

Public Sector Bill 2022

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Annastacia Palaszczuk MP, Premier and Minister for the Olympics, make this statement of compatibility with respect to the Public Sector Bill 2022.

In my opinion, the Public Sector Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Queensland Government is committed to ensuring the public sector is a fair employer and that employees are responsive to the needs of the community and the government.

The Public Sector Bill 2022 (the Bill) gives effect to the primary recommendation of the independent review of public sector employment laws, *A Fair and Responsive Public Service for All* by Mr Peter Bridgman (the Bridgman Review) by replacing the existing *Public Service Act 2008* (PS Act) with a modern, simplified and employee-focused legislative framework extended to apply to all Queensland's public sector employees.

Chapter 1: Introduction

The purpose of the Bill is to provide a framework for a fair and integrated public sector that serves the people of Queensland and the State.

The Bill retains the concept of the public service and introduces the concept of the public sector, consisting of public sector entities and public sector employees who are employed in public sector entities. It is intended that the arrangements in the Bill will operate concurrently and cohesively alongside other legislative frameworks to the extent practicable.

In support of the State Government's Statement of Commitment to reframe its relationship with Aboriginal peoples and Torres Strait Islander peoples (the Statement of Commitment), including progressing the Path to Treaty process and related objectives, Chapter 1 also seeks to establish the role of the public sector in supporting the Statement of Commitment. The reframing the relationship approach promotes the distinct cultural rights of Aboriginal peoples and Torres Strait Islander Peoples through, for example, the inclusion of responsibilities to recognise and honour Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland, to promote cultural safety and cultural capability at all levels of the public sector and to support the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples.

Chapter 2: Equity, diversity, and inclusion

Chapter 2 strengthens existing equality of employment opportunity (EEO) requirements and requires chief executives of public sector entities, the police service and other entities (prescribed entities) to take steps to promote equity, diversity, respect and inclusion. This establishes a nation leading, responsive and forward-looking legislative framework to support a high performing and societally representative Queensland public sector.

The requirement for a chief executive to promote and support a culture of respect and inclusion in their public sector entity promotes cultural rights generally and promotes the right to recognition and equality before the law.

The human right to take part in public life (section 23 HR Act) is promoted through the obligations imposed on chief executives to take reasonable action to ensure members of a diversity target group are able to pursue careers and compete for recruitment and promotion opportunities, including within the public service.

Chapter 3: Public Sector arrangements

Chapter 3 of the Bill sets the key employment arrangements for public sector employees. These arrangements currently apply to public service employees in departments and Public Service Offices under Schedule 1 of the PS Act. While a number of these arrangements also apply to declared Public Service Offices and their employees through the *Public Service Regulation 2018* (PS Regulation), the majority of employment and governance arrangements will now apply to public sector entities and their employees ‘by default’ through the primary legislation.

The employment matters addressed in chapter 3 include:

- contemporary, values based public sector principles to guide public sector entities in their service to the Queensland community and as public sector employers
- the retention of merit while also signalling the policy intent that recruitment and selection processes have a role in supporting equity, diversity, respect and inclusion in public sector employment
- the retention of existing the existing policy position for pre-employment screening with expansion to all public sector entities
- strengthening the Government’s ongoing commitment to maximising employment security
- expanding the reach of the positive performance management framework and the requirement to disclose conflicts of interest to all public sector employees
- the retention of the disciplinary scheme for the public service and expansion of its application to apply consistently in the broader public sector
- the expansion of the suspension power, including the power to suspend with pay for non-disciplinary reasons, to all public sector employees (including all public service employees). This is appropriate given all employees are required to disclose conflicts of interests and non-disciplinary suspension may be used, for example, where a conflict cannot otherwise be managed. This is balanced with requirements for normal remuneration during suspension

- the retention and expansion of the ability of a chief executive to act in relation to a public sector employee where it is reasonably suspected the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability
- the retention and expansion of existing rights to seek conversion to permanent employment to the public sector, including to general employees, to further maximise employment security for all public sector employees
- the expansion of public sector employees' access to the Queensland Industrial Relations Commission to appeal decisions made under the new Act. The policy settings for appeal rights have been expanded so all public sector employees can appeal decisions about conversion, directives, discipline, fair treatment, promotion, suspension without pay and work performance procedural decisions
- in accordance with Bridgman Recommendation 10, the expansion of provisions relating to surplus employees to the sector and clarification that chief executives of public sector entities have the power to terminate employment for redundancy.

Chapter 4: Public service employment framework

Chapter 4 of the Bill establishes a public service within the public sector and provides the employment arrangements for public service employees in departments and other public sector entities to the extent their employees are employed under the Bill.

Chapter 5: Public service chief executives and senior executives

Chapter 5 of the Bill retains the concepts of a chief executive service and senior executive service. The chapter establishes employment arrangements for the chief executives and senior executives to ensure the continuation of the key structures, roles and accountabilities that are necessary to ensure effective governance and administration of the public service.

Chapter 6: Governance of public sector

Chapter 6 of the Bill provides clear and transparent governance arrangements that establish vertical accountabilities, collaborative governance, and system oversight. This supports the Government's aim to ensure the public sector can respond to complex issues that cross agency boundaries and provide wraparound services based on the needs of Queenslanders.

The Bill preserves the existing directive-making powers of the industrial relations Minister and the Commissioner, with extended application to the public sector.

Chapter 7: Matters applying to public service employees and other individuals

The Bill enables the continuance of civil liability protections for public service employees and other persons, including other persons who act for or represent the State.

The Stage 1 Reforms providing a right to reappointment for unsuccessful election candidates has been maintained.

Chapter 8: General

The existing term ‘government entity’ as defined under the PS Act has been maintained for the purposes of other Acts. This is to ensure that no policy implications result from changing the nature of this term which is widely used across the statute book in various contexts.

