under an arrangement to provide the person with a practical experience in the person's field of study.

Clause 65 provides that the division 4 provisions relating to further assessment of persons issued with working with children authority are subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986* but does not limit any other law or provision of the Act under which a person's criminal history may be obtained.

Clause 66 applies if the conditions in clause 64 are met, the chief executive of the public sector entity, may under the suitability directive, ask the person who the chief executive engages, proposes to engage or has engaged to perform a child-related duty or a duty relating to regulated employment in the entity, for their written consent for the chief executive to obtain their criminal history.

Clause 67 provides that if an employee of the public sector entity engaged to perform prescribed duties does not consent or withdraws their consent for the chief executive to obtain their criminal history, then the chief executive must ensure the person does not perform the prescribed duties.

If the person does not consent or withdraws their consent for the chief executive to obtain their criminal history, and the person is not a public sector employee of the entity who is engaged in performing a prescribed duty, the chief executive is not required to consider the person for engagement to perform the prescribed duties.

Clause 68 provides that the duty that is imposed upon the Police Commissioner to comply with a written request to give the chief executive a written report about a person's criminal history, applies only to information in the Police Commissioner's possession or to which the Police Commissioner has access.

Clause 69 provides that the chief executive must, under a suitability directive, consider the person's criminal history report in making an assessment about the person's suitability to perform the prescribed duty.

Division 5 Serious disciplinary action

Clause 70 defines "serious disciplinary action" for the purpose of the division. The definition is largely consistent with the current meaning of serious disciplinary action in PS Act section 179A(4). Serious disciplinary action also includes action taken by a chief executive to end a person's employment as a public sector employee, or to consider a person's employment as a public sector employee ended, as mentioned in new part 11 (Ending of employment).

Clause 71 provides that if a chief executive of a public sector entity proposes to employ or second a person to their public sector entity, the chief executive, under a directive, may require this person to disclose in writing the details of any serious disciplinary action that has previously been taken against the person. This requirement must be complied with before the employment or secondment takes effect, and in the way stated by the chief executive, including any timeframes. The chief executive is not required to further consider the person for employment or secondment if they fail to comply with the requirement or give false or misleading information in response to the requirement.

Clause 72 provides that, after the chief executive has received the notice about the person's serious disciplinary action, the chief executive must consider, under a directive, the details of any serious disciplinary action taken against the person when assessing the person's suitability for employment in or secondment to the entity.

Division 6 Change in criminal history

Clause 73 applies if a public sector employee is charged with an indictable offence or is convicted by a court of an indictable offence.

If the employee has been charged with an indictable offence, they are required to give their chief executive notice that they have been charged, and details of the alleged offence. The notice must be provided immediately after the employee has been charged.

If the employee has been convicted of an indictable offence, the employee must give their chief executive notice of the conviction, and the details of the offence and the penalty imposed. The notice must be provided immediately after the employee has been convicted.

Subclause (4) clarifies that an employee is considered convicted of an offence if they have been found guilty of the offence, regardless of whether or not a conviction has been recorded. An indictable offence includes an indictable offence that has or will be dealt with summarily.

Clause 74 requires a prosecuting authority (the Police Commissioner or the Director of Public Prosecutions) to notify a person's chief executive of particular information in certain circumstances, where the prosecuting authority becomes aware that a person is a public sector employee in a public sector entity who has been charged with a relevant offence.

This clause sets out the particulars that must be provided to the person's chief executive within seven days:

- of the public sector employee being committed by a court for trial for a relevant offence
- of the public sector employee being convicted before a court of a relevant offence
- of the public sector employee's appeal against a conviction of a relevant offence being decided or otherwise ending
- of the prosecution of the relevant offence ending without the person being convicted of the offence.

A relevant offence is an indictable offence, or a disqualifying offence that is not an indictable offence.

A disqualifying offence is defined by reference to section 16 of the *Working with Children (Risk Management and Screening) Act 2000*.

Division 7 Offences

Clause 75 provides that it is an offence punishable by a maximum penalty of 100 penalty units if a public sector employee does not give a notice to their chief executive of a charge or conviction for an indictable offence as required by clause 73.

Clause 76 provides that it is an offence punishable by a maximum penalty of 100 penalty units if a public sector employee gives a notice to their chief executive of a charge or conviction for an indictable offence as required by clause 73, that the person knows is false or misleading in a material particular.

Subclause (2) clarifies that it is not an offence if, when giving the notice to the chief executive, the public sector employee tells the chief executive, to the best of their ability, how the notice is false or misleading, and, if the public sector employee has, or can reasonably obtain, the correct information, and provides the correct information to the chief executive.

Clause 77 provides that it is an offence punishable by a maximum penalty of 100 penalty units if a person gives a chief executive of a public sector entity a written consent mentioned in clause 52 (consent to obtain criminal history for assessment to perform a relevant duty) or clause 66 (consent to obtain criminal history for assessment to perform a prescribed duty), or another document under this part, that the person knows contains information that is false or misleading in a material particular.

Division 8 Miscellaneous

Clause 78 requires a public sector employee to give their chief executive a certified copy or certified extract of the employee's birth certificate within one month of starting employment in the public sector. If it is not practicable for the employee to obtain the certified copy or certified extract or their birth certificate, the chief executive may accept another document the chief executive considers satisfactorily establishes the employee's identity.

Clause 79 requires a chief executive to destroy a criminal history report about a person after the chief executive who requested the report makes an assessment about the person under division 2 (criminal history) or division 4 (further assessment of persons issued with working with children authority), or a notice provided under clause 74 (relating to committals, convictions and other information) if the document is no longer required to be kept under the suitability directive. The chief executive must also destroy any other document required by the suitability directive to be destroyed.

Clause 80 requires the commissioner to make a directive for part 5, which is referred to in clause 48 as a "suitability directive". The directive must include provision for the circumstances in which a chief executive may decide that it is necessary to obtain the criminal history of a person under clause 52. The directive must also include provision for determining whether a duty to be performed in a public sector entity is a child related duty under clause 57 by providing:

- the types of places a chief executive may decide are places at which services are provided only or mainly to a child or children;
- the types of roles a chief executive may decide involve providing services only or mainly to a child or children;

- the duties that involve contact with a child or children that is of a type, or happens in a context, that may create an unacceptable level of risk for the child or children.

The directive must also provide that a person must be given a reasonable opportunity to make written representations about the person's criminal history report before an adverse decision about the person is made. For the purposes of this clause "adverse decision" about a person means a decision about the person's suitability for engagement, or continued engagement, to perform the relevant duties, child-related duties or duties that are regulated employment in relation to which the person's criminal history was obtained, other than a decision that the person is suitable to perform the relevant duties or child-related duties.

Part 6 Nature of employment

Division 1 Security of employment

Clause 81 explains the basis on which a public sector employee is employed and specifically, the circumstances in which an employee must be employed on a permanent basis or may be employed on a non-permanent basis. The clause reinforces the policy intent that employment should generally be on a permanent basis.

To modernise language, and to describe the basis of public sector employment more accurately, the concept of employment on a "permanent basis" replaces the concept in the PS Act of employment "on tenure". However, the change in terminology does not represent a diminution in employment security and it is intended that employment on a permanent basis is as secure as employment on tenure. To this end, schedule 2 (Dictionary) defines "permanent basis" in relation to employment, as including employment on tenure.

Subclause (1) states that the employment of a public sector employee is on a permanent basis unless the employee is employed under this Act or another Act that provides for employment of a public sector employee on another basis, including, for example:

- on a temporary for a fixed term; or
- on a casual basis.

Subclause (2) states that however, a public sector employee may be employed under this Act or another Act on a non-permanent basis only if employment of a person on a permanent basis is not viable or appropriate.

Subclause (3) provides non-exhaustive circumstances where employment on a permanent basis may not be viable or appropriate, so as to allow for employment on a non-permanent basis where applicable. Examples are provided for some of these circumstances to assist in the application of the provision.

Subclause use (4) clarifies that, without limiting subclause (3)(a), employment of a person on a permanent basis may be viable or appropriate if a person is required to be employed for a purpose mentioned in subclause (3)(a) on a frequent or regular basis.

Subclause (5) clarifies that, without limiting subclause (3)(b), employment of a person on a permanent basis, or on a temporary basis for a fixed term, may be viable or appropriate if a

person is required to be employed for a purpose mentioned in subclause (3)(b) on a regular and systematic basis.

Subclause (6) clarifies that subclauses (2), (3), (4) and (5) apply despite another Act.

Subclause (7) clarifies that the clause applies in relation to a public sector employee's employment on a temporary basis for a fixed term if the employment is extended under the Act or another Act.

Division 2 Mobility of employment

Clause 82 introduces a new statutory provision that provides for the mobilisation of employees both within and outside the public sector. This framework amalgamates and simplifies existing processes in chapter 5, part 8 of the PS Act for the making of work performance arrangements and interchange arrangements.

The mobilisation framework may be relied upon by chief executives in a broad range of circumstances, including to:

- staff taskforces established under clause 195 of the Bill;
- enable surge mobility of public sector employees; or
- provide professional development opportunities to employees.

Subclause (1) states that a chief executive of a public sector entity may enter into an arrangement (called a "mobility arrangement) under which:

- a person who is a public sector employee employed in the entity temporarily performs work for or within, or duties in, another part of the entity or another entity (subclause (1)(a)); or
- a person employed in another entity temporarily performs work for or within, or duties in, the public sector entity (subclause (1)(b)).

Examples of "another entity" are provided for the purpose of subclause (1)(a). These examples clarify that a mobility arrangement may facilitate the movement of a public sector employee, for example:

- between public sector entities;
- between public sector entities and government entities in different jurisdictions; and
- between public sector entities and private sector entities, universities or non-government organisations.

Subclause (2) clarifies that a mobility arrangement may be made only with the consent of the employee mobilised under the arrangement and, where employee is mobilised outside of their entity, the chief executive or appropriate office holder of the other entity. The requirement for employee consent distinguishes mobility arrangements from other arrangements in the Bill, such as secondments.

Subclause (3) states that the mobility arrangement may make provision for all matters necessary or convenient to be provided under the arrangement. Such matters may include, for example, the duration of the arrangement, the reimbursement of any wages or salary to be paid to the employee, or the circumstances in which the arrangement may be ended.

Subclause (4) states that the person's chief executive, or the chief executive or appropriate office holder of the other entity, may end the mobility arrangement.

Subclause (5) states that if a chief executive or appropriate office holder ends a mobility arrangement under subclause (4), the chief executive or appropriate office holder must give notice of the ending of the arrangement to the other chief executive, or appropriate office holder, and the person.

Subclause (6) states that the continuity of a person's employment in a public sector entity is taken not to have been broken by a mobility arrangement.

Subclause (7) states that the commissioner must make a directive about mobility arrangements.

Subclause (8) states that the directive may provide for the way in which clause 82 is to be applied, including, for example, the period of notice to be given by a party to a mobility arrangement before ending the arrangement under subclause (4).

Part 7 Notification of employment

Clause 83 expands the requirement under the PS Act for a chief executive to advertise the intention to appoint or second someone to perform duties as a public service officer and expands it to the sector.

The clause requires the chief executive of a public sector entity to publicly notify (i.e. advertise) the proposed employment or secondment of a person to perform duties as a public sector employee in accordance with requirements of a directive.

The clause does not apply to the transfer, redeployment or secondment of a person under a provision of an Act or a directive. The clause also retains the option for a directive to exclude certain employment from the requirement to publicly notify.

Clause 84 provides that if:

- a chief executive was required, under a directive, to publicly notify the intention to employ or second a person to perform duties as a public sector employee, or
- a directive requires a chief executive to publish notice of the employment or secondment of a public sector,

the chief executive must publicly notify the employment or secondment in the gazette or in another way the commissioner considers appropriate.

The requirement to publish a notice of the employment or secondment intends to increase the transparency of recruitment processes and outcomes and provide certainty of appeal timeframe milestones.

Part 8 Work performance and conduct

Division 1 Positive performance management

Clause 85 introduces the positive performance management principles to support managers and employees to work together to support optimal performance.

Subclause (1) provides that the management of public sector employees must be directed towards the positive performance management principles.

Subclause (2) requires the commissioner to make a directive about how the positive performance management principles are to be applied.

The principles are intended to ensure the use of positive performance management for public sector employees. The clause reflects section 25A of the PS Act, which was introduced as part of stage 1 public sector reforms.

Clause 86 requires chief executives to comply with a directive under clause 85(2) about applying the positive performance management principles before disciplinary action is taken for a performance matter. The clause reflects section 186C of the PS Act, which was introduced as part of stage 1 public sector reforms.

Division 2 Conflicts of interest

Clause 87 clarifies that the terms "interest" and "conflict of interest" in the division have their ordinary meaning under the general law. Additionally, the definition of "interest" in schedule 1 of the *Acts Interpretation Act 1954* does not apply to the term for the division.

Clause 88 provides for the declaration of interests of public sector employees other than chief executives. Unlike the corresponding requirements for chief executives (see notes for chapter 5 below), public sector employees are only required to declare their interests if directed by their chief executive. Specifically, the clause empowers a public sector employee's chief executive to direct the employee to prepare and give the chief executive a statement about the employee's interests. The chief executive may also direct the employee to provide a revised statement if particular changes to the employee's interests prescribed by a directive happen after the employee gives the first statement. The clause contains requirements about the timing of any revised statement and makes provision for the way in which a direction may be given.

Clause 89 provides for the management of conflicts of interests of public sector employees. The clause requires a public sector employee to disclose the nature of any interest that conflicts with the discharge of the employee's duties as soon as practicable after the relevant facts come to the employee's knowledge. The clause also prohibits the employee from taking action or further action relating to a matter that is or may be affected by the conflict unless authorised by the employee's chief executive. The employee's chief executive may direct the employee to resolve a conflict or possible conflict between the employee's interests and duties.

Division 3 Disciplinary action

Clause 90 defines particular terms for division 3.

Clause 91 addresses when a public sector employee may be disciplined by outlining the disciplinary grounds which may trigger discipline. Specifically, the clause enables a public sector employee's chief executive to discipline the employee if they are reasonably satisfied that the employee has engaged in any of the conduct specified in subclause (1).

The disciplinary grounds in the clause largely mirror the disciplinary grounds in section 187 of the PS Act. However, the clause expands the circumstances in which a disciplinary ground

may arise for contravening a relevant standard of conduct, by extending the definition of "relevant standard of conduct" to include, for specified public sector employees, codes of practice under section 41 of the *Ambulance Service Act 1991* and section 7B of the *Fire and Emergency Services Act 1990*. This ensures that ambulance officers and fire service officers remain subject to the same disciplinary avenues that exist under the (to be repealed) disciplinary frameworks in those Acts.

The clause also clarifies that a disciplinary ground does not arise in relation to a public sector employee only because the employee's work performance or personal conduct fails to satisfy the work performance and personal conduct principles or the public sector principles. This is intended to ensure that public sector employees are not disciplined merely for failing to satisfy such principles. Consistent with this, the clause also makes clear that contravention, without reasonable excuse, of clause 39 (relating to the public sector principles) or clause 40 (relating to the work performance and personal conduct principles) does not constitute a disciplinary ground under clause 91(1)(g)(i). However, nothing prevents a public sector employee from being disciplined in relation to the underlying conduct that is inconsistent with these principles, where such conduct also constitutes a disciplinary ground.

