AWUEQ
AWU QUEENSLAND BRANCH
Level 13, 333 Adelaide Street, Brisbane QLD 4000
GPO Box 88 Brisbane QLD 4001
T: 1800 298 753 E: secretary@awu.org.au W: www.qld.awu.net.au

THE AUSTRALIAN WORKERS' UNION STRONGER TOGETHER

ABN 54 942 536 069 (AWUEQ) ABN 28 853 022 982 (AWU)

Queensland Parliament

Education, Employment and Small Business Committee

Public Service and Other Legislation Amendment Bill 2020

to amend

The Public Service Act 2008 and the Industrial Relations Act 2016

Submission on behalf of the Australian Workers Union of Employees, Queensland (AWU)

BACKGROUND

The AWU has industrial coverage of employees in the Department of Health, the Department of Youth Detention, the Department of Child Safety, Communities and Women, the Department of Transport and Main Roads, the Department of Agriculture and Fisheries and the Department of Communities, Disability Services and Seniors who are employed under the *Public Service Act ('the Act')*

The Public Service & Other Legislation Bill seeks to amend the Public Service Act and the Industrial Relations Act (IR Act) to implement the recommendations contained in the Bridgman Review which was an independent review of public sector employment laws commissioned by the Queensland Government.

Also, the Bill deals with some recommendations contained in the Coaldrake Review which was commissioned to review Queensland Public Sector Workforce Planning.

COMMENT

Not all recommendations contained in the reviews will be addressed by the passing of this Bill. Whilst we understand further amendments to the Act may occur in the future to deal with more of the recommendations all should have been addressed as part of this Bill.

In this submission we will limit our commentary to the matters addressed in the Bill (only).

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The explanatory notes *('**the notes**'*) to the Bill indicate the amendments seek to address two main issues, the two main issues being:

1. giving full effect to the Government's commitment to maximise employment security in public sector employment; and

2. providing for positive performance management of public sector employees

The notes also indicate the amendments are intended to build on the measures to restore fairness in public sector employment undertaken by the Palaszczuk Government since 2015.

The amendments in the Bill indicate the Government approach is to make minor changes to the Public Service Act and implement the main part of the change through directives issued by the Chief Executive of the Public Service Commission in accordance with the provisions of the Public Service Act.

The AWU disagrees with this approach and contends the changes should be made by the insertion of prescriptive directions into the Act and not prescribed in directives which are subordinate to the Act. Provisions in Acts are less likely to be challenged or disregarded therefore it is more likely that the Government's intentions will better achieved should the provisions be contained in the Act.

The pursuit of restoring fairness will be compromised without the changes being made to the Act.

CONVERSION OF CASUAL AND TEMPORARY EMPLOYEES TO PERMANENT EMPLOYMENT

Amendments to the Public Service Act

Currently there are Directives made under *the Act* that deal with the conversion of temporary and casual employees to permanent employment, they are:

a. Temporary employees – Directive 08/17, and

b. Casual employees- Directive 01/17

The directives outlined above allow for conversions to occur after two years and provides the ability to file a public service appeal when a decision is made to not convert an employee .The proposed amendments allow for conversions to occur after 12 months but do not provide for an appeal in the circumstances where the decision is made to not convert an employee.

An appeal right needs to be incorporated in the Act and needs to available to an employee whose application for conversion has not been successful. To not provide such a right to an employee denies the employee the ability to challenge the decision made by the Departmental employer. To provide an appeal right would be

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consistent with the long held principle that decisions made about public service employment need to stand the test of scrutiny.

There is an alternative that would remove the need for an appeal right. Should the Act prescribe that temporary (fixed term) and casual employees with 12 months service must be converted then there would not be a need for an appeal process.

Both directives indicate that should no response to a conversion application /consideration be made within 28 days then it is deemed that the conversion will not be approved and the employee will continue as a temporary or casual employee. This provision is being carried forward and as there is no appeal right Departments can simply not respond within the 28 day assessment period and thus not be held accountable. At the very least an appeal right should exist for employees who are not even provided with the curtesy of a response.

The current provisions in the Act do not stipulate the number of part time hours that have to be offered to a converted employee which has led to the situation where employees are offered less hours then those they have worked on a regular and systematic basis. In some instances the number of hours is less than half the hours worked by the employee.

The Act must provide that the average hours worked over the past twelve months must be offered to the employee.