Transitional provisions and consequential amendments

Transitional provisions largely enable things commenced under the repealed Act to be continued under the new Act, to transition employers and employees to the new framework as efficiently and effectively as possible.

The Bill amends the *Fire and Emergency Services Act 1990* (FES Act) to remove its existing disciplinary framework, in anticipation of reliance on the disciplinary scheme established under the new Act. The universal disciplinary provisions under the Bill now provide for contravention of a code of practice under the *Ambulance Service Act 1991* or the FES Act in a way that is sufficiently serious to warrant disciplinary action.

Human Rights Issues

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

In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to this Bill are:

- Recognition and equality before the law (section 15)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Taking part in public life (section 23)
- Privacy and reputation (section 25)
- Cultural rights Aboriginal and Torres Strait Islander peoples (section 28)
- Fair hearing (section 31)

Freedom of expression (section 21)

The human right to freedom of expression and the free flow of information and ideas between people and through the media, particularly about public and political issues, is considered essential to a democratic system of government because it enables citizens to effectively participate in the political, social and economic aspects of society, and encourages government accountability and transparency.

The human right to freedom of expression protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal communication. The right to hold an opinion is

considered a fundamental component of an individual's privacy, requiring absolute protection without external influence. Attempts to coerce someone into holding, changing, or expressing any opinion would interfere with this right.

The human right to freedom of expression protects the right of an individual to hold an opinion without interference and the right of all people to seek, receive and express information and ideas (including verbal and non-verbal communication). The right to hold an opinion is considered a fundamental component of an individual's privacy, requiring absolute protection without external influence. This right is central to the fulfilment of other rights such as cultural rights and freedom of thought, conscience and religion.

Taking part in public life (section 23 / Article 25 ICCPR)

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

The human right to take part in public life specifically includes a right to have access, on general terms of equality, to the public service and to public office. This right has been interpreted by the UN Human Rights Committee as providing a right of access, on general terms of equality, to positions in the public service and in public office.

The UN Human Rights Committee has said:

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

The right also interacts with the general right to equality and provides that criteria and processes for appointment, promotion, suspension and termination within the public service must be objective, reasonable and non-discriminatory.

Privacy and reputation (section 25)

The human right to privacy and reputation protects the individual from unlawful or arbitrary interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation.

The scope of the right to privacy is broad. It protects privacy in the sense of personal information, data collection, and correspondence, and also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence, and reputation. Case authority suggests that 'arbitrary' in the human rights context refers to conduct that is capricious, unpredictable, or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. The human right to reputation protects the individual from unlawful and intentional attacks on their reputation, based on untrue allegations.

Cultural rights – Aboriginal and Torres Strait Islander peoples (section 28)

The *Human Rights Act 2019* recognises the special importance of human rights for Aboriginal peoples and Torres Strait Islander peoples, and explicitly protects their distinct cultural rights as Australia’s first people. This right recognises that Aboriginal peoples and Torres Strait Islander peoples have a rich and diverse culture. There are many hundreds of distinct Aboriginal groups and Torres Strait Islander groups in Australia, each with geographical boundaries and an intimate association with those areas. Many of these groups have their own languages, customs, laws and cultural practices. Section 28 explicitly protects the right to live life as an Aboriginal or Torres Strait Islander person who is free to practise their culture.

Fair hearing (Section 31)

The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

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

Equity and diversity audit and report

(a) the nature of the right

Privacy and reputation

The Bill has requirements requiring chief executives of public sector entities and the police service to take steps to promote equity, diversity, respect and inclusion, undertake an annual audit and make a plan for improving equity and diversity in relation to employment matters.

Clause 29 of the Bill requires the chief executive of a prescribed entity to gather information about the composition of the entity’s workforce. The clause provides that after conducting the audit, the chief executive must prepare a report about the information gathered in the audit. The Commissioner or Special Commissioner for Equity and Diversity may require the chief executive to provide them with a copy of the report.

The gathering of this information, and potential sharing with the Commissioner and/or Special Commissioner may impact an employee’s right to privacy and reputation.

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

The purpose of gathering an employee’s diversity information is to ensure each entity can analyse its performance against an existing equity and diversity plan, or otherwise identify and analyse opportunities to promote, support and progress equity and diversity in the entity.

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

The collection of diversity data will inform a chief executive's understanding of the demographic makeup of the entity's workforce, including which target and community groups may be under-represented.

The entity's equity and diversity plan, and data obtained through the equity and diversity audit, will assist the chief executive to promote and progress equity and diversity in their entity. Data obtained through the audit can inform measures that can be taken to provide more equitable opportunities and help foster strategies that attract and retain people from diverse backgrounds. Developing a diverse workforce will enable the public service to better represent and reflect the diverse views, experiences, and backgrounds of the people of Queensland.

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

There is no alternative way of obtaining the information relevant to assessing whether an entity's workforce represents the diversity of the people of Queensland without limiting an applicant's right to privacy through the collection of the information.

It is intended that, when collecting the data, an employee will have the option of providing the requested information, or providing a response indicating that they do not wish to say, thereby minimising any privacy and reputational concerns. The information provided in a report will be de-identified, so that it will not be possible to identify the individual to which the specific data relates.

The requirement to share the information with the Commissioner or Special Commissioner of Equity and Diversity is necessary to ensure independent oversight of the data, both at an entity and whole of government level, and allow analysis against an entity's equity and diversity plan.

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

As applicants and employees can choose not to provide this information, and if they do, the data will be de-identified in any corresponding reports, the extent of the limitation is minimal, and is outweighed by the need for a public sector entity to take measures to promote and retain a diverse workforce, and to ensure the Commissioner and/or Special Commissioner can carry out their functions to stimulate responsiveness and change across the sector.