Clause 92 defines the term "disciplinary action". The definition is broadly consistent with the current meaning of that term in section 188 of the PS Act. Among other things, the clause retains existing limitations in the PS Act where disciplinary action consists of amounts directed to be deducted from periodic remuneration payments. However, the clause replaces existing references to the "guaranteed minimum wage" with "Queensland minimum wage" to ensure alignment with the IR Act.

Clause 93 provides for the taking of disciplinary action against a public sector employee. The clause provides that, in disciplining a public sector employee, the employee's chief executive may take the disciplinary action, or order the disciplinary be taken, against the employee that the chief executive considers reasonable in the circumstances. The clause clarifies that, where the disciplinary action is transfer or redeployment, the taking of such action is not limited or affected by the general transfer and redeployment power in chapter 4, part 4, division 3. Subdivision 2 (Disciplinary action against public sector employee) also has a note to clause 86 (Requirement to apply positive performance management principles before taking disciplinary action) to remind the user of this rule.

Clause 94 provides for the taking of disciplinary action against a public sector employee where:

- a public sector employee is employed in a public sector entity (the "former entity");
- a disciplinary ground arises in relation to the employee; and
- after the disciplinary ground arises, the employee changes employment from the former entity to another public sector entity (the "current entity").

The clause clarifies that the term "changes employment" includes a change in employment by promotion, transfer, secondment or redeployment.

In such cases, the clause provides for a disciplinary process whereby:

- either the chief executive of the former entity, or the chief executive of the current entity, makes a disciplinary finding about the disciplinary ground; and
- the chief executive of the current entity takes disciplinary action against the employee.

Subclause (2)(a) empowers the chief executive of the former entity to make a disciplinary finding. If this occurs, the chief executive of the current entity may take disciplinary action against the employee under clause 93 that the chief executive of the former entity agrees is reasonable in the circumstances.

Subclause (2)(b) alternatively empowers the chief executive of the former entity to delegate the power to make a disciplinary finding to the chief executive of the current entity. If this occurs, the chief executive of the current entity may make the disciplinary finding.

To address the circumstance where a machinery of government change prevents the delegation of the power, subclause (3) also empowers the chief executive to make a disciplinary finding where:

- the former entity no longer exists;
- the former entity no longer has a chief executive; or
- the chief executive of the former entity and the chief executive of the current entity are the same person.

If the chief executive of the current entity makes a disciplinary finding, they may take disciplinary action against the employee under clause 93. In such a case, there is no requirement for the chief executive of the former entity to agree to the disciplinary action.

The clause clarifies that the chief executive of the former entity may give the chief executive of the current entity information about the employee or a disciplinary ground relating to the employee to help the chief executive make a disciplinary finding or take disciplinary action.

Clause 95 provides for the taking of disciplinary action, and the making of disciplinary findings and disciplinary declarations, against a person who was a public sector employee where:

- the person was employed in a public sector entity (the "former entity");
- a disciplinary ground arose in relation to the person; and
- after the disciplinary ground arose the person's employment as a public sector employee ended for any reason.

Where these conditions exist, the person's previous chief executive may make a disciplinary finding or take or continue to take disciplinary action against the person in relation to the disciplinary ground. This facilitates the taking of post-separation disciplinary action.

However, the clause clarifies that it does not apply in relation to former public sector employees who become CCC employees in particular circumstances.

The disciplinary finding or disciplinary action must be made or taken within two years of the end of the employee's employment. However, this does not stop disciplinary action being taken following an appeal or review, nor does it affect:

- an investigation of a suspected criminal offence; or
- an investigation of a matter for the purpose of notifying the Crime and Corruption Commission of suspected corrupt conduct under the *Crime and Corruption Act 2001*.

The person's previous chief executive may also make a disciplinary declaration if they believe the disciplinary action that would have been taken against the person if the person's employment had not ended would have been:

- termination of employment; or
- reduction of classification level.

The clause defines a "disciplinary declaration" as a declaration of:

- the disciplinary finding against the former public sector employee; and
- the disciplinary action that would have been taken against the former public sector employee if the employee's employment as a public sector employee had not ended.

The clause clarifies that the making of a disciplinary declaration does not affect the way in which the employee's employment ended, or any benefits, rights or liabilities arising because the employment ended.

The clause also defines other key terms used.

Clause 96 clarifies how disciplinary action may be taken in relation to a public sector employee who was formerly a CCC employee in particular circumstances.

Clause 97 enables the chief executive of a public sector entity to ask the chief executive of another public sector entity for disciplinary information about a person who is or was a public sector employee in particular circumstances.

Clause 98 requires a chief executive of a public sector entity to comply with the Bill and any relevant directive in discipling a public sector employee under the Bill.

Clause 99 provides that if a public sector employee's chief executive decides to terminate the employment of the employee under division 3, the chief executive must give the employee notice of the termination stating the day the termination takes effect.

Clause 100 requires the commissioner to make a directive about managing disciplinary action and procedures for investigating the substance of a grievance or allegation relating to a public sector employee's work performance or personal conduct. The clause requires the directive to make provision for specified matters.

Division 4 Suspension

Clause 101 enables a public sector employee's chief executive to suspend the employee from duty by notice if the chief executive reasonably believes:

- the employee is liable to discipline under a disciplinary law (subclause (1)(a)); or
- the proper and efficient management of the entity might be prejudiced if the employee is not suspended (subclause (1)(b)).

The clause broadly reflects the suspension power in the PS Act section 137, with expanded application to public sector employees. However, unlike PS Act section 137, the trigger for suspension in subclause (1)(b) applies to all public service employees (and other public sector employees), not just public service officers. This is to ensure that the suspension power is

available to chief executives outside of a disciplinary context, such as, for example, to manage an employee's conflict of interest.

Subclause (2) outlines the matters that a suspension notice must state.

Subclause (3) requires the chief executive to consider all reasonable alternatives available to the employee before suspending the employee. This may include alternative duties, a change in the location where the employee performs duties, or another alternative working arrangement.

Subclause (4) gives a chief executive a power to suspend a public sector employee without receiving normal remuneration. The chief executive may only do so where the employee is suspended for disciplinary reasons under subclause (1)(a) and the chief executive considers it is not appropriate for the employee to be entitled to normal remuneration for the period of suspension, having regard to the nature of the discipline to which the chief executive believes the employee is liable.

Subclause (5) provides for the deduction of amounts earned by a suspended employee in alternative employment. Such amounts must be deducted from the employee's normal remuneration unless:

- the employee was engaged in the employment at the time of the suspension; and
- the employee, in engaging in the employment, was not contravening the Act or a standard of conduct applying to the employee under an approved code of conduct or approved standard of practice under the *Public Sector Ethics Act 1994*.

Subclause (6) provides that the deduction under subclause (5) must not be more than the amount of the employee's normal remuneration during the period of the suspension.

Subclause (7) provides that the continuity of the employee's service as a public sector employee is taken not to have been broken only because of the suspension.

Subclause (8) enables the chief executive to cancel the suspension at any time.

Subclause (9) requires the chief executive to comply with the directive made under clause 102 in suspending a public sector employee.

Subclause (10) clarifies that procedural fairness is not required if the employee is entitled to normal remuneration during the suspension.

Clause 102 requires the commissioner to make a directive about procedures relating to suspension from duty of public sector employees under clause 100. The clause provides the directive must make provision for particular matters, including procedural fairness requirements in relation to suspension decisions.

Division 5 Mental or physical incapacity

Clause 103 provides that division 5 applies to a public sector employee if:

- the employee is absent from duty or the employee's chief executive is reasonably satisfied the employee is not performing the employee's duties satisfactorily; and

- the chief executive reasonably suspects that the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability.

Clause 104 enables the chief executive of a public sector employee to which division 5 applies to require the employee to submit to the medical examination. As part of this process, the chief executive may also appoint a doctor to examine the employee and to give the chief executive a written report on the examination.

Clause 105 provides that the employee must not be given sick leave for any period during which the employee fails to comply with a chief executive's requirement to submit to a medical examination. However, consistent with section 17 of the IR Act, this clause is subject to the Queensland Employment Standards.

Clause 106 outlines requirements relating to the content and disclosure of medical examination reports. The clause requires the report to include the examining doctor's opinion as to whether the employee has a mental or physical illness or disability that may adversely affect the employee's performance. If doctor's opinion is in the affirmative, the report must address also address other specified matters. The clause provides for disclosure of the report by the chief executive to the employee, subject to the doctor's opinion about whether disclosure would be prejudicial to the employee's mental or physical health or wellbeing. The clause also provides for disclosure of the report to another doctor if requested by the employee.

Clause 107 enables the chief executive to transfer or redeploy the employee, or where this is not reasonably practicable, retire the employee, following the report of the medical examination. The chief executive may take this action if, after considering the report, the chief executive is reasonably satisfied the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability. However, the clause clarifies that it does not limit the action that may be taken relating to the employee. Clause 107 is intended to apply subject to the *Anti-Discrimination Act 1991*.

Clause 108 requires the chief executive to keep a record of the chief executive's requirement to submit to a medical examination and the report on the medical examination. The clause clarifies that the chief executive may keep the record separate from other records about the employee if the chief executive considers it necessary to protect the employee's interests.

Clause 109 requires the commissioner to make a directive providing for matters relevant to way in which division 5 is to be applied in relation to public sector employees. The clause makes clear that chief executives who are exercising powers or functions under the division must comply with the directive.

Clause 110 requires the commissioner to make a directive about how public sector entities must deal with grievances of employees about decisions made by employees or the conduct of employees. The clause provides for the matters that a directive must or may address.

Part 9 Reviews

Division 1 Review of non-permanent employment

Clause 111 defines "continuously employed" for the division.

Clause 112 provides the division applies to public sector employees employed on a non-permanent basis under:

- clause 149(2)(b) or (c), as a general employee on a fixed term temporary or casual basis,
- clause 150(1)(a), as a fixed term temporary employee performing duties ordinarily performed by an officer, but not a senior officer,
- clause 151(1)(a), as a casual employee performing duties ordinarily performed by an officer, but not a senior officer.

Along with expanding the application of the existing review provisions to non-permanent general employees, the clause also expands the application to public sector employees mentioned under clause 12(1)(b), that is those employed on a non-permanent basis under another Act or law in a public sector entity.

The application of this division to any public sector employee who is employed "on a non-permanent basis" is to ensure that arrangements in the broader public sector aren't excluded merely due to naming conventions for those arrangements. This intends to capture eligible employees engaged on a casual or temporary basis for a fixed term, for a fixed task or for the duration of a particular season.

The division does not apply to a non-industrial instrument employee or an auxiliary fire service officer employed under section 25 of the *Fire and Emergency Services Act 1990*.

Clause 113 retains the ability for a non-permanent public service employee to ask for a review of their status of employment after being continuously employed, for at least one year in the same entity, and extends it to the sector.

The clause clarifies that the employee can not make more than one request in each 12 month period, starting on the day the most recent request was made under subclause (1).

The purpose of this provision is to drive good practice in workforce planning, and provide employees with an opportunity to have the status of their non-permanent employment reviewed to determine if it is viable and appropriate to convert the employee's employment to a permanent basis, having regard to the genuine operational requirements of the public sector entity.

Subsection (3) clarifies how to determine how long a person has been continuously employed in a public sector entity. This provision is to ensure a person is not considered to be ineligible to request a review as a result of authorised leave taken or breaks of employment of six weeks or less in the 12 month period prior to the calculation of the period of continuously employed under this clause.

Clause 114 provides that the chief executive must decide a request made under clause 113 within 28 days after receiving it.

In making a decision, the chief executive must consider whether there is a continuing need for a person to be employed in the employee's current role or a role that is substantially the same as the employee's role, and whether the employee is suitable to perform the role. Any requirements of an industrial instrument are to be complied with in relation to the decision.

If the chief executive considers there is a continuing need for a person to be employed in the employee's role, or one that is substantially the same, and the employee is suitable to perform that role and any requirements or an industrial instrument have been complied with, then the chief executive must decide to offer to convert the employee's employment to a permanent basis, unless it is not viable or appropriate to do so having regard to the genuine operational requirements of the public sector entity.

Consideration of an employee's suitability to perform a role in the context of a conversion review replaces the requirement in the PS Act for the chief executive to consider if the person is eligible for appointment having regard to the merit principle. Consideration of a person's suitability to perform a role is a narrower focus than the considerations in deciding which applicant is best suited to the position under clause 45 of the Bill, as it is not intended that a chief executive consider the extent to which the proposed decision to convert an employee to permanent employee would contribute to the fulfilment of the entity's obligations under chapter 2. The requirement to consider an employee's suitability to perform a role does not require that there has been an advertised merit process prior to conversion. "Suitable" in this context has the meaning given under a directive.

Consideration of the genuine operational requirements of an entity when making a decision about the conversion of an employee to permanent employment is consistent with the policy settings approved by Parliament during stage one of the public sector reforms. Guidance on the meaning of this term may be provided by QIRC decisions and the Public Sector Commission. It is intended that consideration of an entity's genuine operational requirements may include budgetary considerations.

To provide employees with transparency in decision making, if the chief executive decides to decline to offer to convert the employee's basis of employment to a permanent basis, the chief executive must provide a notice that includes reasons for the decision, the total period the employee has been continuously employed in the entity and how many times their employment on a non-permanent basis has been extended during the period of continuous employment.

Subclause (6) has been designed to exclude the requirement to document periods of time an employee was "extended" in casual employment to address stakeholder concerns that it is often not relevant to determine if, and how often a casual contract has been extended. Extensions to all other relevant employment types must continue to be addressed in the notice.

If the chief executive does not make a decision within 28 days of receiving the employee's request, the decision will be deemed to be a decision not to offer to convert the employee's employment to a permanent basis.

The commissioner must make a directive about the making of a decision under this clause. The directive may also include information relating to a decision made under clause 115.

Subclause (9) defines the term "suitable" for the clause, in relation to an employee performing a role, as having the meaning given under a directive. It is anticipated that the directive may include considerations relating to unresolved work issues when determining whether a person is suitable to perform a role, among other things.

Clause 115 requires a chief executive to undertake a review of the basis of employment of an eligible employee to whom the division applies, if they have been continuously employed on

a non-permanent basis in the same public sector entity for at least two years. The chief executive must decide whether to continue the employee's employment according to their existing non-permanent terms of employment, or to offer to convert the employee's basis of employment to permanent.

The review must commence on the date which is at the end of two years of the employee being continuously employed in the entity on a non-permanent basis, and commence again at the end of each subsequent one year-period during which the employee remains continuously employed on a non-permanent basis in the entity.

Subclause (3) provides that in making the decision, clause 114(3) and clause 114(4) apply. Clause 114(3) requires the chief executive to consider if there is a continuing need for someone to be employed in the employee's role, or a role that is substantially the same, and if the employee is suitable to perform the role. Any requirements of an industrial instrument must be complied with. Clause 114(4), provides that if the matters in clause 114(3) are satisfied, the chief executive must offer to convert the employee's employment to a permanent basis unless it is not viable or appropriate to do so having regard to the genuine operational requirements of the public sector entity. The chief executive must also have regard to the reasons for each decision previously made, or deemed to have been made, under this clause or clause 114 in relation to the employee during their period of continuous employment.

Subclause (4) provides that if the chief executive decides to decline to offer to convert the employee's basis of employment to a permanent basis, the chief executive must provide a notice that includes: reasons for the decision; the total period the employee has been continuously employed on a temporary basis for a fixed term and/or on a causal basis in the entity; how many times their employment on a non-permanent basis has been extended and each decision previously made, or deemed to have been made under this clause and/or clause 114 during the employee's continuous period of employment.