PROVIDING FOR POSITIVE PERFORMANCE MANAGEMENT OF PUBLIC SECTOR EMPLOYMENT

Amendments to the Industrial Relations Act

Appeals

The amendments transfer the head of power for all appeals from the Public Service Act to the Industrial Relations Act but does not alter the nature of the appeal. The appeal currently and as proposed in the amendments is a review of the decision made by the decision maker having regard only to the material put before the decision maker.

This appeal should be more than a review. It should allow for the appellant to rely on all relevant documents when presenting their case and not be limited to the material placed before the decision maker, rather than having to rely on section 201 of the *Public Services Act 2008* (Qld) (a discretionary power) or similar to provide further information.

Even if an Applicant is allowed to bring in more material, the appeal application is only requesting the Commissioner to review the decision, which prevents a broader scope and powers from being enacted, such as a fresh review with all the evidence available to the Commissioner.

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In consideration of the above, the AWU submits that the Bill should allow:

a. public service appeals to review the entire matter and make a fresh decision, that is different and no worse to the current decision by the decision maker – in order to ensure that the Applicant's matter is completely reviewed and provided a third party decision; and

b. the decision maker/employer provides all evidence in their position relating to the Applicant's matter, and that the Applicant is free to include further evidence, even if the employer/decision maker did not have the same in their possession.

AMENDMENTS TO THE PUBLIC SERVICE ACT

Suspension

The current Act provides the ability for employees under investigation for a discipline breach to be suspended with remuneration and in certain circumstances without remuneration. The amendment carries forward these provisions.

Suspension should only be on the basis of suspension with remuneration. The main reason being whilst under investigation no finding has been made that renders the employee liable to disciplinary action at that point in time and the principle of procedural fairness is ignored if the penalty of no remuneration is imposed prior to a finding being made.

Secondly the loss of income has a significant impact on the employee and their family which can be devastating. Again, this penalty is imposed without a finding being made and thus is harsh particularly in the circumstances where no negative finding is made against the employee at the conclusion of the investigation.

Further, if the employer has no choice but to suspend the employee with pay, then it will provide the employer a sense of urgency to complete the investigation, rather than extend the matter over a lengthy amount of time. The consequences of the matter being extended for a lengthy amount of time and if suspended without pay, would be that the employee would have no remuneration to support themselves and their family (if they have one).

Clause 44 of the amendments sets out what should be in a directive about managing discipline. At no point does the amendment prescribe that the process should be fair or extend procedural fairness to the employee under investigation.

These provisions need to be in the Act and there needs to be instructions that ensure the investigation is carried out in a fair and balanced manner with no predetermined views.

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Members of the AWU have also raised a number of concerns in relation to a performance management and/or disciplinary process and this should be included in the proposed amendments to the Act:

That it be mandatory that a member must have a union delegate and/or official attend any meeting whether formal or informal in relation to a performance management or disciplinary matter and that the member be provided with the details in writing in relation to the specifics of the meeting prior to it being held. Not just called into the managers office or confronted in a hallway;

That should a meeting be "informal" any notes from the meeting are inadmissible;

That managers are to refrain from informally writing up file notes on members and placing the notes on their file without their knowledge or used to intimidate or coerce;

That all material relied upon by the decision maker be provided to the respondent including statements, evidence, investigations reports and other findings;

That the process be strictly limited to a fixed timeframe especially if the respondent is suspended;

That the response letter from the respondent provide cogent reasoning based on the evidence available.

That witnesses nominated by the respondent be interviewed and their evidence considered; and

That any proposed penalty not be harsh given the findings.

Members of the AWU have also raised a number of concerns in relation to initiating a grievance procedure and this should be included in the proposed amendments to the Act:

That the manager take the substance of the grievance and timeframes seriously;

That grievances from members are properly and impartially investigated;

That the response back to the member who submitted the grievance provide cogent reasoning in relation to the findings based on the evidence available and the balance of probabilities test;

That the outcome letter detail how the behavior or conduct subject of the grievance will be prevented in the future including action taken against officers found to be breaching the Code of Conduct.

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The AWU does not have confidence that these specific problems with the process which have such a huge impact on the well-being of our members and their families will be addressed through Directives as line agencies have an interest in maintaining the status quo.

The changes advanced in this submission will allow the Government to move a step closer to restoring fairness.