- (f) any other relevant factors

Measures taken to encourage the members of diversity target groups to apply for and be selected for roles in the public service will promote the right of members of diversity target groups to take part in public life.

Conduct in a private capacity

(a) the nature of the right

The principle in the current PS Act to ensure an employee's personal conduct does not reflect adversely on the reputation of the public service has been retained in the Bill, however it has been narrowed to ensure the conduct does not reflect adversely on the reputation of the public sector entity in which the employee is employed.

The discipline provisions in the Bill clarify the expectations of employees' conduct in a private capacity by expressly stating that a 'breach' of the personal conduct principles alone cannot give rise to discipline. Rather, the misconduct threshold must be met in order to discipline an employee under the Act.

Freedom of expression

Clause 40 of the Bill provides that a public sector employee must ensure their personal conduct does not reflect adversely on the reputation of the public sector entity in which the employee works.

Clause 91 of the Bill provides that a public sector employee's chief executive may discipline the employee if the chief executive is reasonably satisfied the employee is guilty of misconduct. The definition of misconduct includes inappropriate or improper conduct in a private capacity that reflects seriously and adversely on a public sector entity.

These provisions could potentially limit the human right to freedom of expression by attempting to regulate the conduct of a public sector employee in their private life, including the expression and publication of their personal views with a risk of being disciplined by their employer.

Freedom of thought, conscience, religion and belief

Regulating an employee's personal conduct could potentially limit the human right to freedom of thought, conscience, religion and belief. For example, if a public sector employee holds a religious or other belief, this right protects the employee's freedom to demonstrate their religion or belief through ways such as displaying symbols, wearing distinctive jewellery or clothing, using a particular language and preparing and distributing religious texts or publications.

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

Imposing limitations on an employee's conduct so that it does not reflect adversely on the reputation of the public sector entity in which the employee works is required to ensure that the personal views or actions of an employee that contrast with the objectives of their employer are not seen to be a representation of the entity in which they are employed. This is necessary to ensure that the Queensland public maintain a high level of confidence in the integrity and impartiality of the public service and more broadly, the public sector.

These limitations can also prevent employees from sharing non-public information about the actions of other public sector employees, thereby providing protection of their privacy and reputation.

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

Queensland's public sector employees are private citizens and members of the community and have a right to engage in public discourse and demonstrate their religion or belief. All public sector employees also have an obligation to ensure that their actions and behaviours do not adversely reflect on the reputation and integrity of the public sector entity in which the employee is employed, or an employee's ability to carry out their role, or impact public confidence in the public sector.

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

Clarifying appropriate conduct for public sector employees in the workplace and in a private capacity is the most direct and least restrictive way of achieving this policy intent.

Clause 90 of the Bill 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 provision is to avoid a situation where an employee is disciplined for conduct that is not sufficiently serious to be misconduct.

Clarifying when an individual's conduct is so serious that it amounts to misconduct with associated disciplinary action is also necessary to ensure public sector employees can be confident of what is expected of them and how any issues arising from their misconduct in a private capacity may be addressed.

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

Clarifying the appropriate conduct of a public sector employee ensures that they understand their responsibility to maintain the public trust that is inherent in public sector employment. The risk of an employee's conduct adversely reflecting on the reputation and integrity of the public sector entity in which they work and affecting public confidence in the public sector outweighs an employee's unfettered rights to freedom of expression and freedom of thought, conscience, religion and belief.

The Bill aims to ensure public sector employees can continue to have the ability to contribute to public discussions on community and social issues in their private capacity. However, their actions and behaviours must not adversely reflect on the reputation and integrity of the public sector entity in which the employee works, or their ability to perform the duties of their role in an independent, unbiased manner to ensure public confidence in the public sector is not compromised.

The limitation on an employee's freedom of expression and freedom of thought, conscience, religion and belief is therefore reasonable and demonstrably justifiable when the rights of the individual are balanced with the rights of the employer and the public interest.

(f) any other relevant factors

Nil.

Requirement for citizenship or residency

(a) the nature of the right

Taking part in public life

Clause 47 of the Bill provides that a person is only eligible to be a public sector employee if the person is an Australian citizen or resides in Australia and has permission under a Commonwealth law to work in Australia.

The right to take part in public life affirms the right of all persons to contribute to and exercise their voice in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance. This right has been interpreted by the UN Human Rights Committee as providing a right of access, on general terms of equality, to positions in the public service and in public office. Clause 47 of the Bill limits the human right to take part in public life by restricting a person's ability to be employed in the public sector if they are not an Australian citizen or do not have an appropriate work visa.

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

The purpose of the citizenship requirement is to ensure that the Act limits employment in the Queensland public sector is restricted to persons who have a lawful right to work in Australia.

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

The limitation on access to working in the public sector is necessary to ensure that only those persons who are permitted to work in Australia in accordance with Commonwealth laws, may be employed in the Queensland public sector. Clause 47 also makes clear that if a person no longer has a lawful right to work in Australia, their appointment will be considered to terminate on that same day.

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

As this clause puts into effect Commonwealth legislation, there are no less restrictive ways to achieve the purpose of the Bill.

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

It is important that the right to take part in public life is balanced against, and consistent with, Commonwealth employment laws and the need to ensure the integrity of the public service.

- (f) any other relevant factors

Nil.

Assessing suitability for employment

Chapter 3, Part 5 of the Bill relates to assessing a person's suitability for employment to a role in the public service. The chapter covers considerations including a person's criminal and serious disciplinary history and whether they hold a working with children authority.

The Bill expands the scope of the existing legislative framework under the PS Act to give all chief executives of public sector entities the ability, where relevant, to consider the suitability of a prospective employee before employing them to a position in the public sector.