Subclause (5) has been designed to exclude the requirement to document periods of time an employee was "extended" in casual employment to address stakeholder concerns that it is often not relevant to determine if, and how often a casual contract has been extended. Extensions to all other relevant employment types must continue to be addressed in the notice.

The chief executive must make the decision within the "required period" which is defined in subclause (11) to mean the period stated in an industrial instrument within which the decision must be made, or if there is no relevant clause in an industrial instrument, within 28 days after the end of the period the employee has been continuously employed on a non-permanent basis in the public sector entity, or at the end of each subsequent one year period during which the employee remain continuously employed on a non-permanent basis in the public sector entity.

Subclause (8) requires the commissioner to make a directive about the making of a decision under this section.

The directive must provide for the matters a chief executive must consider when deciding the hours of work to be offered when offering to convert a person's employment to a permanent basis.

Subclause (10) clarifies that the timing of a review under this clause does not impact on an employee's eligibility to request a review under clause 113.

Clause 116 is a new provision to increase fairness, transparency and accountability in decision making, by allowing an employee who was entitled to a review for conversion to permanent employment to request an additional review (i.e. in addition to their current review rights), in certain circumstances.

Subclause (1)(a) applies to a public sector employee who has been continuously employed on a non-permanent basis in the same public sector entity for at least one year, if:

- the employee's chief executive has made a decision not to offer to convert the employee's employment to a permanent basis following an employee's request for a review, or a compulsory review undertaken by the chief executive, on the grounds the chief executive considered the employee was not suitable to perform the role, and
- the employee now considers that they have become suitable to perform the role (for example, through the successful completion of a performance improvement plan).

The employee must make the request for subclause (1)(a) within three months of the employee considering themselves to have become suitable to perform the role. An employee's eligibility to make a request for subclause (1)(a) is not limited or otherwise affected by the fact an employee has appealed the decision under clause 130 not to convert them to permanent employment on the grounds the employee was not considered suitable to perform the role.

Subclause (1)(b) provides the clause also applies to a public sector employee who has been continuously employed on a non-permanent basis in the same public sector entity for at least one year, if:

- the employee's chief executive is taken to have made a deemed decision not to offer to convert the employee's employment to a permanent basis under clause 114(7) or clause 115(6), and
- the employee has not appealed against the decision under clause 130.

The public sector employee may ask their chief executive to undertake an additional review of the status of their employment. The request must be made within three months after the deemed decision not to offer to convert the employee's employment to a permanent basis being made under clause 114(7) or clause 115(5).

A request for an additional review made for subclause (1)(b) is an alternative to lodging an appeal where an appeal right exists. In effect, the appeal right will be delayed so that the employee may appeal the decision of the additional review.

The intent is that the employee can only make one request under this clause for each decision made that satisfies the eligibility requirements in subclause (1)(a) or (b). The employee should still have a right to make multiple requests under this clause in the case of multiple separate decisions that meet the eligibility requirements.

The chief executive must decide the request within 28 days of receiving it or the decision will be deemed to be a decision to refuse to offer to convert the person's employment to permanent employment.

Subclause (5) provides for a decision made on a request for an additional review arising from a decision under clause 114, the following clauses apply to the chief executive in making the decision:

- clause 114(3), which provides the chief executive must consider there is a continuing need for someone to be employed in the employee's role, or a role that is substantially the same, the employee is suitable to perform the role and any requirements of an industrial instrument are complied with;
- clause 114(4), which provides if the matters in clause 114(3) are satisfied, the chief executive must offer to convert the employee's employment to a permanent basis unless is not viable or appropriate to do so having regard to the genuine operational requirements of the public sector entity'
- clause 114(5), which provides if the chief executive decides not to offer to convert the employee's employment to a permanent basis, the employee must be provided a notice stating the reasons for the decision, the total period of continuous employment on a non-permanent basis, and how many times the employment on a non-permanent basis has been extended;
- clause 114 (6) which provides that a notice provided in accordance with clause 114(5) does not need to state how many times employment on a casual basis has been extended.

For a decision made on a request for an additional review arising from a decision under clause 115, the following clauses apply to the chief executive in making the decision:

- clause 115(3), which provides clause 114(3) and (4) relating to: a continuing need for someone to be employed in the role, or a role that is substantially the same, the employee's suitability to perform the role, compliance with any requirements of an industrial instrument, and the requirement to convert the employee to permanent employment if these matters are satisfied, unless it is not viable or appropriate to do so having regard to the entity's genuine operational requirements;
- clause 115(4), which provides if the chief executive decides not to offer to convert the employee's employment to a permanent basis, the employee must be provided a notice stating the reasons for the decision, the total period of continuous employment on a non-permanent basis, how many times the employment on a non-permanent basis has been extended, and details of each decision previously made or deemed to have been made;
- clause 115(5), which provides that a notice provided in accordance with clause 115(4) does not need to state how many times employment on a casual basis has been extended.

The commissioner must make a directive about the making of a decision under this section.

It is intended that any request for an additional review under this clause does not affect ability for a non-permanent public sector employee to ask for a review of their status of employment under clause 113, after being continuously employed, for at least one year in the same entity.

Clause 117 introduces a new ability for a chief executive to undertake an additional review of the employment status of a non-permanent employee who has been continuously employed in the same public sector entity for at least two years.

If, following a decision made under clause 115(2) not to offer to convert the employee's employment to a permanent basis, the chief executive considers circumstances justify making another decision while the employee remains continuously employed, and before the next

review is required to be undertaken in accordance with clause 115, the chief executive may undertake an additional review of the employee's employment status.

This section provides the employer with additional opportunities to consider an employee's employment status and make an offer to convert the employee to permanent employment. Circumstances that a chief executive may consider justify making another decision include:

- identifying that a deemed decision had inadvertently been made under clause 115(6)
- a role suitable for the employee being established or becoming substantively vacant
- performance concerns previously identified being resolved.

The chief executive must make the decision within 28 days. The following clauses apply to the chief executive when making a decision after using their discretion to conduct an additional review:

- clause 115(3), which provides clause 114(3) and (4) relating to: a continuing need for someone to be employed in the role, or a role that is substantially the same, the employee's suitability to perform the role, compliance with any requirements of an industrial instrument, and the requirement to convert the employee to permanent employment if these matters are satisfied, unless it is not viable or appropriate to do so having regard to the entity's genuine operational requirements;
- clause 115(4), which provides if the chief executive decides not to offer to convert the employee's employment to a permanent basis, the employee must be provided a notice stating the reasons for the decision, the total period of continuous employment on a non-permanent basis, how many times the employment on a non-permanent basis has been extended, and details of each decision previously made or deemed to have been made;
- clause 115(5), which provides that a notice provided in accordance with clause 115(4) does not need to state how many times employment on a casual basis has been extended;
- clause 115(7) which provides how to work out how long the employee has been continuously employed in the public sector entity.

If the chief executive does not make the decision within 28 days of forming the opinion that circumstances justify the making of another decision, the decision will be deemed to be a decision to refuse to offer to convert the person's employment to permanent employment.

Division 2 Review of acting or secondment at higher classification level

Clause 118 defines "second" for the purposes of the division.

Clause 119 explains the application of the division, stating it applies to a public sector employee who is acting at, or seconded to, a higher classification level in the public sector entity in which the employee is employed.

The division does not apply to a public sector employee employed on a casual basis, a non-industrial instrument employee, or an employee who is acting in or seconded to a position that is ordinarily held by a non-industrial instrument employee.

Clause 120 provides that an employee acting in or seconded to a higher classification level may request to be permanently employed in the position at the higher classification level if they have been seconded to or acting at the higher classification level for a continuous period of at least one year.

The request may be made at the end of one year of acting in or being seconded to the higher classification level for a continuous period. The employee may make an additional request at the end of each subsequent year of acting in or being seconded to the higher classification level for a continuous period, beginning when the employee first became eligible to make a request under subclause clause 120(1)(a).

The term "continuous period", in relation to an employee acting at, or seconded to, a higher classification level, has the meaning given under a directive.

Subclause (2) provides that the chief executive must make the decision within the "required period" which is defined in subclause (8) to mean the period stated in an industrial instrument in which the decision must be made, or if this does not apply, within 28 days of the request being made. If the chief executive does not make a decision within the required period, they are deemed to have refused the request.

The chief executive may only decide to employ the employee in the position at the higher classification level on a permanent basis if they consider the employee is suitable to perform the role. It is intended that the chief executive only consider the employee for permanent employment in the role in which the employee is acting in or seconded to at the time the request is made. It is not intended that the chief executive be required to consider other similar roles.

The meaning of "suitable", in relation to an employee performing a role, has the meaning given under a directive. It is anticipated that the directive may include considerations relating to unresolved work issues when determining whether a person is suitable to perform a role.

The purpose of this clause is to encourage employment on a permanent basis where it is viable and appropriate and to facilitate a chief executive permanently employing an employee in the higher classification level role they are acting in or seconded to, without the advertising requirements referred to in the directive relating to recruitment and selection.

When making the decision, the chief executive must consider the genuine operational requirements of the entity and the reasons for each decision previously made, or deemed to have been made, under this clause in relation to the person's continuous period of employment at the higher classification level. Consideration of the genuine operational requirements of an entity, when making a decision about the appointment of an employee to a higher classification level, is consistent with the policy settings approved by Parliament during stage one of the public sector reforms. Guidance on the meaning of this term may be provided by QIRC decisions and the Public Sector Commission. It is intended that consideration of an entity's genuine operational requirements may include budgetary considerations.

If the chief executive decides to refuse the request to permanently employ the employee in the role at the higher classification level, the chief executive must provide a notice that includes reasons for the decision, the total continuous period the employee has been acting at or seconded to the higher classification level, how many times the employee's acting arrangement or secondment to the higher classification level has been extended at during the continuous period, and each decision previously made, or deemed to have been made under this clause during the employee's continuous period of employment at the higher classification level.

The commissioner must make a directive about employing an employee at the higher classification level under this clause.

Clause 121 is a new provision to increase fairness, transparency and accountability in decision making, by introducing a new ability for an employee to make an additional request to be permanently employed in the position they are acting in or seconded to at the higher classification level.

Subclause (1)(a) provides the clause applies to a public sector employee who has been acting in or seconded to the higher classification level for a continuous period of at least one year if:

- the employee's chief executive has made a decision, following a request by an employee under clause 120, not to permanently employ the employee in the role at the higher classification level because the chief executive considered the employee was not suitable to perform the role, and
- the employee now considers that they have become suitable to perform the role (for example, through the successful completion of a performance improvement plan).

The employee must make the request for an additional review under subclause (1)(a) within three months of the employee considering themselves to have become suitable to perform the role.

Subclause (1)(b) applies the clause to a public sector employee who has been acting in or seconded to the higher classification level for a continuous period of at least one year if:

- the employee's chief executive is taken to have made a deemed decision not to permanently employ the employee in the role at the higher classification level, following a request by an employee for a review under clause 120, and
- the employee has not appealed against the decision under clause 130.

The public sector employee may ask their chief executive to employ the employee in the position at the higher classification level. The request must be made within three months of a deemed decision being made under clause 120(6). A request for an additional review made under subclause (1)(b) is an alternative to lodging an appeal where an appeal right exists. The appeal right will be delayed so that if an appeal right exists under clause 130, the employee may appeal the results of the additional review requested under this clause.

An employee may make only one request under this clause in relation to each decision made, or deemed to have been made, under clause 120.

Subclause (1)(c) provides the clause also applies to a public sector employee who has been acting in or seconded to a role at the higher classification level for a continuous period of at least one year, and the position in which the employee is acting in or seconded to at the higher classification level becomes substantively vacant. The request must be made within three months of the role in which the employee is acting in, or has been seconded to, at the higher classification level becoming vacant.

The ability for an employee to request a review of their employment status at the higher classification level if the role becomes substantively vacant is currently provided for in a directive. This provision is to enshrine this right in the Act.

It is intended that a request for a review made in relation to a decision made under clause 120 does not limit the ability for the employee to request one additional review under subclause (2) each time subsection (1)(c) applies.

The chief executive must decide the employee's request to employ the employee in the role at the higher classification level within 28 days of the request being made. Clause 120(3), (4) and (5) apply to the chief executive in making the decision. If the chief executive does not make the decision within 28 days of receiving the request, the chief executive is deemed to have refused the request.

The commissioner is required to make a directive about the making of a decision under this clause.

Division 3 Review of work performance matters

Clause 122 defines the terms "public sector employee", "work performance information directive" and "work performance matter" for the division. The definitions of these terms are consistent with those provided in the PS Act.

Clause 123 authorises the Public Sector Commission to conduct or commission a review of a public sector entity's handling of work performance matters where issues exist in relation to its management of either current or completed matters. The aim of the review is to build capability in the agency, by helping agencies achieve timely processes and outcomes that are proportionate to the work performance matter.

If the Public Sector Commission forms the opinion that issues exist in relation to a public sector entity's management of either single or multiple disciplinary or conduct matters, the Commissioner may: review the matter himself/herself; or delegate the power to an appropriate officer within the Public Sector Commission; or engage a suitable entity to conduct the review on his or her behalf.

The Public Sector Commission may give the chief executive of the entity subject to the review a report about the review. The report must include any recommendations made about improvements to the entity's practices regarded the handling of work performance matters, or the optimal resolution of the current work performance matter.

Subclause (5) defines current work performance matter for the clause.

Clause 124 relates to the Public Sector Commission's functions relating to a public sector entity's handling of a work performance matter. The clause applies where a procedure under a directive relating to suspension or discipline is being undertaken in relation to a public sector employee for a work performance matter. Before the procedure is concluded, an employee, having first complied to the extent possible with any relevant procedures under a discipline or suspension directive, can ask the Public Sector Commission to review a procedural aspect of the public sector entity's handling of the matter.

The employee may not request a review under this clause if the work performance matter relates to personal conduct that would, if proved, constitute corrupt conduct under section 15 of the *Crime and Corruption Act 2001*.

On receiving the request by the employee, the commission may conduct a review of a procedural aspect of the current work performance matter and give the chief executive a report about the review that includes any recommendations and directions about how any defects in the procedural aspects of the current work performance matter are to be rectified. The chief

executive of the entity must comply, to the extent possible, with a direction given unless a decision was made in relation to the work performance matter before the report was provided to the chief executive and the employee has a right to appeal against that decision.

A function of the commission under this clause must be performed by the commissioner, a staff member or the commission to whom the function has been appropriately delegated, or an appropriately qualified entity that has been delegated the function under clause 283(2). However, an entity can not be delegated the power to give a report to the chief executive that includes directions about how any defects in the procedural aspects are to be rectified.

Subclause (8) defines "current work performance matter" and "procedural aspect" of a current work performance matter for the clause. The definitions of these terms are consistent with those provided in the PS Act.

Clause 125 requires each chief executive of a public sector entity which is the subject of a review to give the commissioner, delegate, or entity undertaking the review, the help it reasonably requires to conduct the review.

Clause 126 enables the commissioner to enter into an agreement about giving and receiving information with prescribed external agencies (an "information exchange agreement"). As part of the review of a work performance matter under clause 123, an agency may refer a matter to an external agency (e.g. the Queensland Police Service or the commission).