- (a) the nature of the right

Privacy and reputation

Clause 52 of the Bill provides that a chief executive of a public sector entity may ask a person for written consent to obtain the person's criminal history if they are engaged or proposed to be engaged to perform a relevant duty under the suitability directive. The clause also applies to a public sector employee employed in the entity who changes or is proposed to change duties to include a relevant duty.

A duty is considered a relevant duty under the suitability directive if, because of the nature of the duty, it may be necessary to have regard to a person's criminal history to ensure they are suitable to perform the duty.

Clauses 58 to 62 of the Bill provide that a chief executive of a public sector entity must ensure a person does not perform a child-related duty in the entity unless the person holds a working with children authority or a relevant exemption under the *Working with Children (Risk Management and Screening) Act 2000* (WWC (RMS) Act).

Clauses 66 of the Bill provides that a chief executive of a public sector entity may ask a person for written consent to obtain the person's criminal history. A chief executive may only make this request if:

- the person is engaged, proposed to be engaged or has been engaged to perform a prescribed duty
- the person has been issued a working with children authority, and

- the chief executive (working with children) has advised the chief executive that a further assessment of the person may be needed to decide whether the person should be engaged to perform the prescribed duty.

A prescribed duty is a child-related duty or a duty relating to regulated employment.

Clause 71 provides that a chief executive of a public sector entity may, under a directive, require a person that the entity proposes to employ or second into the agency to provide details of the history of any serious disciplinary action taken against person.

Clause 70 defines serious disciplinary action as disciplinary action taken under a public sector disciplinary law involving: termination of employment; a reduction of classification level or rank; transfer or redeployment; reduction of remuneration level; or action taken, in accordance with part 11 of the Bill, to end a person's employment as a public sector employee or consider the person's employment has ended.

Clause 73 of the Bill requires a public sector employee to disclose to the chief executive a charge or conviction for an indictable offence.

Clause 74 requires the police commissioner or the director of public prosecutions to notify a public sector employee's chief executive if the employee is committed for trial for an indictable offence or a disqualifying offence under the WWC(RMS) Act.

The ability for a chief executive to obtain (with consent) a person's criminal history report and the requirement for an employee or prosecuting authority to notify charges of relevant offences may limit the person's right to privacy and reputation.

Right to take part in public life

These provisions could potentially limit an individual's human right to taking part in public life by providing a chief executive with discretion to decide whether a person is suitable for engagement in the public sector on the basis of their criminal or serious disciplinary history information or imposing the requirement to possess an authority to work with children or a relevant exemption.

Right to recognition and equality before the law

The criminal history provisions may impose a limitation on the rights of a person to equal treatment and protection before the law without discrimination if they possess a relevant criminal record and wish to be engaged in relevant duties within the public sector. However, as a criminal record is not a protected attribute in section 7 of the *Anti-Discrimination Act 1991*, these clauses do not on their own constitute discrimination.

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

The ability for a chief executive to:

- request an individual or employee to consent to obtain information about their criminal history,
- request details of any serious disciplinary history, or
- require a working with children authority or exemption when considering their suitability for employment to a position in the public sector,

enables the chief executive to effectively manage their workforce and reduces the risk of employing an unsuitable person to a position of public trust.

Protection of children and proper administration of government are pressing and substantial concerns in a free and democratic society. The risk to the entity and the public could be significant. For example, if a person has a relevant criminal or serious disciplinary history, or lacks the required qualifications, this would indicate a significant risk if the person was to be given responsibilities in relation to positions of public trust such as handling public finances, private and confidential information or vulnerable persons and children.

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

Limiting a person's right to privacy and reputation by seeking consent to undertake a criminal history check and details of their serious disciplinary history, and potentially limiting a person's right to take part in public life by restricting their ability to be employed to in a role, including if they do not have a relevant authority or exemption, is required to ensure persons employed in the public service are deemed suitable to undertake their roles. This is necessary to ensure a high performing public sector workforce and supports a chief executive to maintain accountability, impartiality and integrity, while supporting the public interest and safeguarding the community.

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

Enabling a chief executive to share confidential information and consider an individual's criminal history, criminal charges or history of serious disciplinary action to assess their suitability or ongoing suitability for employment to a position is the most direct and least restrictive way of achieving the policy intent. These provisions will allow the chief executive to make informed decisions for the responsible management of public resources and service delivery.

The requirement to ensure a person holds a working with children authority or exemption complies with the obligations under the WWC(RMS) Act .

Clause 278 of the Bill retains the existing safeguards in the Public Service Act to ensure that confidential information such as criminal history and other sensitive information obtained in

employment screening may not be used or disclosed to anyone else, other than in accordance with the relevant legislation. A penalty of 100 penalty units applies for a breach of this section.

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

Enabling a chief executive to consider information about an individual or employee when considering their suitability or ongoing suitability for employment to a position of public trust will ensure the responsible management of public resources and help safeguard the community.

The government identifies the safety of children as an area of lowest appetite for risk and is committed to providing a safe and supportive learning environment for all children.

The limitations in the Bill balance the individual rights with public interest in proper administration of the public sector, and corruption prevention.

The risk of an employee's conduct adversely reflecting on the reputation and integrity of the public sector entity in which they work and affecting public confidence in the public sector outweighs an employee's unfettered rights to privacy and reputation and taking part in public life.

(f) any other relevant factors

The criminal history provisions include protections for the individual as they apply only to relevant duties, information is confidential, consent is required, and impacts are considered in the context of the role.

The directive relating to employment screening supports affording procedural fairness to a person in relation to employment screening, a further safeguard of the human rights of individuals impacted by these clauses.