The Public Sector Commission will be working in partnership with the relevant public sector entity in order to conduct a review. If the work performance matter has been referred to an external agency, then, from time to time, the Public Sector Commission may need to approach that external agency. This may be, for example, to consult with the Queensland Police Service about a disciplinary process while a criminal process is on foot. In such cases, the commissioner needs to be able to obtain information from these external agencies, and also in some cases (with the permission of the agency) to be able to make representations on behalf of the agency.

This clause provides that the commissioner and the chief executive officer or equivalent of an external agency may enter into an agreement by which relevant information is given or received.

Subclause (3) is not limited to a review under clause 123, but provides that in order to help the commissioner perform his or her functions under this part, the commissioner may give information to a prescribed external agency under an information exchange agreement.

Subclause (4) provides definitions of external agency and relevant information. Without limiting the list, it is proposed that prescribed external agencies would include the Queensland Police Service and the Public Sector Commission.

Clause 127 creates protection from liability for giving information. A person, on behalf of the public sector entity, may give the information outlined in this division despite any other law that would otherwise prohibit or restrict the giving of the information. The purpose of this provision is to ensure those employees working with the Public Sector Commission and sharing information about individual work performance matters are not exposed to legal liability for performing their role. If a person, acting honestly on reasonable grounds, gives the information

to the commissioner or their delegate, the person is not liable, civilly, criminally or under an administrative process, for giving the information.

Without limiting the paragraph above, in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—

- does not contravene the Act, oath or rule of law or practice by giving the information; and
- is not liable to disciplinary action for giving the information.

Also, merely because the person gives the information, the person cannot be held to have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct.

Clause 128 clearly provides that the Public Sector Commission must publish information to which it has access to, either by way of the work performance information directive or otherwise. The Public Sector Commission will, in a publicly accessible way, and by 30 September after each financial year, publish the following information regarding each prescribed entity's work performance matters: number, type, how they were handled, the period within which they were finalised and the outcomes. Subclause (4) defines "prescribed entity" for the clause.

Part 10 Appeals

Division 1 Preliminary

Clause 129 provides definitions for the types of decisions permitted under the appeals part.

The definition of "conversion decision" provided under this clause includes:

- a decision not to employ a public sector employee to a higher classification level where the employee has been acting in or seconded to the higher classification level for a continuous period for at least two years and decisions for each subsequent year of employment for a continuous period at the higher classification level after the initial two year period. The term "continuous period" for this purpose will be defined in a directive;
- decisions related to a review of non-permanent employment of an eligible employee who has been continuously employed in the same public sector entity for at least two years on a non-permanent basis including;
    - a decision not to convert the employment to employment on a permanent basis;
    - a decision not to convert the employment to employment on a permanent basis if the decision arose from a request for an additional review where the employee had a right of review for reasons including:
        - at the time of the review the employee was not considered suitable to perform the role and the employee has since become suitable; or
        - the employee's chief executive is taken to have decided not to offer to convert the employment to employment on a permanent basis because the chief executive failed to make a decision to convert the employment within the required timeframes and the employee had not already made an appeal against the "decision".

- a decision about the hours offered when offering to convert the employment to employment on a permanent basis, including in relation to decisions that arose through an additional right of review.

For the purpose of a conversion decision in relation to non-permanent employment:
- an applicable employee is a public sector employee who is entitled to seek a review of non-permanent employment status as set out in the Reviews part, part 9 of chapter 3 of the Bill; and
- the term "continuously employed" is defined in the Reviews part, part 9 of chapter 3 of the Bill.

While the appeals part is a Chapter 3 matter and applies to public sector entities, however decisions related to transfer are limited to public service employees and employees of public sector entities where a regulation prescribes that the transfer provisions are to be applied to that entity. The application of transfer decisions for appeal purposes is clarified through this clause.

Definitions are also provided for:
- a directive decision;
- a disciplinary decision;
- a fair treatment decision;
- a promotion decision;
- a suspension without pay decision; and
- a work performance direction decision.

Division 2 Right of appeal

Clause 130 references relevant sections for the purpose of making an appeal, including the sections that sets out:
- the decisions against which an appeal may be made; and
- the person who may appeal a matter.

Clause 131 lists decisions for which an appeal may be made, that is, appealable matters. Decisions permitted under the appeals part relate primarily to chapter three matters, with the exception of transfer decisions. Subject to the prescribed non-appealable matters, appeal rights apply to the following decisions:
- a conversion decision;
- a directive decision;
- a disciplinary decision;
- a fair treatment decision;
- a promotion decision;
- a suspension without pay decision,
- a transfer decision; and
- a work performance direction decision;
- a decision about anything else against which another Act allows a person to appeal.

This clause clarifies that an appeal can not be taken as an appeal against a fair treatment decision if an appeal could be taken under another appealable matter.

Clause 132 lists decisions against which an appeal can not be made, that is non-appealable decisions. Non-appealable matters are largely the same as the non-appealable matters included in the PS Act, but with modification to reflect that the jurisdiction now extends to the public sector.

Matters carried forward as non-appealable decisions include decisions of the Governor in Council and the Minister and matters related to decisions about superannuation and workers compensation.

The Bill imports the PS Act provision that prohibit appeals against decisions that decide policy, strategy, nature, scope, resourcing or direction of the public service with modification so that the arrangement will also apply to these sorts of decisions for a public sector entity or as they relate to the public sector.

The provisions which clarify when decisions related to conversion, promotion or fair treatment are non-appealable are also retained.

While the Bill does not deal with probation, which is provided for exclusively in the IR Act, references to probation including in relation to decisions about probations and decisions to terminate a person including when employed on probation are included as non-appealable matters out of an abundance of caution to ensure no appeal right is available where an employee's employment is terminated, including during their probation period.

The inclusion of a decision to terminate the employment of a person as a non-appealable matter further clarifies that appeal rights for termination of employment are outside the jurisdiction of this Act. It is noted that this will not affect employees existing unfair dismissal rights under the IR Act.

Other matters listed as non-appealable decision include decisions to promote, transfer, redeploy or second a person as a chief executive, senior executive, senior officer or in the case of a public sector executive, a public sector executive, unless the decision is declared under a directive to be a decision against which an appeal may be made.

"Public sector executive" is a new term for the Bill which means a public sector employee employed under another Act or law whose remuneration is at least the remuneration of a senior officer (for the public service) and who is a non-industrial instrument employee. The intent is to exclude equivalent senior employees for the sector from these appeals. The ability to provide otherwise in a directive is to establish a mechanism to preserve the status quo for senior employees who may have existing appeal rights applied via another mechanism such as a regulation.

Clause 133 clarifies who may appeal against decisions, by decision matter. Generally, the person who may appeal is the public sector employee that is the subject of the decision for which the appeal is sought, however further conditions apply to appeals for some decision matters. For instance, in the case of appeals against transfer decision, appeals may be made by public service employees and public sector employees, where prescribed as per the definition of transfer decision described at clause 129.

Division 3 Hearing of appeal

Clause 134 provides that, in accordance with chapter 11 of the IR Act, the Queensland Industrial Relations Commission (QIRC) hears and decides appeals.

Affording public sector employees access to the independent adjudication through the QIRC will ensure fairness, transparency and consistency in appeal process.

Clause 135 clarifies circumstances when attendance at an appeal is part of an employee's duties, including if the employee is a party to an appeal or is requested or required by the QIRC to attend the hearing.

This clause does not apply to an appeal against a disciplinary declaration. A disciplinary declaration for this purpose applies to a disciplinary action that would have been taken against a person if the person's employment had not ended.

Clause 136 sets out conditions upon which an employee is entitled to travelling expenses and allowances reasonably incurred for attendance at an appeals proceeding, including where attendance is required as part of an employee's duties.

An employee who is an appellant in a proceeding is not entitled to expenses or allowances, if the employee is suspended from duty without pay, unless the employee is successful in the appeal.

Under this clause the commissioner decides the amount to be paid.

This clause does not apply to an appeal against a disciplinary declaration. A disciplinary declaration for this purpose applies to a disciplinary action that would have been taken against a person if the person's employment had not ended.

Clause 137 sets out conditions upon which a person, other than a public sector employee, is entitled to reimbursement of expenses reasonably incurred in attending an appeal proceeding.

This clause applies if the QIRC asks the person to attend the proceeding but does not apply to person who is appealing against a disciplinary declaration. A disciplinary declaration for this purpose applies to a disciplinary action that would have been taken against a person if the person's employment had not ended.

Under this clause the commissioner decides the amount to be paid.

Clause 138 contains requirements for payment of costs incurred in an appeal proceeding by a public sector entity whose decision is appealed against. Costs includes the QIRC's costs and in accordance with the requirements of clause 136 and clause 137 respectively, travelling expenses and allowances payable where attendance is required as part of an employee's duties and reimbursement of expenses incurred by a person asked by the QIRC to attend a proceeding.

Division 4 Exclusion of particular matters from other Acts

Clause 139 is a definitions clause for Division 4 and defines "excluded matter" by referring to clause 140.

Clause 140 sets out matters excluded from review under other Acts. This clause is consistent with the application clause for exclusions under the PS Act, with a minor amendment to expand application of excluded matters in relation to the contract of employment to include a reference to a special commissioner.

Clause 141 describes the application of the IR Act to excluded matters by clarifying that excluded matters are not industrial matters for that Act, subject to specified exceptions.

Clause 142 describes the application of the *Judicial Review Act 1991* to excluded matters.

Division 5 Miscellaneous

Clause 143 requires the commissioner to make a directive about appeals. The clause specifies matters that must and may be included in the directive.
The directive must include detail on the following matters:

- decisions against which an appeal may be made;
- persons who are entitled to appeal against particular decisions; and
- directions that may be made by the Queensland Industrial Relations Commission in relation to deciding public service appeals.

The directive may declare the appointment or employment to particular positions as non-appealable appointments.

The clause prohibits the directive from directing or purporting to direct the Queensland Industrial Relations Commission or another person to do or not do something in a particular way, in relation to an appeal under this part. This clause, which is modelled on an arrangement included in the PS Act, preserves the independence of the Queensland Industrial Relations Commission and other persons when carrying out appeal related functions.

Part 11 Ending of employment

Clause 144 outlines the purpose the part.

Clause 145 provides that nothing in the Act:

- limits or otherwise affects a right or power, of a chief executive of a public sector entity, under the common law to terminate a public sector employee's employment, including summarily;
- prevents a public sector employee's employment contract from ending by operation of law; or
- limits or otherwise affects the contractual rights of the State or a public sector entity as an employer under the common law.

This clause seeks to preserve the common law rights and powers of the State and public sector entities as an employer, particularly in relation to the ending of an employee's employment. While it is intended that most matters relating to the end of employment will continue to be dealt with by chief executives under the Act's disciplinary framework, the clause recognises that common law processes may be the most appropriate means for ending employment in limited circumstances. Such circumstances include, for example, where:

- an employee has seriously breached their contract of employment, for example by engaging in serious misconduct;
- an employee has repudiated their employment contract by abandoning their employment; or
- the contract of employment is frustrated because the employee is imprisoned or remanded in custody.

The examples in the clause provide guidance only and are not exhaustive. For instance, there may be other forms of conduct that would justify summary dismissal at common law depending on the circumstances. This may include, for example, acts of dishonesty such as fraud or stealing. However, nothing in the clause is intended to pre-empt the application of the common law in any given case. Further, the clause does not impact an employee's ability to access the unfair dismissal regime in the IR Act in appropriate cases.

The common law principles mentioned in the clause are intended to operate alongside the disciplinary framework and other provisions in the Bill. It will be a matter for chief executives to decide how they determine an employee's employment in any given case, including whether they rely on the disciplinary framework in the Bill or a common law process.

Part 12 Surplus

Clause 146 provides that part 12 does not limit or affect the IR Act, chapter 2, part 3, division 13, or an industrial instrument.

Clause 147 provides for the chief executive of a public sector entity to terminate a public sector employee's employment in particular circumstances, where the chief executive believes the employee is surplus to the entity's needs. Relevantly, the clause empowers the Public Sector Commissioner to make a directive about action (including, for example, termination of employment) that a chief executive must take if the chief executive holds such a belief. The clause safeguards employees to whom the clause applies by:

- making the chief executive's termination power subject any such a directive; and
- requiring the chief executive to act in a way that is compatible with the purpose of the Act outlined in clause 3 and the ways in which the purpose is to be achieved outlined in clause 4.

Chapter 4 Public service employment framework

Part 1 Preliminary

Clause 148 provides for the application of the chapter to public service entities. The clause clarifies that if a public service entity's chief executive is the only employee of the entity under this Act, the chapter applies only in relation to the employment of the chief executive.

Part 2 Employment of general employees, fixed term temporary employees and casual employees

Clause 149 sets out the basis of employment of general employees, who perform duties and functions that are different from the work of a public service officer. These employees may be

engaged by chief executives to perform work of a type not ordinarily performed by an officer, on either a permanent, temporary (full-time or part-time) or casual basis.

Clause 150 sets out the basis of employment of fixed term temporary employees. To meet temporary circumstances, a chief executive may employ a person to perform work of a type ordinarily performed by an officer other than a senior executive or chief executive, on a temporary, full-time or part-time, basis. The clause affirms that a person employed as a fixed term temporary employee does not become a public service officer.

A chief executive may only employ someone as a fixed term temporary employee if employment of the person on a permanent basis is not viable or appropriate. Clause 81(3)(a) of the Bill provides examples of when fixed temporary employment may be suitable if employment of the person on a permanent basis may not be viable or appropriate.

Clause 151 provides for the employment of persons on a casual basis to perform work of a type ordinarily performed by an officer or a senior officer (but does not apply to work of a type ordinarily performed by a chief executive or senior executive). The clause affirms that a person employed as a casual employee does not, by the employment, become a public service officer.

A chief executive may only employ a person on a casual basis if employment on a permanent or fixed term temporary basis is not viable or appropriate. Clause 81(3)(b) of the Bill provides examples of when casual employment may be suitable if employment of the person on a permanent or fixed term temporary basis may not be viable or appropriate.

Part 3 Employment of public service officers

Clause 152 provides for the employment of public service officers by chief executives of public service entities. The basis of an officer's employment may be permanent or on a contract for a fixed term. The employment may be full-time or part-time.

Clause 153 provides for the continuation and purpose of senior officer positions. This distinguishes senior officers as a distinct group within the public service, and as the primary feeder group to the senior executive service. Accordingly, the purpose of senior officers reflects a requirement for professional development and a public-service-wide perspective.

Clause 154 describes the role of the commissioner in relation to senior officer positions and requires the commissioner to make and implement arrangements to facilitate the professional development of senior officers as potential future senior executives.

Clause 155 sets out the basis of employment for public service officers on contract for a fixed term. Equivalent contracts under the PS Act were commonly known as "section 122" contracts. The clause states that the person must enter into a written contract of employment with the public service entity's chief executive. The clause protects individual rights by providing that a person is not required to enter into a contract if they are employed on a permanent basis in the position immediately before it is to be on contract.

The clause also affirms that the person's overall employment conditions under the contract must not, on balance, be less than those that the person would be entitled to if they were employed on a permanent basis. The Queensland Industrial Relations Commission may hear and decide matters in relation to contract disputes.

Clause 156 provides for reversionary rights if a public service officer, originally employed on a permanent basis, is subsequently employed as an officer on contract under clause 155, and the contract is terminated other than by disciplinary action or expires and is not renewed or replaced by another contract. This clause preserves rights of individuals by protecting security of permanent employment and providing that a person may choose to elect to continue to be employed under the same conditions that would apply if the person had continued in employment as a public service officer on a permanent basis.

Clause 157 provides that if an officer employed on contract under clause 155 accepts employment as a public service officer on a permanent basis, the contract is taken to be terminated by agreement of the parties. The clause clarifies that the person is not entitled to payment under the contract because of the termination.

Part 4 Other employment arrangements

Division 1 Preliminary

Clause 158 provides for the application of the part. Part 4 is subject to clause 159 and clause 164.

Clause 159 provides that a regulation can apply division 2, relating to secondment, or division 3, relating to transfer or redeployment, to a public sector employee employed in a public sector entity. The regulation may apply the divisions with or without change. This clause is to support the continued application of secondment, transfer and redeployment provisions currently applied to certain public service offices declared under the PS Regulation.

Division 2 Secondment

Clause 160 provides for the secondment of a public service officer within and between public service entities. Second is defined in the dictionary to mean temporarily employ the employee on different duties at the same classification level, or at a higher level or at a lower level than the officer's current classification level. Secondments between entities must be by agreement between the relevant chief executives. The clause provides a protection to ensure that an employee cannot be seconded to a lower classification level without their consent, for example, if the officer requests to be seconded to a lower classification level for personal reasons.

If a chief executive of a public service entity (the first entity) has seconded a public service officer from another entity into the first entity, only the chief executive of the first entity may cancel the secondment at any time.

Division 3 Transfer or redeployment

Clause 161 makes provision for the transfer or redeployment of public service officers within and between public service entities. The clause provides flexibility for chief executives to redeploy officers with their consent (including at the person's request) to a position at a lower classification level. Transfer or redeployment between public service entities must be by agreement between the relevant chief executives. A transfer under this clause involves employing the employee, on different duties or at a different location, other than temporarily. A redeployment under this clause involves employing the employee, at a lower classification level, whether or not on different duties or at a different location, other than temporarily.

Clause 162 describes the consequences if a transfer is refused and provides for public service officers to establish grounds on which transfers may be refused. If the officer establishes reasonable grounds to the chief executive's satisfaction, the transfer is cancelled, and the refusal must not be used to prejudice the officer's prospects for future promotion or advancement. However, if the officer refuses the transfer after failing to establish reasonable grounds, the chief executive may terminate the officer's employment.

Division 4 Resignation or retirement

Clause 163 makes provision for a standard two-week resignation period for public service officers. The clause also states that a public service officer may resign within a shorter period if approved by their chief executive.

Clause 164 provides for voluntary retirement and states that a public service officer or general employee may elect to retire from the public service if they have turned 55 years or if they are permitted to retire under a directive.

Chapter 5 Public service chief executives and senior executives

Part 1 Preliminary

Clause 165 provides the application of the chapter, stating it applies in relation to chief executives and senior executives in departments, and the commissioner. Part 3 also applies to a public service entity mentioned in clause 9(b).

Part 2 Chief executives

Division 1 Chief executive service

Clause 166 continues the concept of a chief executive service and provides that the chief executive service consists of chief executives appointed or declared under division 2 and the commissioner.

Clause 167 sets out the purpose of the chief executive service and how it is to be achieved. As leaders within the public service, chief executives are expected to provide a high level, strategic leadership role, focusing on the overall effectiveness and efficiency of the public service in accordance with the Government's priorities. Subclause (1)(b) provides for the chief executive service to promote collaboration between the departments with a focus on public service-wide priorities in addition to department-specific priorities. This furthers the objects of the Bill of shared responsibility for the effective stewardship of the public sector between the Public Sector Governance Council, the Public Sector Commissioner and the chief executive service.

Clause 168 introduces a provision requiring the commissioner to make and implement arrangements to facilitate the executive development of chief executives.

Clause 169 enables the Minister to make chief executive service standards which provide for competencies expected of and ethical standards for chief executives, complementary to existing obligations under the *Public Sector Ethics Act 1994*.These standards would acknowledge the

unique roles and responsibilities of chief executives as accountable officers within the public service.

Division 2 Appointments

Clause 170 enables the Governor in Council to appoint chief executives.

Clause 171 requires each department to have a chief executive. The Minister may appoint a chief executive to a particular department by signed public notice. The appointment must be notified in the gazette or in another publicly available way the Minister considers appropriate.

Clause 172 allows the departmental Minister to appoint a person to act as chief executive in the absence of the chief executive. It does not matter whether the person appointed is or is not already a public service officer.

Clause 173 provides for the appointment of a statutory officer, such as the Police Commissioner, as the chief executive of a department. This Act does not apply to an appointment to the stated office.

Clause 174 describes the basis of a chief executive's employment and requires that each person appointed as chief executive must enter into a written contract of employment with the Minister.

Clause 175 sets out the term of a chief executive's appointment and the resignation and termination procedures in relation to chief executives. Subclause (1) provides the term of a chief executive's appointment is five years, unless the person has requested a shorter period, in which case the term of the appointment is the shorter period. This seeks to give effect to recommendation 14 of the Coaldrake Report and mirrors section 58 of the *Public Service Act 1999* (Cwlth). The *Acts Interpretation Act 1954* (Qld) enables reappointment of a chief executive where the power to appoint exists. Subclause (2) clarifies that the term of any reappointment cannot be more than five years.

The clause provides a chief executive may resign by signed notice at least one month before the notice is to take effect. A chief executive's appointment and contract of employment may be terminated by the Governor in Council with signed notice given to the appointee by the Minister at least one month before it is to take effect.

Division 3 Functions

Clause 176 defines Minister of a chief executive of a department for the division.

Clause 177 describes the functions and responsibilities of chief executives in managing their departments within the context of overall Government priorities. A key change from the PS Act is the inclusion of additional functions and responsibilities such as: pro-actively managing the work performance and personal conduct of departmental employees; and being responsible for providing stewardship of the public sector by actively participating in collective and collaborative leadership and implementing sector-wide policies decided by the Minister and the council.

Clause 178 delineates the extent of a chief executive's autonomy. The clause provides that the chief executive of a department is subject to the directions of the departmental Minister in managing the department. However, in making decisions about particular individuals, the chief executive must act independently, impartially and fairly and is not subject to the directions of any Minister, but is subject to any direction given by the commission in a report about a procedural aspect of a current work performance matter.

Another Act may provide that a chief executive is not subject to the directions of their Minister about particular matters, or may limit the extent to or circumstances in which the chief executive is subject to any directions.

Clause 179 clarifies that for a person who is a chief executive, references in the Act to the chief executive's chief executive, or the chief executive of the chief executive's department, refer to the Minister.

Division 4 Conflicts of interest

Clause 180 defines the term "Minister" for the division.

Clause 181 defines the terms "interest" and "conflict of interest".

Clause 182 provides for the declaration of interests of public sector entity chief executives. A chief executive must give a statement about their interests to their Minister or the commissioner (each a "designated person") within one month after their appointment. The chief executive must give a revised statement to each designated person if particular changes to the chief executive's interests, as prescribed by a directive, happen after chief executive gives the first statement. The revised statement must be provided as soon as possible after the relevant changes to the chief executive's interests become known to the chief executive. The clause also provides that when the giving the commissioner a statement of interests or revised statement of interests, the chief executive must also give the commissioner written advice that they have given the statement to their Minister.

Clause 183 provides for the management of conflicts of interests of departmental chief executives. The clause requires a chief executive to disclose to their Minister the nature of any interest that conflicts, or has the potential to conflict, with the discharge of their responsibilities. The disclosure must be made as soon as practicable after the relevant facts come to the chief executive's knowledge. The clause also prohibits the chief executive from taking action concerning a matter that is or may be affected by the actual or potential conflict unless authorised by their Minister. The Minister may direct the chief executive to resolve a conflict or possible conflict between the chief executive's interests and responsibilities.

Part 3 Senior executives

Division 1 Senior executive service

Clause 184 continues the Senior Executive Service as part of the public service.

Clause 185 sets out the purposes of the senior executive service and how they are to be achieved. A key change from the PS Act is the inclusion of additional purposes such as

providing strategic leadership and high quality and impartial advice and championing the public sector principles.

These purposes reflect the leadership role of senior executives within government and reflect their responsibilities of ensuring a public service-wide perspective and developing their skills both within and outside the public service. The senior executive service will consist of a core of mobile, highly skilled senior executives.

Clause 186 describes the role of the commissioner to help achieve the purposes of the senior executive service. The commissioner must make and implement arrangements to facilitate the executive development of senior executives.

Clause 187 provides that the senior executive service consists of persons employed under the Bill as senior executives.

Division 2 Employment

Clause 188 makes provision for the employment of senior executives. This clause represents a change from the appointment of senior executives by the commission chief executive under the PS Act and is intended to streamline appointment processes in government.

The chief executive of a public service entity may employ a senior executive in the entity. However, the chief executive is first required to obtain approval from the commissioner to employ the senior executive in accordance with the relevant directive. For example, commissioner approval may be required to initially employ a specific person into a particular senior executive role.

Clause 189 allows a chief executive of a public service entity to appoint a person from within or outside the public service to act as a senior executive.

Clause 190 describes the basis of a senior executive's employment and the requirement to enter into a contract with their chief executive. In reliance on statutory interpretation principles, the Bill does not limit the number of times a contract with the senior executive can be extended. The senior executive's conditions of employment are governed by the Act, any relevant directives and the contract.

Clause 191 sets out a maximum five year term of employment contract for senior executives, and resignation and termination procedures. A senior executive may resign by signed notice given to their chief executive at least one month before the retirement is to take effect. A chief executive may terminate a senior executive's contract of employment by signed notice given to the senior executive at least one month before the contract is to be terminated.

Chapter 6 Governance of public sector

Part 1 The Minister

Clause 192 describes the functions of the Minister, including the main function which is to promote the overall effectiveness and efficiency of the public sector. The Minister's subsidiary functions are also listed and include functions imported from the PS Act which have been

expanded upon to reflect the extended application of the Public Sector Act and new functions including the function of requesting public sector reviews.

Clause 192 clarifies that for the purpose of the Public Sector Act, the Minister's functions do not relate to functions of certain core integrity bodies, including the Crime and Corruption Commission, the Office of the Information Commissioner, the Queensland Integrity Commissioner, the Office of the Ombudsman and the audit office.

Clause 193 is a new arrangement, which empowers the Minister to give a direction, which may be as specific or general as the Minister considered appropriate, to any of the following entities: to the commissioner, the council or the chairperson on of the council.

A direction may include a requirement for the entity, to which the direction has been given, to report on the performance of their functions. A direction may also be about any matter the Minister considers appropriate in relation to public sector employment.

Clause 193 sets out the ways in which a direction, which involves giving the Minister a report, must be made.

Clause 194 empowers the Minister to make a performance framework about the Minister's expectations, including in relation to competencies and ethical standards of departmental chief executives in the performance of their functions. This clause is based on the chief executive service standards provision included in the PS Act.

If the Minister makes a framework, it is required to be made publicly available, in a way the Minister considers appropriate.

Clause 195 empowers the Minister to establish a taskforce of at least two chief executives of public service entities, one of whom must be appointed as the taskforce chairperson, where the chief executives have responsibility in relation to a particular matter. The Minister must decide the public service entity to which the taskforce belongs.

Clause 196 sets out the functions and staffing arrangements of taskforces established under clause 195. The main function of a taskforce is to deal with issues of a complex nature which are common to two or more public service entities. The clause sets out how chief executives may discharge the main function of the taskforce.

The clause further provides that chief executives have powers necessary or convenient to perform the taskforce's functions and clarifies staffing arrangements that may be made for the performance of the functions of the taskforce. In particular, the chief executive of the public service entity to which a taskforce belongs may employ public service employees, including on a temporary basis, or enter into mobility or secondment arrangements so that public sector employees or where appropriate other persons can perform functions of the taskforce.

Clause 196 also sets out the Minister's functions in relation to a taskforce including that the Minister must decide the following:

- the terms of reference;
- governance and administration arrangements;
- monitoring and reporting arrangements; and

- the allocation of resources.

Part 2 Departments of government

Clause 197 imports arrangements from the PS Act which provide that departments of government are the entities declared to be departments of government by the Governor in Council by gazette notice. This includes parts of departments declared as such by the Governor in Council by gazette notice.

Clause 198 imports arrangements from the PS Act which enable formalisation of machinery of government changes made to departments or other government entities. Arrangement are made by the Governor in Council by gazette notice.

Clause 199 imports arrangements from the PS Act which provide that the Governor in Council may by gazette notice make declarations in relation to the functions of a department or another government entity. The declaration may include functions or matters that are not functions of the department or government entity.

Clause 200 imports arrangements from the PS Act which permit the formalisation of changes in functions of departments or government entities, including giving, discontinuing or changing a function. Such changes are to be made by the Governor in Council by gazette notice.

Clause 201 imports arrangements from the PS Act which ensure the Governor in Council has necessary powers in relation to the making of particular gazette notices under this part.

Clause 202 establishes arrangements that apply to a public service employee when departments are amalgamated. The clause clarifies that the employee retains entitlements; that continuity of service is not interrupted; and that the employee's employment is not a termination for the purpose of retrenchment or redundancy.

Clause 203 imports arrangements from the PS Act to clarify that a gazette notice under this part does not have any effect on a government entity established or regulated by another Act as a separate entity.

Part 3 Public Sector Commission

Clause 204 continues the Public Service Commission as the Public Sector Commission (the commission).

Clause 205 establishes the membership of the commission as comprising the commissioner, each special commissioner and commission staff.

Clause 206 provides that the commission represents the State and has the privileges and immunities of the State.

Clause 207 establishes the functions of the commission, including its main function which is to support the implementation and consistent application of the Act. Subsidiary functions listed under this clause include to provide system leadership and stewardship of the public sector; and to build and maintain the capability and capacity of the public sector.

The clause also recognises other functions the commission has under the Public Sector Act or another Act.

Clause 208 clarifies the powers of the commission, including powers given under this or another Act.

Clause 209 empowers the commissioner to employ the persons under chapters 4 and 5, the commissioner considers necessary to perform the functions of the commission.

Clause 210 clarifies that commission staff members are subject to the direction of the commissioner.

Clause 211 empowers the commissioner to engage suitably qualified persons to meet temporary circumstances. Such persons are to be engaged under the terms and conditions decided by the commissioner.

Part 4 Public Sector Commissioner

Clause 212 makes provision for appointment of an appropriately qualified person as the Public Sector Commissioner (the commissioner), including that the appointment be made by the Governor in Council, on the recommendations of the Minister. Clause 212 clarifies that the commissioner is the commission's chief executive.

Clause 213 prohibits a "disqualified person" from appointment. The term "disqualified person" is defined in the Act to include particular office holders. A person may also be disqualified for reasons including:

- if a person has a conviction, other than a spent conviction, for an indictable offence;
- is an insolvent under administration; or
- is disqualified from managing corporations under the *Corporations Act 2001* (Cwlth), part 2D.6.

Clause 214 provides that the term of appointment to the office of commissioner may not exceed five years, but that a person may be reappointed to this office. The clause further provides that the term of the appointment is included in the appointment instrument.

Clause 215 requires a person appointed as the commissioner to enter into a contract with the Minister. The clause provides detail on matters that may be included in the contract including remuneration and allowances and required performance standards. The clause also includes arrangement for the termination of the contract by the Governor in Council by signed notice by the Minister to the commissioner. The notice must be given at least 1 month before the termination is to take effect.