Declarations and conflicts of interest

(a) the nature of the right

The Bill retains the existing provisions relating to declarations and conflicts of interest and extends their application to the sector.

Privacy and reputation

Clause 182 of the Bill provides that a chief executive of a public sector entity must provide a statement about their interests to their Minister and the commissioner.

Clause 183 provides that if a chief executive has an interest that conflicts or may conflict with the discharge of their duties, the chief executive must disclose the nature and conflict of the interest to their Minister as soon as practicable. The Minister may direct the chief executive to resolve the conflict or possible conflict.

Clause 88 of the Bill provides that a chief executive, whenever they consider it necessary because of an employee's duties and responsibilities, may direct the employee to provide a statement about the employee's interest.

Clause 89 provides that if a public sector employee has an interest that conflicts or may conflict with the discharge of their duties, the employee must disclose the nature of the interest and conflict to their chief executive as soon as practicable and must not take action relating to the matter unless authorised by their chief executive.

The requirements to disclose information relating to an individual's personal interests may limit the person's right to privacy and reputation.

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

A conflict of interest occurs when private interests interfere, or appear to interfere with, the performance of official duties. The purpose of limiting a public service employee's right to privacy by disclosing interests and managing actual or potential conflicts of interest is to ensure Queensland Government employees perform their duties in a fair and unbiased way, ensuring that decisions made are not impacted by self-interest, private affiliations, or the likelihood of gain or loss for them or others that they may wish to benefit or disadvantage.

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

The requirement for a chief executive and public sector employee to disclose their interests and identify potential conflicts of interests is necessary to maintain integrity and accountability within the public sector, and retain public confidence.

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

Requiring a chief executive of a public sector entity to provide a statement of their interests to their Minister, the integrity commissioner and the commissioner is the most direct and least restrictive way of identifying whether a chief executive's interests have a bearing, or may be perceived to have a bearing, on their ability to carry out their role properly and impartially.

The ability for a chief executive to direct an employee to provide a statement about their interests is the most effective and least restrictive way for a chief executive to determine whether an employee could be influenced, or it could be perceived that they are influenced, by a personal interest in carrying out the duties and responsibilities of their role.

The potential limitation of a person's right to privacy is minimised as the Bill prohibits a public sector employee from disclosing confidential information to anyone without the necessary consent or unless it required or permitted by legislation.

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

The limitation on a person's right to privacy and reputation is reasonable as it balances the individual's right with the public's interest in the proper administration of the public sector, and safety and corruption prevention. The provisions also include protections as the Bill restricts the ability to share confidential information.

- (f) any other relevant factors

Nil.

Suspension

- (a) the nature of the right

The Bill expands the suspension power of a chief executive to all public sector employees (including all public service employees) for non-disciplinary reasons.

Right to take part in public life

Clause 101 of the Bill provides processes for the suspension of a public sector employee from duty. A chief executive may suspend an employee if they reasonably believe the employee is liable to discipline under a disciplinary law or the proper and efficient management of the entity might be prejudiced if the employee is not suspended.

An employee who is suspended from duty will have their right to take part in public life limited for a specified period of time, and potentially also have limitations to their right to privacy and reputation.

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

Suspension is an administrative action, taken for administrative necessity if the chief executive believes the employee is liable to discipline under a disciplinary law or the proper and efficient management of the entity might be prejudiced if the employee is not suspended.

Suspension is not disciplinary action and is not to be used as a form of punishment. The Bill requires that before suspending an employee, the chief executive must consider all reasonable alternatives, including alternative duties, a temporary transfer, or another alternative working arrangement, that is available to the employee.

Suspension decisions are to be made fairly and natural justice is required in relation to a suspension without remuneration. Adherence to natural justice is not required for suspension on normal remuneration as the employee retains the benefit of their remuneration as well as continuity of employment.

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

The limitation of the right to take part in public life and potential limitation to an employee's right to privacy and reputation is necessary if a chief executive determines that the proper and efficient management of the entity might be prejudiced if the employee continues to perform duties in the agency or if the chief executive believes the employee is liable to discipline under a disciplinary law.

The decision to suspend an employee is a last resort after the chief executive has considered the possibility to undertake all alternative duties.

An example of when a chief executive may determine it is appropriate to suspend an employee on normal remuneration is where an employee discloses a conflict of interest in relation to their employment activities and cannot be allocated elsewhere within the department without prejudicing the proper and efficient management of the department. The length of suspension cannot be more than a reasonable period in order to avoid the prejudice.

The ability to suspend an employee may also provide the agency with the opportunity to mitigate any risks while investigating the matters prompting the suspension.

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

If reasonable alternatives to suspension, such as alternative duties, are not feasible, suspension is the most direct and least restrictive way to achieve the purpose of the Bill

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

The ability for a chief executive to suspend an employee applies in cases where there is a reputational risk to the agency or risk to employees, such as where an employee is being investigated for serious allegations such as sexual harassment or assault. It can be used where other options, such as moving the employee into a different role, have been explored and are not viable. Natural justice applies to decisions to suspend an employee without pay, and confidentiality obligations apply. Balancing the rights of others against the rights of the individual, and the public interest in effective management of the public service, the limits imposed by the suspension provisions are reasonable and demonstrably justifiable.

- (f) any other relevant factors

The Bill requires the commissioner to make a directive about procedures relating to the suspension of public sector employees from duty. The directive is to provide, among other things, for periodic reviews of suspensions being considered or undertaken and how the requirements of procedural fairness are to be met.

Independent medical examinations

Clauses 103 and 104 of the Bill provide that if a public service employee is absent from duty or the employee's chief executive is reasonably satisfied the employee is not performing his or her duties satisfactorily, and the chief executive reasonably suspects that the employee's absence or unsatisfactory performance is caused by a mental or physical illness or disability, the chief executive may require an employee to submit to a medical examination.

These provisions allow a chief executive to seek independent medical advice which may be needed to ensure appropriate support for the employee in the workplace, and in some cases to ensure the safety of all employees and clients. Following the receipt of the report, the chief executive may consider making reasonable adjustments, transferring or redeploying the employee or retiring the employee from the public sector.

(a) the nature of the right

Privacy and reputation

These provisions impose a limitation on the human right of privacy and reputation by requiring disclosure of personal information to the examining doctor and medical information to the public sector entity, insofar as it relates to the employee's absence or performance of their duties. The privacy of the employee will also be limited if they are compulsorily required to attend a medical examination.

Taking part in public life

The ability for a chief executive to retire a public service employee may impact on an employee's ability to take part in public life.

The right protected by this provision is for an 'eligible' person to have the right and opportunity, without discrimination, to access the public service on general terms of equality. The term 'eligible' is not defined in the *Human Rights Act 2019*. If an employee's role requires them to have a certain level of health and fitness in order to safely perform the inherent requirements of it, then it may be arguable that they are no longer 'eligible' for the role.

Recognition and equality before the law

Discrimination is defined in the *Human Rights Act 2019* as including the definition of discrimination in the *Anti-Discrimination Act 1991* (ADA). The protected attributes in the ADA include 'impairment'. Because of the direct link between an employee's perceived medical condition and the decision to direct them to attend an IME, this human right may be limited.

If the employee was retired on ill-health grounds, this would limit their right under section 23(2)(b) of the *Human Rights Act 2019* to have access, on general terms of equality, to the public service. Accordingly, a decision to direct an employee to submit to an independent medical examination may set in train a course that results in the employee being excluded from the public service on the basis of their health.

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

The purpose of the limitations of these human rights is to enable a chief executive who is satisfied under the Act that an employee is absent from duty or not performing their duties satisfactorily, and reasonably suspects that the absence or unsatisfactory performance is caused by a mental or physical illness or disability, then the chief executive is able to obtain expert medical advice to consider whether the employee is able to perform the inherent requirements of their position.

Queensland public sector entities have a legal obligation to ensure a safe workplace, and the rights to safety of other people in the workplace.

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

The purpose of directing an employee to attend an independent medical examination is so that the employer can obtain independent, expert medical evidence to inform considerations about whether the employee is able to perform the inherent requirements of their position, including whether reasonable adjustments are necessary to allow them to do so.

For a chief executive to have the necessary information to properly consider the impact of an employee's medical condition on their performance or current absence, it is necessary to obtain independent, expert medical advice.

If, following receipt of the medical report, the chief executive determines that reasonable adjustments to the employee's tasks or workplace or the transfer or redeployment of the employee are not viable options, the limitations to the employee's right to participate in the public sector are necessary for the chief executive to safeguard the health and safety of the employee.

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

An employee could potentially provide medical evidence provided by their treating doctor, noting that requesting information from an employee's treating doctor (with the employee's consent) is normally a constructive first step when an employee's performance or attendance is affected by a medical condition.

In some situations, a chief executive may determine that additional independent and objective evidence is also required to fully inform any considerations. In these circumstances, directing an employee to attend an independent medical examination is the most direct and least restrictive way of obtaining the required evidence.

The confidentiality obligations contained in the Bill reduce the impact of the limitation on an employee's right to privacy, and appeal rights also exist for their protection.

If alternative options such as reasonable adjustment, transfer or redeployment are not viable or appropriate, the limitation of an employee's right to access the public service is the most direct and least restrictive way of managing the health and safety of the workforce.

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

The ability for a chief executive to direct an employee to submit to an independent medical examination is necessary for the chief executive to have accurate specialist medical information to inform the needs of an employee in the workplace. This and the consequential sharing of the employee's personal information is a necessary and reasonable interference with the employee's right to privacy to ensure their wellbeing and safety, the potential wellbeing and safety of other employees, and for the effective management of the workplace.

Providing that a chief executive, after considering the independent medical report, may retire the employee from the public service is necessary if it is not reasonably practicable to transfer or redeploy the employee or make reasonable adjustments to support they employee's return to work. In these cases, this is the most appropriate option is to support the safety and health of the public sector entity's employees.

The purpose of these limitations are not to discriminate against an employee or to limit their human rights. On balance, the importance of the purpose of directing an employee to attend an independent medical examination and potentially retiring them from the public sector is greater than the importance of preserving the human rights which are impacted.

(f) any other relevant factors

The Bill allows the chief executive may make a directive about these provisions, which must also be compatible with human rights.

The Public Service Commission has issued a directive and guideline to support best practice processes around the use of independent medical examinations under the current Public Service Act. These supporting documents will be retained with necessary amendments to support the provisions of the Bill. The directive provides for the following measures to ensure necessary safeguards for the employee:

- The chief executive is to ensure that processes are fair and without bias, provide for impartiality and inform and involve the employee.
- An employee has the right to seek an internal review of a decision requiring them to submit to a medical examination, allowing both the employee and the chief executive to ensure the conditions of the PS Act have been met.
- A mechanism exists for an employee to appeal a requirement to submit to an independent medical examination and there is an expectation that processes under the Act will be implemented with appropriate support, sensitivity and respect.
- The letter of referral to the independent medical doctor should specify that their report is not to contain any medical or other information that is not directly or indirectly related to the effect and management of the employee's medical condition on their workplace performance or current absence.

- The chief executive must provide the employee with procedural fairness, consider any applicable statutory protections and consider all reasonably practicable options for continuing employment. Retirement of the employee should be considered as a last resort.