Clause 216 sets out conditions upon which the office of commissioner becomes vacant, including if the commissioner completes the term for which the commissioner was appointed and the commissioner is not reappointed; if the commissioner becomes a disqualified person; or if the commissioner resigns.

Clause 216 includes requirements for the way in which the resignation must be made including that the resignation must be made by giving signed notice to the Minister at least one month before the resignation is to take effect. This clause also provides that the office becomes vacant

if the commissioner's appointment is terminated by the Governor in Council as provided for in clause 215.

Clause 217 sets out the functions and responsibilities of the commissioner, including the commissioner's main function of ensuring the effective and efficient administration and operation of the commission and the performance of its functions. Subsidiary functions listed under this clause include internal functions aimed at managing the commission and externally focused functions including:

- providing stewardship of the public sector's workforce;
- making directives;
- approving the initial employment of senior executives; and
- conducting public sector reviews.

The clause also recognises other functions the commissioner has under this Act or another Act.

Clause 218 makes provision for the powers of the commissioner, including powers given under this or another Act.

Clause 219 sets out the circumstances when the Minister can appoint an acting commissioner.

Clause 220 preserves the rights and entitlements of a public service officer if the officer is appointed as the commissioner. This clause provides that for the purpose of accrual of rights, service as the commissioner is treated as a continuation of service as a public service officer.

Part 5 Directives

Clause 221 clarifies that directives bind those that they apply to.

Clause 222 empowers the commissioner to make directives about the overall employment conditions of non-industrial instrument public sector employees including public sector executives and public service officers and fixed term contract public service employees remunerated at rates at least that of a senior public service officer.

The clause includes the following examples of matters a directive may be about:

- a matter relating to equity, diversity, respect or inclusion under chapter 2 of the Act;
- a matter relating to the employment arrangements of public sector employees under chapter 3 of the Act; and
- a matter relating to the employment of public service employees under chapter 4 or 5.

The clause prohibits the commissioner from making a directive about the overall employment conditions of public sector employees covered by industrial instruments.

The commissioner's powers, including the restriction which limits application to non-industrial employees, to making directives about overall employment conditions are modelled on the PS Act with necessary modification to extend application to public sector executives.

For the purpose of this clause "industrial instrument" takes its definition from the IR Act and "overall employment conditions" is defined in the definitions schedule of the Bill as meaning remuneration and conditions of employment.

The commissioner also has a broad power under this clause to make directives about a range of matters included in the Bill, including in relation to the functions of the commissioner and the Commission and the ways in which the main purpose of the Act is to be primarily achieved. It is noted that in addition to the directive making powers included in this clause, the Bill contains express provisions which require or permit the commissioner to make directives about specific matters.

The Bill does not retain the PS Act requirement to gazette a directive. However, this clause includes a requirement that the commissioner publish a directive on a Queensland government website after it is made, to ensure sufficient transparency and accountability is achieved.

The clause does not include a required timeframe for publication, therefore in accordance with "reckoning of time" arrangements contained in the *Acts Interpretation Act 1954*, publication must occur as soon as possible after the directive is made.

In addition, in accordance with the *Statutory Instruments Act 1992*, a statutory instrument that is not required to be published in the gazette, commences:

- on the day on which it is made; or
- if a later day or time is fixed in the statutory instrument—on that day or at that time.

Clause 223 empowers the IR Minister responsible for industrial relations to make directives about the overall employment conditions of industrial instrument public sector employees, that is of public sector employees, excluding public service officers remunerated at rates at least that of a senior officer, equivalently remunerated fixed term contract public service employees and public sector executives.

The clause makes clear the IR Minister can not make a directive about the overall conditions of employment for employees that the commissioner can make a directive for on this matter.

The directive making power included at clause 223 is modelled on existing PS Act arrangements and extended to public sector employees.

As is the case with directives made by the commissioner, the Bill does not retain the PS Act requirement to gazette a directive. However, the IR Minister is required to publish a directive on a Queensland government website after it is made. As this clause does not include a required timeframe for publication, publication must occur in accordance with "reckoning of time" arrangements contained in the *Acts Interpretation Act 1954*, which is as soon as possible after the directive is made.

In addition, in accordance with the *Statutory Instruments Act 1992* a statutory instrument, that is not required to be published in the gazette, commences:

- on the day on which it is made; or
- if a later day or time is fixed in the statutory instrument—on that day or at that time.

Clause 224 contains consultation requirements for the making of directives, including that failure to consult does not invalidate or affect the directive if reasonable attempts were made to comply with the consultation requirements.

Clause 225 requires the commissioner or the IR Minister to consider advice given to the other about improving the public sector's effectives and efficiency. Clause 225 is modelled on the PS Act and modified to apply to the public sector.

Clause 226 is modelled on a provision of the PS Act and clarifies that the commissioner and IR Minister may make a joint directive.

Clause 227 makes provision for the way in which a directive may apply a provision of the Act, including with modifications, to a public sector employee.

Clause 228 provides that legislation (including subordinate legislation) prevails over a directive to the extent of any inconsistency. The clause explains what an inconsistency is considered to be for the purpose of the provision.

Clause 229 provides that an industrial instrument prevails over a directive to the extent of any inconsistency between the two. The clause explains what an inconsistency is considered to be for the purpose of the provision.

Part 6 Special commissioners

Clause 230 makes provision for appointment of person as a special commissioner, including that an appointment to this office is made by the Governor in Council, on the recommendations of the Minister.

Clause 231 prohibits a disqualified person from being appointed as a special commissioner. A "disqualified person" is defined in the Act and includes holders of particular offices. A person may also be disqualified for certain reasons including:

- if a person has a conviction, other than a spent conviction, for an indictable offence;
- is an insolvent under administration; or
- is disqualified from managing corporations under the *Corporations Act 2001* (Cwlth), part 2D.6.

Clause 232 provides for the term a person may be appointed to the office of special commissioner including that the term must not be more than five years, but that a special commissioner may be reappointed.

Clause 233 makes provision for remuneration and conditions of appointment as a special commissioner.

Clause 234 sets out conditions upon which the office of a special commissioner becomes vacant.

Clause 235 includes requirements and conditions that apply if a special commissioner has an interest that conflicts, or may conflict, with the discharge of the special commissioner's responsibilities. The clause includes disclosure requirements that apply to a special commissioner and actions the Minister make take in response to a conflict, or possible conflict of interest.

Clause 236 lists the main functions of a special commissioner as:

- advising the Minister about an area of public sector administration stated in the special commissioner's instrument of appointment; and
- facilitating the development and implementation of public sector-wide policies; and
- conducting public sector reviews.

This clause also recognises other functions the special commissioner has under this Act or another Act.

Clause 237 sets out the powers of a special commissioner, including powers given under this or another Act.

Clause 238 preserves the rights of a public service officer if the officer is appointed as a special commissioner. This clause provides that for the purpose of accrual of rights, service as a special commissioner is treated as a continuation of service as a public service officer.

Clause 239 clarifies that a special commissioner is subject to the direction of the chairperson of the council. The clause also clarifies that the chairperson of the council is the chief executive of a special commissioner.

Part 7 Public Sector Governance Council

Clause 240 establishes the Public Sector Governance Council (the council).

Clause 241 establishes membership of the council which comprises public sector (internal) and non-public sector (external) membership. Internal membership consists of the commissioner, required chief executives and other chief executives and special commissioners appointed for a particular period. External membership consists of two persons appointed as community representatives. The appointment of external community representatives is consistent with the approach suggested in the Coaldrake Report.

Clause 242 contains arrangements for appointment of community representatives, including that they are appointed by the Governor in Council on the recommendation of the Minister with the remuneration and allowances decided by the Governor in Council. The clause provides that term of appointment may not exceed three years, but that a person may be reappointed. The clause prohibits appointment of public sector employees as community representatives. The clause also provides for the termination of the appointment by the Governor in Council.

Clause 243 provides that a person is disqualified from being appointed, or continuing as, a community representative if the person is a disqualified person.

Clause 244 outlines the circumstances where the office of a community representative becomes vacant.

Clause 245 provides that the council represents the State and has the privileges and immunities of the State.

Clause 246 provides that the chairperson of the council is the chief executive of the department in which the *Parliament of Queensland Act 2001* is administered. This clause clarifies the chairperson's power to make the appointments, including that the chairperson may appoint:

- another member of the council to act as the chairperson in the chairperson's absence;
- chief executives or special commissioners as members for a period decided by the council.

Clause 247 lists the functions of the council including its main function as the oversight body for whole-of-sector governance and to provide system leadership and stewardship of the public sector. The clause recognises the council's relationship with the Minister through inclusion of the following functions:

- to monitor and advise the Minister on, the performance of the public sector and matters relating to public sector administration and workforce management;
- to monitor and report to the Minister about, the workforce profile (that is the demographic categories and other characteristics of a workforce) of the public sector.

Other key functions include to set work programs for each special commissioner and to request public sector reviews.

Clause 248 empowers the council to do anything necessary or convenient to be done for the performance of the council's functions.

Clause 249 permits the council to fix the maximum number and classification levels, of full-time senior executive roles in a public service entity.

The ability of the council to fix full-time roles includes fixing full-time equivalent roles and therefore permits a position to be temporarily backfilled or shared between part-time employees.

Clause 250 clarifies the council's role in making a public sector employee the head of a practice area. The clause lists practice areas for this purpose and includes areas such as human resource management, change management and reframing of the State government's relationship with Aboriginal peoples and Torres Strait Islander peoples.

Clause 251 provides that the council may conduct its business, including its meetings, in the way it considers appropriate, but requires the council to hold at least four meetings per year.

Part 8 Public sector reviews

Division 1 Preliminary

Clause 252 provides definitions for the part.

Clause 253 provides that a public sector review includes a review about any matter or aspect of public administration, or of public sector management, relating to the main purpose of this Act including how the main purpose is primarily achieved.

Division 2 Initiating public sector review

Clause 254 provides that a "referring entity", which is defined as the Minister or the council, may ask a "reviewing entity", which is defined as meaning the commissioner, a special commissioner or another appropriately qualified person, to conduct a public sector review.

The referring entity's request must be made by signed notice. The notice must state the terms of reference for the review, including the timeframe for completion of the review.

The clause lists entities for which a referring entity can not seek a public sector review, this restriction applies to core integrity bodies, entities listed include among other entities, the Crime and Corruption Commission, the audit office and the Queensland Integrity Commissioner. The clause clarifies a review may not be sought about an individual.

The clause also clarifies delegation arrangements that apply where the reviewing entity is "another appropriately qualified person" that is not the commissioner or a special commissioner.

A note is included at clause 254 to provide a reference to delegation arrangements that apply to the commissioner or a special commissioner.

Clause 255 establishes requirements which must be fulfilled before a referring entity asks a reviewing entity to conduct a review, including that the referring entity must inform the Minister responsible for the administration of the public sector entity and the chief executive of the entity about the proposed review. The chief executive of the public sector entity is entitled to nominate the number of employees of the entity that can take part in the public sector review. In addition, the referring entity must consult with, and have regard to the views of, the chief executive of the public sector entity about the proposed terms of reference for the review.

This clause clarifies the Minister or council may ask for a review about a public sector entity the Minister administers or a member of the council is the chief executive.

Division 3 Functions and powers of reviewing entity

Clause 256 requires a reviewing entity to conduct a public sector review in accordance with the terms of reference for the review, as created by the referring entity.

Clause 257 provides the reviewing entity with powers necessary to conduct a public sector review including:

- right of entry to the official premises of the public sector entity, at a reasonable time;
- access to any official document, as defined in this clause, in possession of the public sector entity;
- the ability to interview employees of the public sector entity or anyone else, such as an employee organisation, who can provide information relevant to the review.

The clause requires a chief executive and other employees of the public sector entity to provide assistance reasonably required to conduct the review, including in relation to the provision of official documentation. However, a person is not required to answer questions or provide information if it would incriminate the person.

These arrangements are based on arrangements provided in the PS Act for the conduct of an administrative inquiry.

Division 4 Conduct of review

Clause 258 requires the reviewing entity to keep the referring entity informed of progress in relation to a public sector review.

Clause 259 requires the reviewing entity to comply with requests from the referring entity for particular information relevant to a review and to provide assistance to the referring entity in understanding the information. This clause further provides that any such information is confidential.

Clause 260 permits a person to disclose information, for the purpose of the review, to the reviewing entity for the conduct of the review.

Clause 261 requires the reviewing entity of a public sector review to prepare a report on the review. The clause contains required content for the report, including among other things findings, recommendations and details on the conduct of the review.

This clause further provides that if the reviewing entity is the commissioner or special commissioner and the reviewing entity delegates the preparation of the report, the reviewing entity must approve the report.

Clause 262 contains requirements for treatment of information the reviewing entity considers to be sensitive information, such as information that would be contrary to the public interest to disclose or for which the State would have a basis for claiming that disclosure should not be permitted in a judicial proceeding.

Under this clause the reviewing entity is not required to include such information in the report and may include it in a separate document to be given to the referring entity.

Clause 263 includes requirements that apply to the reviewing entity and the referring entity in relation to treatment of the report including that the reviewing entity must give the report to the referring entity as soon as practicable after the report has been prepared.

The referring entity is required to give the report to anyone the referring entity considers appropriate. If the review is about a public sector entity, the referring entity must also give a copy of the report to the Minister responsible for administering the entity and the chief executive of the entity.

Clause 263 further provides that the referring entity may publish the report in the way the referring entity considers appropriate, however if the referring entity is the Minister the report must also be tabled in the legislative assembly.

Prior to publication and if required, tabling, the referring entity must remove confidential information. Clause 263 defines “confidential information” for this clause.

Part 9 Complaints management system

Clause 264 requires public sector entities to establish and implement complaints management systems for their respective entities. Complaints management systems developed under this clause must include measures for receiving, processing and providing outcomes for customer complaints. The clause defines the term "customer complaint".

This clause imposes a requirement that an entity's complaints management systems complies with Australian Standards for handling customer complaints.

The clause imposes reporting obligations upon chief executives of public sector entities, including that they must publish the number of complaints received by their respective entities each year and provide a further breakdown of complaint outcomes where further action is required and where it is not required.

Part 10 Miscellaneous

Clause 265 contains requirements that apply to suitability checks for appointment of the commissioner, a special commissioner or a community representative, including that the Minister may ask the police commissioner for a report about a person's criminal history. This provision is subject to the Minister first obtaining written consent from the person for which the report is sought.

The clause requires that, as soon as practicable after a decision about the person's suitability is made, that the report be destroyed.

Chapter 7 Matters applying to public service employees and other individuals

Part 1 Protection from civil liability

Clause 266 sets out the main purpose of the part, which is to give public service employees and other persons protection from civil lability for engaging in conduct in an official capacity.

Clause 267 includes a definitions section for the part to define a "prescribed person" by referencing relevant subclauses of the application clause.

Clause 268 is an application clause which lists as prescribed persons, persons the part applies to. Consistent with the arrangements in the PS Act, the civil liability protections apply to public service employees and other prescribed persons including associates to Supreme and District Court judges, associates to commissioners of the Queensland Industrial Relations Commission, ministerial staff members, other members or employees of particular entities that represents the State and a person prescribed by regulation for this purpose.

The clause also identifies particular persons the civil liability protections do not apply to such as persons employed by government owned corporations and honorary officer holders. The provision permits a regulation to prescribe persons for this purpose.

Clause 269 seeks to continue in the Public Sector Act the civil liability protections included in the PS Act that apply to a prescribed person when engaging in conduct in an official capacity.

The clause provides that if the person to whom the conduct applies was a member or employee of a body corporate, the liability transfers to the body corporate, otherwise the liability attaches to the State. However, if the person to whom the liability applies acted other than in good faith and with gross negligence, the body corporate or the State may recover a contribution from the person. Under this clause, the amount recoverable is the amount found by a court to be just and equitable.

Clause 270 continues an arrangement currently contained in a transitional provision of the PS Act which provides that if a person would be civilly liable under another Act but would not be civilly liable under the PS Act, the PS Act protections apply for the purpose of civil lability. However, this protection does not limit any other liability of the person under the other Act.

Part 2 Right to reappointment after candidature in election

Clause 271 preserves PS Act definitions of "service with the State" and "the State" for this part. These definitions import broad reaching application of arrangements as service with the State means employment in any capacity and applies to the public service, police service or any other office or position under the State.

The definition of the State also results in extensive application as it includes among other things boards, corporations, instrumentalities and other persons representing the State.

Clause 272 provides a person who held a permanent office of service with the State, with a right to reappointment or appointment to another position, if the person resigned from that office to become a candidate in a Queensland state election, another state or territory election or a federal election and was defeated in that election.

Conditions attached to this right include that the person is entitled to reappointment or appointment if the person resigned within six months before the day the period for nomination of candidates in the election ended and applied for reappointment or appointment within 2 months after the return of the writ for the election.

While the person has a right to reappointment or appointment, the person need not be reappointed to the person's former office. If the person is appointed to another office it may be at the same or a lower classification level than the level of the office to which the person was formerly appointed.

A person seeking reappointment or appointment under this clause must apply to the chief executive of the entity which has responsibility for the office the person formerly held. This arrangement is included as a machinery of government change may have occurred during the time that the person's office was interrupted and the person's former officer may no longer be with the entity it was with before the person resigned.

The chief executive must reappoint or appoint the person within 3 months after the return of the writ for the election.

As the person has a right to reappointment or appointment, the person is not subject to the recruitment and selection provisions that ordinarily apply to an appointment.

Clause 273 clarifies arrangements that apply to continuity of employment continuity of the person's service with the State, including that service is taken not to have been broken by resignation but that the period during which service was interrupted does not count towards a person's total service.

Chapter 8 General

Part 1 Application of other Acts to particular public service entities

Clause 274 provides another Act applies to a public service entity mentioned in clause 9(b) and its public service employees as if the entity were a department and the head of the entity were the department's chief executive. This preserves the operation of Acts applying to existing public service offices mentioned in schedule 1 of the PS Act and the heads of such offices. The clause states that the head of the public service entity has, for the entity's public service employees, all of a chief executive's functions and powers. The clause clarifies that it does not affect provisions about accountable officers under the *Financial Accountability Act 2009* section 65 or the meaning of "department" under section 8 of that Act.

Part 2 Government entities

Clause 275 outlines the purpose of the part.

Clause 276 generally preserves the meaning of government entity included in the PS Act by listing entities which are included as government entities, including public service entities. The clause also lists entities that are not government entities, including local governments, the parliamentary service, the Executive Council and the Legislative Assembly.

Part 3 Confidentiality

Clause 277 defines terms relevant to this part, including "confidential information", which is information about a person that is not publicly available or other information such as statistical information that could not reasonably identify an individual. For the purpose of public sector reviews, confidential information also applies to protected information which is non-personal information about an entity that is not publicly available.

Other terms defined include "disclose" and "protected information".

Clause 278 imposes a duty of confidentiality on public sector employees and other persons who obtain confidential information when carrying out functions under the Public Sector Act. Other persons for this purpose include selection panel members, persons performing a function as a reviewing entity for a public sector review and persons delegated a function in relation to a review of a public sector entity's handling of a work performance matter or a review of a procedural aspect of a review of a public sector entity's handling of a work performance matter.

The duty of confidentiality prohibits the use or disclosure of such information unless it is specifically permitted.

Clause 279 contains detail on when disclosure of confidential information is authorised, including where it is required or permitted or necessary to perform a person's functions under legislation or where consent for disclosure is obtained from the person or the person is a minor, the person's parent.

Part 4 Delegation

Clause 280 defines the term "function" as including power for the purpose of this part.

Clause 281 empowers the Minister responsible for the governance of the public sector to delegate the Minister's functions to the chairperson of the council. The Minister's functions are found in chapter 6 of the Bill and include broad functions related to assessing and ensuring the effectiveness and efficiency of public sector management and more specific functions such as recommending the appointment and employment arrangements of chief executives of departments, the commissioner and special commissioners.

Functions delegated under clause 281 to the chairperson may not be subdelegated.

Clause 282 permits a chief executive of a public service entity to delegate the chief executive's functions under this Act or another Act to an appropriately qualified person. This clause also empowers chief executives of public sector entities to delegate their functions under this Act to an appropriately qualified person. This provision does not affect delegation arrangements for chief executives of public sector entities included in other Acts.

The term "appropriately qualified person" takes its meaning from the *Acts Interpretation Act 1954* definition of "appropriately qualified" which for the purpose of a function "means having the qualifications, experience or standing appropriate to perform the function or exercise the power". This Act provides as an example of "standing", "a person's classification level in the public service".

Clause 283 sets out the delegation arrangements that apply to the commissioner's functions. Under this clause the commissioner may delegate functions to appropriately qualified staff members.

In addition, the commissioner may delegate to appropriately qualified staff members or an appropriately qualified entity, the commissioner's function to conduct a review about:

- one or more work performance matters that have been handled by an entity; or
- a work performance matter that is being handled by an entity at the time the commissioner decides to conduct the review (a current work performance matter).

A report about a review of these types of work performance matters may be delegated.

The commissioner may also delegate to appropriately qualified staff members or an appropriately qualified entity, the commissioner's function conduct a review of a procedural aspect of a current work performance matter. However, the commissioner can not delegate functions related to the giving of a report on this matter.

In addition, the commissioner can not delegate the making of a directive or approving a report for a public sector review.

Clause 284 sets out the arrangements that apply to the delegation of the functions of a special commissioner. Except for the function of approving a report for a public sector review which may not be delegated, a special commissioner may delegate functions to an appropriately qualified staff member of the commission.

Part 5 Miscellaneous

Clause 285 continues the operation of section 219 of the PS Act and explains the effect of the Bill on the State. The clause provides that the Bill binds the State while preserving the State's common law right or power to dismiss an employee at will. The clause also clarifies that a person who employs another person under this Act employs the person as the authorised agent of the State. This is intended to make clear that a chief executives and others that employ public service employees do so for the State and not in their own capacity.

Clause 286 provides the commissioner may approve forms for use under the Bill.

Clause 287 enables the Governor in Council to make regulations under the Bill and specifies the matters a regulation may be about.

Clause 288 provides that a regulation may make transitional regulations about particular matters.

Chapter 9 Repeal, savings and transitional provisions

Part 1 Repeal

Clause 289 provides that *Public Service Act 2008* is repealed.

Part 2 Savings and transitional provisions

Division 1 Preliminary

Clause 290 defines particular terms used in the part.

Clause 291 provides that words defined in the repealed PS Act (the repealed Act) immediately before its repeal and used in the part have the same meanings as they had under the repealed Act.

Division 2 Savings provision

Clause 292 defined particular terms used in the division.

Clause 293 clarifies that the omission of an express reference to the principles of natural justice in a provision of the Bill, in circumstances where a corresponding provision of the repealed Act referenced the principles of natural justice, does not limit or otherwise affect an obligation under the Bill provision to comply with procedural fairness that is implied under the general law.

Clause 294 clarifies that the omission of an express reference to an obligation to perform a function or exercise a power "reasonably" does not limit or otherwise affect an obligation implied under the general law to perform the function or exercise the power reasonably.

Division 3 Public service employees

Clause 295 clarifies that an existing public service employee continues to be a public service employee under the Bill on the same terms of appointment or employment that applied to them immediately before the commencement. The clause further clarifies that, if there is doubt about whether a person is an existing public service employee, a chief executive may, if the person asks, declare the person to be an existing public service employee.

Clause 296 clarifies that an existing public service officer continues to be a public service officer under the Bill on the same terms of appointment or employment that applied to them immediately before the commencement. The clause further clarifies that, if there is doubt about whether a person is an existing public service officer, a chief executive may, if the person asks, declare the person to be an existing public service officer.

Clause 297 clarifies that existing chief executives continue to be a chief executive under the Bill on the same terms of appointment that applied to them immediately before the commencement.

Clause 298 clarifies that the commission chief executive under the repealed Act is taken to hold appointment as the commissioner under the Bill on the same terms of appointment that applied to them immediately before the commencement as the commission chief executive.

Clause 299 clarifies that existing secondment, transfer and redeployment arrangements continue under the Bill on the same terms that applied immediately before the commencement.

Clause 300 applies if, before the commencement, a chief executive required a person, under section 179A of the repealed Act, to disclose particulars of any serious disciplinary action, and had not decided whether to appoint, second or employ the person. In these circumstances, from the commencement, clause 179A continues to apply in relation to the requirement and the chief executive may use the information in making an assessment about the person's suitability for the appointment, secondment or employment. This ensures, among other things, that employees who are subject to a pre-existing requirement to disclose serious disciplinary action do not have to disclose action taken by a chief executive mentioned in new part 11 (arising from the new definition of "serious disciplinary action" in clause 70).

Clause 301 clarifies that, from the commencement, an existing work performance arrangement under section 183 of the repealed Act is taken to be a mobility arrangement made under clause 82 of the Bill.

Clause 302 clarifies that, from the commencement, an existing interchange arrangement under section 184 of the repealed Act is taken to be a mobility arrangement made under clause 82 of the Bill.

Clause 303 applies if, before the commencement, a person gave written consent to a chief executive to obtain the person's criminal history and immediately before the commencement, the chief executive had not asked the police commissioner for a written report about the history.

From the commencement, the person is taken to have given the person's consent to obtain the person's criminal history under clause 52 or clause 66 of the Bill.

Clause 304 applies if, before the commencement, a chief executive gave a statement about the chief executive's interests under section 101 of the repealed Act and immediately before the commencement, the statement was still in effect. From the commencement, the chief executive is taken to have given the statement under clause 182 of the Bill.

Clause 305 applies if, before the commencement, a person gave a statement about their interests under section 185 of the repealed Act and immediately before the commencement, the statement was still in effect. From the commencement, the statement was still in effect.

Clause 306 applies if, before the commencement, a chief executive required a person to submit to a medical examination under section 175 of the repealed Act. From the commencement, the requirement is taken to have been made under clause 103 of the Bill. The clause clarifies that chapter 3, part 8, division 5 applies in relation to the person and the requirement.

Division 4 Directives

Clause 307 makes transitional arrangements to continue existing directives made by the commission chief executive under the PS Act ("continued directives").

The transitional arrangement permits existing directives to be taken to be made by the commissioner under the Public Sector Act and should be read with changes necessary to give effect to this.

This clause clarifies that directives applied to public sector entities through the PS Regulation continue to apply.

However, any "continued directives" apply only in relation to entities and individuals to whom the continued directives applied before the commencement.

Clause 308 makes transitional arrangements to continue existing directives made by the Minister responsible for industrial relations under the PS Act ("continued directives").

The transitional arrangement permits existing directives to be taken to be made by the Minister responsible for Industrial Relations under the Public Sector Act and should be read with changes necessary to give effect to this.

This clause clarifies that directives applied to public sector entities through the PS Regulation continue to apply.

However, any "continued directives" apply only in relation to entities and individuals to whom the continued directives applied before the commencement.

Clause 309 clarifies that references in other Acts or documents to a directive made under the repealed Act may, if the context permits, be taken to be a reference to a directive made under the Bill.

Division 5 Delegations

Clause 310 continue certain existing delegations by chief executives under the repealed Act.

Clause 311 continues certain existing delegations by chief executives under the repealed Act, providing that these continue to have effect as if they were made by the commissioner under the Bill.

Division 6 Disciplinary action and suspension

Clause 312 continues disciplinary action started but not completed under the repealed Act, providing that the disciplinary action continues under the Bill.

Clause 313 applies if before the commencement, a chief executive made a disciplinary finding against a public service employee under the repealed Act and immediately before the commencement, any disciplinary action in relation to the finding had not been completed. From the commencement, the disciplinary finding is taken to be a disciplinary finding under the Bill.

Clause 314 clarifies that chapter 3, part 8, division 3 applies in relation to a disciplinary ground whether the disciplinary ground arises before or after the commencement.

Clause 315 continues suspensions under section 137 of the repealed Act, providing that from the commencement, such suspensions continue under the Bill on the same terms that applied immediately before the commencement.

Clause 316 clarifies that a suspension may be imposed under clause 100 after the commencement whether the reason for suspension arises before or after the commencement.

Division 7 Reviews and appeals

Clause 317 applies if before the commencement, a person asked a chief executive for a review of the person's employment status under section 149 of the repealed Act, and immediately before the commencement, the review had not been decided. From the commencement, the person is taken to have made the request under clause 113 and the chief executive must decide the request under clause 114.

Clause 318 applies if before the commencement, the chief executive started to review a person's employment status under section 149B of the repealed Act, and immediately before the commencement, the review had not been completed. From the commencement, the chief executive must complete the review under clause 115.

Clause 319 provides that undecided requests under section 149C of the repealed Act for appointment to a higher classification level as a general employee on tenure or a public service officer, are taken to have been made under clause 120(1) of the Bill.

Clause 320 applies if before the commencement, the commission under the repealed Act started to conduct a review mentioned in section 88I(2) of that Act, and immediately before the commencement, the review had not been completed. From the commencement, the Public Sector Commission must complete the review under clause 123.

Clause 321 clarifies that the Public Sector Commission may, after the commencement, conduct a review under clause 123 in relation to a public sector entity's handling of a work performance matter whether the reason for the review arises before or after the commencement.

Clause 322 applies if before the commencement, the commission under the repealed Act started to conduct a review mentioned in section 88IA(4)(a) of the repealed Act, and immediately before the commencement, the review had not been completed. From the commencement, the Public Sector Commission must complete the review under clause 124.

Clause 323 clarifies that the commission may, after the commencement, conduct a review under clause 124 in relation to the procedural aspect of a public sector entity's handling of a current work performance matter whether the reason for the review arises before or after the commencement.

Clause 324 applies if before the commencement, a person appealed against a decision under section 194 of the repealed Act, and immediately before the commencement, the appeal had not been decided. From the commencement, the appeal must be heard and decided under chapter 3, part 10.

Division 8 Miscellaneous

Clause 325 continues the operation of applied provisions in the PS Regulation for public service offices and their employees mentioned in section 23 of the repealed Act, for the purpose of the savings and transitional arrangements in part 2.

Clause 326 clarifies that a reference in an Act or a document to the repealed Act may, if the context permits, be taken to be a reference to the Bill.

Chapter 10 Amendment of other Acts

Part 1 Amendment of this Act

Clause 327 provides the part amend this Act.

Clause 328 makes amendments to the long title of the Act.

Part 2 Amendment of Ambulance Service Act 1991

Clause 329 provides that the part amends the *Ambulance Service Act 1991*.

Clause 330 omits section 13A because the Bill will adequately provide that the chief executive may require a person who is proposed to be employed in or seconded to the entity, to disclose the particulars of any serious disciplinary action taken against the person.