Review of work performance matters

(a) the nature of the right

Clause 125 of the Bill empowers the commissioner or their delegate to obtain information and documentation from the chief executive whose public sector entity is subject to a review.

Clause 126 empowers the commissioner to enter into an information exchange agreement with a chief executive of an external agency to obtain and give information for the purpose of undertaking a review of a public sector entity's handling of work performance matters.

Clause 127 protects a person from civil or criminal liability who acts honestly and reasonably when giving information under the Act for the purpose of a work performance review.

Sharing information and documentation that relate to individual employees could impact upon their human right to privacy and reputation.

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

The purpose of the potential limitation of an employee's right to privacy and reputation is necessary to ensure the commissioner can obtain and consider all relevant information, such as documentation and witness statements, when undertaking a review of a public sector entity's handling of work performance matters or, following the request of an employee, a review of a procedural aspect of a public sector entity's handling of a current work performance matter.

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

The ability for the commission to review a public sector entity's handling of work performance matters only applies where the commissioner reasonably considers a review may be beneficial to promote the continuous improvement of a public sector entity's practices regarding the handling of work performance matters or the optimal resolution of a current work performance matter.

A work performance review is an important mechanism to investigate any matter or aspect of public administration or public service management with the view of improving efficiency and effectiveness of Queensland's public service.

Work performance reviews are administrative processes undertaken to support employees and managers to maintain a high standard of professionalism, conduct and work performance, and to ensure inappropriate conduct or performance is dealt with effectively, and in a timely manner that is proportionate to the matter.

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

Enabling an entity to obtain and consider information and intelligence from an employee and providing the employee immunity from providing this information or opinion, is necessary to ensure the public service review can be effectively undertaken.

The Bill defines confidential information as personal information that is not publicly available or does not 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.

There is no reasonable and less restrictive alternative to empowering the entity undertaking the public service review to compel an employee to provide relevant information or intelligence.

The Bill contains sufficient safeguards regarding the purpose for which information can be disclosed and used. For example, the Bill provides that an employee must not use or disclose the confidential information to anyone else, other than as provided for in the legislation.

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

Enabling the commissioner to obtain information about an employee when undertaking a review will ensure the quality of the review, which ultimately aims to improve the efficiency and effectiveness of the public service.

The benefits associated with being able to effectively undertake a work performance review will not only benefit the public sector as a whole, but the broader Queensland community by ensuring a responsive and effective Government. Any limitation on the right to privacy and reputation is balanced against the importance of ensuring the commissioner, when undertaking the review, is equipped with the appropriate powers to perform their functions independently and to report with appropriate protection and immunity.

(f) any other relevant factors

The directives relating to discipline, suspension and workplace investigations refer to the commissioner's ability to undertake a review of work performance matters.

Appeals to the Queensland Industrial Relations Commission

(a) the nature of the right

Right to a fair hearing

The Bill could potentially limit the human right to a fair hearing as Clause 134 provides that appeals for disputes relating to decisions made under the Bill, will be heard by the Queensland Industrial Relations Commission (QIRC) where legal representation is generally not permitted.

The Bill aims to ensure fairness, transparency, and consistency in the employment experience and decision-making by giving public sector employees the same access to independent adjudication processes as public service employees have under the existing legislative framework under the PS Act.

Clause 140 of the Bill retains the existing provisions clarifying matters that are excluded from review under other Acts. For the purpose of the Bill an excluded matter, or a matter affecting or relating to an excluded matter, is not an industrial matter for the *Industrial Relations Act 2016*.

The Bill specifically includes as an excluded matter the contract of employment of, or the application of the proposed Public Sector Act, or a provision of that Act, to the following public service officers:

- the commissioner;
- a chief executive;
- a senior executive;
- a senior officer;
- a special commissioner;
- another public service officer whose employment is on contract for a fixed term.

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

Clause 134 of the Bill provides that appeals for disputes relating to decisions made under the proposed Public Sector Act, will be heard by the QIRC. The QIRC is a laypersons tribunal and appeals are intended to be conducted as a simple and informal process with a practical rather than technical focus, to reduce the legal complexity in matters heard by the QIRC.

Under the *Industrial Relations Act 2016* (IR Act) legal representation in appeals before the QIRC can only occur with consent of the other party and leave of the Commission. Under the industrial relations framework, it is intended the QIRC hear public sector appeals as a laypersons tribunal and therefore legal representation is generally not permitted. These provisions could potentially limit an individual's human right to a fair hearing by denying a public sector employee the ability to be legally represented in a matter before the QIRC.

The provisions relating to excluded matters carry forward the current settings of the PS Act. The application of these provisions has not been extended to equivalent employees across the sector, so as to retain all existing entitlements.

This exclusion of certain matters as industrial matters for this cohort of public service employee is justified on the basis that it applies to high paid employees who are compensated in other ways for the exclusion.

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

The Bill will give public sector employees the same access as public service employees to the independent adjudication processes of the QIRC. The QIRC is considered the appropriate forum to continue to hear disputes in relation to employment decisions made under the proposed Public Sector Act.

The Bill retains the current policy settings relating to excluded matters and only applies to high earning employees who are compensated in other ways for the exclusion.

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

The Bill does not seek to amend the existing IR Act provisions and the operation of the QIRC in relation to appeals made about employment matters. Retaining the existing approach that appeals about employment matters are heard by the QIRC, is considered the least restrictive way of providing public sector employees access to impartial dispute resolution processes.

Maintaining the provisions relating to excluded matters is the most direct and least restrictive way of achieving the policy intent of the Bill.

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

Giving public sector employees access to the QIRC for disputes relating to decisions made under the proposed Public Sector Act, provides these employees with a new avenue for dispute resolution and ensures a fair and consistent employment experience as public service employees. It is noted that the restriction on legal representation only extends to proceedings and parties are not precluded from seeking legal advice outside of proceedings.