Clause 331 omits section 16 because other statutes, including the Bill, will adequately provide for conflicts of interest, including seeking or accepting any fee or reward on account of anything done in the course of duty of a service officer.

Clause 332 omits section 18 because this power is provided for in the Bill.

Clause 333 omits Part 2, division 4 because disciplinary action for service officers and former service officers is provided for in the Public Sector Bill 2022.

Clause 334 omits the power of the Commissioner to make a code of practice about disciplinary matters. The purpose of this amendment is to ensure there is no conflict between a code of practice made under the Ambulance Service Act and the discipline provisions of the Public Sector Bill 2022.

Clause 335 inserts new Part 8, division 10 which deals with certain transitional provisions for the Public Sector Act. Specifically, in Division 10:

- new section 106 defines "former" as being a provision as in force immediately before the commencement of the new legislation;
- new section 107 clarifies words under a former provision have the same meaning as they did under the former provision;
- new section 108 ensures, among other things, that particulars of serious disciplinary action required to be disclosed under section 13A before the commencement may be used to assess a person's suitability for an appointment or secondment;
- new section 109 applies to disciplinary action started against a service officer or former service officer under the repealed provisions of the Ambulance Service Act which was not completed before the commencement of the new legislation. The section makes it clear the disciplinary action continues under the Public Sector Act and no further action is to be taken under the Ambulance Service Act;
- new section 110 applies where a disciplinary finding was made against a service officer or former service officer under the repealed provisions of the Ambulance Service Act where no disciplinary penalty in relation to that finding had been imposed in relation to that finding. Section 109 makes it clear the disciplinary finding is taken to be a disciplinary finding under the Public Sector Act;
- new section 111 ensures that the new legislation applies in relation to a disciplinary ground whether the disciplinary ground arises before or after the commencement of the new legislation;
- new section 112 ensures that disciplinary information obtained by the chief executive prior to the new legislation taking effect is taken to be information obtained under the new legislation;
- new section 113 ensures that suspensions under the repealed Ambulance Service Act continue under the new legislation on the same terms;
- new section 114 clarifies that a service officer may be suspended under the new legislation whether the reason for the suspension arises before or after the commencement of the new legislation.

Clause 336 amends the Dictionary by omitting definitions which are provided for in the Bill.

Part 3 Amendment of Corrective Services Act 2006

Clause 337 provides that the part amends the *Corrective Services Act 2006.*

Clause 338 provides for the insertion of a new section 217A.

New section 217A provides that the parole board is not a public sector entity, and is prescribed as such in accordance with clause 8(2)(s) of the Bill.

Clause 339 amends section 285 (Appointing official visitor) to provide that an official visitor is appointed under the *Corrective Services Act 2006* and not the Public Sector Act. The clause references section 12(2)(g) of the Public Sector Act to clarify that an official visitor is a person prescribed by another Act as not being a public sector employee. This amendment intends to clarify that the Public Sector Act does not apply to employment of official visitors.

Part 4 Amendment of Crime and Corruption Act 2001

Clause 340 states this part amends the *Crime and Corruption Act 2001*.

Clause 341 provides the insertion of new sections 221B to 221D.

New section 221B prescribes the Crime and Corruption Commission (CCC) as an entity for the Public Sector Act, section 8(2)(s), meaning the CCC is not a public sector entity under that Act. This continues the position that the CCC was not covered by the PS Act, and is consistent with the Coaldrake Report's emphasis on preserving the CCC's independence as a core integrity body.

New section 221C prescribes the CCC as an entity for the Public Sector Act, section 26, definition "prescribed entity", paragraph (c), meaning the CCC is a prescribed entity for the purposes of the chapter in that Act about equity, diversity, respect and inclusion.

New section 221D provides a regulation-making power to apply particular provisions of the Public Sector Act (including directives made under that Act) to the CCC and commission officers. Before recommending to the Governor in Council the making of a regulation under this power, the Minister must consult with the chief executive officer of the CCC about the proposed regulation.

Part 5 Amendment of Fire and Emergency Services Act 1990

Clause 342 provides that the part amends the *Fire and Emergency Services Act 1990*.

Clause 343 omits sections 25B and 25C of the *Fire and Emergency Services Act 1990*.

Section 25B provides that if the commissioner proposes to employ a person under section 25 of the *Fire and Emergency Services Act 1990*, the commissioner may require the person to disclose to the commissioner particulars of any serious disciplinary action taken against the person. The section further provides for compliance with such a requirement and how the commissioner may deal with information disclosed by the person under this section.

Section 25C provides that if the commissioner proposes to second a person to Queensland Fire and Emergency Services (QFES), the commissioner may require the person to disclose to the commissioner particulars of any serious disciplinary action taken against the person. The section further provides for compliance with such a requirement and how the commissioner may deal with information disclosed by the person under this section.

The Public Sector Act provides requirements to disclose serious disciplinary action that will allow the commissioner to require information for these purposes. Therefore, sections 25B and 25C have been omitted.

Clause 344 amends section 26 of the *Fire and Emergency Services Act 1990* which relates to conditions of employment for persons employed under section 25.

Section 26 provides that subject to any applicable industrial instrument, persons employed under section 25 shall be paid salary, wages and allowances at such rates and shall be employed under such conditions of employment as the commissioner determines. However, if a person employed under section 25 is employed on contract for a fixed term, the conditions of the person's employment are not subject to any industrial instrument.

The Bill insets a new subsection to provide that if a directive made under the Public Sector Act applies to a person employed under section 25 and the directive is inconsistent with the determination of the commissioner under subsection (1) of section 26, the directive applies to the extent of the inconsistency. The amendment ensures clarity where a determination is made by the commissioner that is inconsistent with a directive made under the Public Sector Act.

Clause 345 omits section 27 of the *Fire and Emergency Services Act 1990* which provides that a fire service officer must not seek or accept on account of anything done in the course of employment in QFES any fee or reward not authorised by the commissioner. The Public Sector Act provides for conflicts of interest for public sector employees. The Public Sector Act requires a public sector employee with an interest that conflicts or may conflict with the discharge of the employee's duties to disclose the nature of the interest and conflict to the employee's chief executive as soon as practicable after the relevant facts come to the employee's knowledge. The employee must not take action or further action relating to a matter that is, or may be, affected by the conflict unless authorised by the employee's chief executive. It is considered that this obligation, and obligations arising under codes of conduct and practice and legislative provisions relating to appropriate conduct in public office and corruption sufficiently cover circumstances involving the seeking or acceptance of an unauthorised fee or reward. Therefore, section 27 has been omitted.

Clause 346 omits section 28(2) to (5) of the *Fire and Emergency Services Act 1990* which relate to the processes for retirement of a fire service officer, who by reason of mental or physical infirmity lacks capacity or fitness to discharge duties. The Public Sector Act provides processes for mental or physical incapacity. Therefore, subsections 28(2) to (5) have been omitted.

Clause 347 omits section 29 of the *Fire and Emergency Services Act 1990* which provides for the retrenchment of a fire service officer if the services of the officer can no longer be gainfully utilised in the office held by the officer because the office has become redundant. The Public Sector Act provides for the action a chief executive can take if a public sector entity believes an employee is surplus to its needs. The Public Sector Act provides that a chief executive may terminate the employee's employment, subject to any directive made by the Public Sector Commissioner. Therefore, subsection 29 has been omitted.

Clause 348 omits part 4, division 3 of the *Fire and Emergency Services Act 1990* which provides for disciplinary action, including: grounds and disciplinary action generally; disciplinary action against a fire service officer who was a relevant employee; disciplinary action against a former fire service officer; provisions about information about disciplinary action; and other provisions about disciplinary action. The Public Sector Act is to provide the processes for discipline of fire service officers. Therefore, part 4, division 3 has been omitted.

Clause 349 inserts a new chapter 5, part 5, division 10 to provide transitional provisions for the Public Sector Act. The transitional provisions apply to the following prior to the commencement of the Public Sector Act:

- disciplinary action;
- disciplinary findings;
- disciplinary grounds;
- requirements to disclose serious disciplinary action;
- disciplinary information;
- suspensions and reasons for suspensions; and
- mental or physical infirmity.

Clause 350 omits the following terms from the dictionary in Schedule 6: disciplinary action, disciplinary declaration, disciplinary finding, disciplinary ground, disciplinary law, former fire service officer, prescribed employee, public sector disciplinary law, relevant employee and serious disciplinary action. Following the commencement of the Public Sector Act these defined terms will no longer appear in the *Fire and Emergency Services Act 1990*.

Part 6 Amendment of Legal Aid Queensland Act 1997

Clause 351 states this part amends the *Legal Aid Queensland Act 1997*.

Clause 352 provides for the insertion of a new section 42A and 42B.

New section 42A prescribes Legal Aid Queensland (LAQ) as an entity for the Public Sector Act, section 8(2)(s), meaning LAQ is not a public sector entity under that Act. This is a change from the PS Act, as LAQ was a declared public service office under that Act. The exclusion is considered justified to protect LAQ's public benevolent institution status.

New section 42B provides a regulation-making power to apply particular provisions of the Public Sector Act (including directives made under that Act) to LAQ, its chief executive officer and employees. Before recommending to the Governor in Council the making of a regulation under this power, the Minister must consult with the chief executive officer of LAQ about the proposed regulation.

Part 7 Amendment of the Ombudsman Act 2001

Clause 353 states this part amends the *Ombudsman Act 2001*.

Clause 354 provides for the insertion of a new section 75A to 75C.

New section 75A prescribes the ombudsman office as an entity for the Public Sector Act, section 8(2)(s), meaning the ombudsman office is not a public sector entity under that Act. This continues the position that the ombudsman office was not covered by the PS Act, and is consistent with the Coaldrake Report's emphasis on preserving the ombudsman office's independence as a core integrity body.

New section 75B prescribes the ombudsman office as an entity for the Public Sector Act, section 26, definition "prescribed entity", paragraph (c), meaning the ombudsman office is a

prescribed entity for the purposes of the chapter in that Act about equity, diversity, respect and inclusion.

New section 75C provides a regulation-making power to apply particular provisions of the Public Sector Act (including directives made under that Act) to the ombudsman office, the ombudsman and officers of the ombudsman. Before recommending to the Governor in Council the making of a regulation under this power, the Minister must consult with the ombudsman about the proposed regulation.

Part 8 Amendment of Supreme Court Library Act 1968

Clause 355 states this part amends the *Supreme Court Library Act 1968*.

Clause 356 inserts a new section 3A to prescribe the Supreme Court Library Committee as an entity for the Public Sector Act, section 8(2)(s), meaning the Committee is not a public sector entity under that Act. This continues the position that the Committee was not covered by the PS Act, and is considered appropriate in view of the close working arrangements between employees of the Committee and judicial officers, and in particular the work done by these employees in relation to core judicial functions.

Part 9 Amendment of TAFE Queensland Act 2013

Clause 357 provides that the part amends the *TAFE Queensland Act 2013* (the TAFE Act).

Clause 358 omits sections 30 and 31 of the TAFE Act. Section 30 of the TAFE Act includes the power and necessary supporting information for the chief executive officer to enter into a work performance arrangement where:

- an employee of TAFE Queensland performs work for a department or another entity; or
- a person employed by or within a department or another entity performs work for TAFE Queensland.

Section 31of the TAFE Act includes the power and other necessary supporting information for the chief executive officer to enter into an interchange arrangement under which:

- an employee of TAFE Queensland performs duties in another entity; or
- a person employed by or within another entity performs duties in TAFE Queensland.

These clauses are largely the same as the work performance and interchange arrangements included in the PS Act. As these PS Act arrangements will be replaced by the mobility arrangements included in chapter 5, part 6 of the Public Sector Act and the new arrangements and will apply to public sector entities and public sector employees, including to TAFE and its public sector employees, it is considered appropriate to omit the equivalent arrangements from the TAFE Act, and make necessary consequential amendments to support this omission.

Clause 359 replaces a reference to work performance arrangements and interchange arrangements at section 40 of the TAFE Act with a reference to mobility arrangements. Section 40 concerns required content for TAFE Queensland's operational plans and includes that the operational plan must provide an outline of arrangements for people performing work including under worker performance arrangements or interchange arrangements.

Clause 360 replaces a reference to work performance arrangements and interchange arrangements at section 60 of the TAFE Act with a reference to mobility arrangements. Section 60 relates to delegation arrangements for TAFE Queensland.

Clause 361 replaces a reference to work performance arrangements and interchange arrangements at section 61 of the TAFE Act with a reference to mobility arrangements. Section 61 relates to delegation arrangements for the chief executive officer of TAFE Queensland.

Clause 362 replaces section 65(f) and (g) with a new section 65(g) to replace a reference to work performance arrangements and interchange arrangements with a reference to mobility arrangements. Section 65 concerns protection from civil liability.

Clause 363 contains the following transitional arrangements:

- a definition clause which clarifies that a former provision in this division means a provision that was in force immediately before commencement of this provision;
- to clarify that a work performance arrangement made under section 30 of the TAFE Act, which was in place immediately before commencement of the Public Sector Act mobility arrangements is taken to be a mobility arrangement when the Public Sector Act commences;
- to clarify that an interchange arrangement made under section 31 of the TAFE Act, which was in place immediately before commencement of the Public Sector Act mobility arrangements is taken to be a mobility arrangement when the Public Sector Act commences.

Clause 364 amends the dictionary included at Schedule 1 of the TAFE Act to omit the definitions of "interchange arrangement" and "work performance arrangement" and to include a definition of "mobility arrangement" as provided for under the Public Sector Act.

Chapter 11 Other amendments

Clause 365 provides that schedule 3 amends the Acts it mentions.

Schedule 1 Public service entities under section 9(b)

Schedule 1 lists public service entities mentioned in clause 9(b) and their heads. The entities listed are entities that, immediately before the commencement, were public service offices mentioned in section 22 of the PS Act (and listed in schedule 1 of that Act).

Schedule 2 Dictionary

Schedule 2 is the dictionary and sets out definitions for particular terms used in the Bill.

Schedule 3 Other amendments

Schedule 3 makes minor amendments to Acts listed in the schedule to update terms currently defined by reference to the PS Act and to correct cross-referencing as a consequence of amendments made by the Bill.

Corrective Services Act 2006

Schedule 3 includes the following amendments to the *Corrective Services Act 2006*.

Clause 1 replaces references to the PS Act with the Public Sector Act in the following sections: section 225(4) (Conditions of appointment), section 236(4) (Establishment and functions) and section 306O(2) (Effect of failure to comply).

Clause 2 amends the definition of "misconduct" in subsection 226(4) (Vacancy in office) to replace the reference to section 187(4) of the PS Act with the corresponding provision in the Public Sector Act.

Clause 3 amends subsection 306N(2)(d) (Positive alcohol or substance test) to replace the reference to chapter 5, part 7 of the PS Act (relating to mental or physical incapacity) with a reference the corresponding section in the Public Sector Act.

Clause 4 amends subsection 306N(2)(e) (Positive alcohol or substance test) to replace the reference to disciplinary or other action under chapter 5 or 6 of the PS Act with a reference to the corresponding parts of the Public Sector Act, chapter 3, part 8 division 3 or 4, or chapter 4, part 4, division 3.

Clause 5 amends the definition of "misconduct" in Schedule 4 (Dictionary) to replace the reference to section 187 of the PS Act with the corresponding provision in the Public Sector Act.