The risk of not giving public sector employees consistent access to appeals and dispute resolution processes for decisions made under the proposed Public Sector Act, despite the inability to have a legal representative at the QIRC, would outweigh the need to protect the individual's right to a fair hearing.

This exclusion of certain matters as industrial matters for the identified cohort of public service employee is justified on the basis that it applies to employees who are compensated in other ways (including receipt of a high income) for the exclusion. Maintaining this longstanding exclusion, which is carried forward from the existing *Public Service Act 2008*, does not alter existing rights or liberties for this class of employee. The proposed arrangements do not seek to extend the exclusion to non-public service executives (defined as "public sector executives" in the Bill) on the basis that this would alter existing rights and liberties for these employees.

- (f) any other relevant factors

Nil.

Termination and ending of employment

(a) the nature of the right

Right to take part in public life

Clause 92 of the Bill retains termination of employment as an example of a disciplinary action relating to employment.

Clause 147 of the Bill retains the provision enabling a chief executive to terminate an employee if they are surplus to the entity's needs and applies it to the sector.

Clause 162 of the Bill retains the provision enabling a chief executive to terminate the employment of a public sector employee who refuses a transfer without establishing reasonable grounds for refusal to the satisfaction of the chief executive.

The Bill introduces an express provision at clause 145 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.

These clauses potentially impact an employee's right to take part in public life as they have the potential to increase the likelihood that common law principles relating to ending employment contracts (including for serious misconduct, abandonment and imprisonment) and may strengthen an agency's ability to rely on the common law in particular circumstances.

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

The purpose of providing a chief executive with the ability to terminate an employee who is surplus to the entity's needs or who refuses a transfer without establishing reasonable grounds is necessary for the management of the public sector entity's workforce, and the efficient use of public sector resources.

To give effect to Bridgman Recommendation 53 an express provision in the Bill provides clarity that chief executives of public sector entities may end employment or consider employment ended under the common law, where an employee has engaged in serious misconduct or has abandoned their employment (repudiation) or is imprisoned or remanded in custody (frustration).

The purpose of this provision is not to introduce a new termination right, but to strengthen agencies' ability to rely on the common law, particularly in circumstances where an employee is imprisoned or is on remand, and the employment contract is frustrated.

The Bill preserves the ability for a chief executive to summarily terminate an employee's employment, including where an employee has engaged in serious misconduct. The level of public trust inherent in public sector employment exists to varying degrees, depending on the nature and scope of the position and duties. Serious misconduct may arise where an employee's

conduct causes serious and imminent risk to the health and safety of a person, or to the reputation of the public sector entity in which the person is employed.

In recognition of this notion of public trust, the Bill aims to strike an appropriate balance between ensuring employees are treated fairly and provided procedural fairness in the appropriate circumstances, while also ensuring chief executives can make decisions to protect the risk and reputation of their entity and to ensure their public financial accountability obligations are met.

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

The limitation on an employee's right to take part in public life if they are deemed as surplus to an entity's need or who refuse a transfer to other duties or another location without establishing reasonable grounds is necessary for the effective management of a public sector entity's workforce, and the efficient use of public sector resources.

The retention of the ability for a chief executive to terminate an employee who has engaged in serious misconduct is necessary to ensure a chief executive can make decisions to protect the risk and reputation of their entity and employees, and to ensure their public financial accountability obligations are met.

The purpose of including an express provision in the Bill is to clarify that the Act does not limit or affect a common law right to terminate an employee's employment, giving effect to the intent of Bridgman Recommendation 53.

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

If an employee has been deemed as surplus, and alternative options such a transfer, redeployment or voluntary retirement are not available, termination is the most direct way to achieve the policy intent.

As the mobility of public sector employees enables an agency to effectively manage its workforce and address changing needs, there is no less restrictive way to achieve the policy intent than terminating an employee who refuses a transfer without a reasonable excuse.

The ability to terminate for surplus can also be limited by a Directive, and has an additional safeguard embedded to require 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*".

As the new express provision for ending employment is intended to preserve common law rights and operation, this is the most direct way to achieve the purpose of the Bill. The new provision does not prevent an employer from using the existing discipline avenue, for example where an employee has been absent from duty without approved leave and without reasonable excuse. The provision further clarifies that nothing in the Act is intended to derogate from the

State's contractual rights as an employer under the common law. As the termination provision preserves common law, it is the least restrictive way to achieve the policy intent.

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

There is a public expectation that a chief executive of a public sector entity will effectively and efficiently manage the entity's workforce.

The ability of a chief executive to make decisions to end an employee's employment to effectively manage their workforce, ensure public financial accountability obligations are met, and to protect the risk and reputation of their entity, outweighs the potential limitations to an individual's human rights.

(f) any other relevant factors

The Government's employment security policy and the directive relating to supporting employees affected by workplace change detail the steps an agency must take to find an alternative role for an employee who has been identified as being surplus to an entity's needs.

It is intended that termination of a surplus employee only be used when all other avenues have been exhausted. A Directive can also limit or affect the way the surplus power is used by chief executive in the public service to terminate, or take other action, in relation to an employee.

Consistent with Bridgman Review Recommendation 52, the PSC will develop sector-wide guidance for agencies about summary dismissal or other ending of employment. This guidance will contemplate when these avenues may be used instead of, or how they may interact with, the existing suspension and discipline frameworks.

Conclusion

Establishing a new Public Sector Act is the first listed priority recommendation of the 99 recommendations of the Bridgman Review. Therefore, the key priority recommendation which will deliver a primary role in ensuring Queenslanders have the most responsive, consistent, and reliable public sector possible.

In my opinion, the Public Sector Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality, and freedom.

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