

Queensland Council of Unions

Honorary President: **Kate Ruttiman** General Secretary: **Michael Clifford** Assistant General Secretary: **Jacqueline King**

30 July 2020

Ms. Erin Jameson,
Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

By email eesbc@parliament.qld.gov.au

Dear Ms. Jameson

Public Service and Other Legislation Amendment Bill 2020

The Queensland Council of Unions (QCU) is Queensland's union peak council. The QCU welcomes the opportunity to provide this submission to the Education, Employment and Small Business Committee (EESBC) concerning the *Public Service and Other Legislation Amendment Bill 2020* (the Bill). In general, the QCU and its affiliated unions are supportive of the primary objectives of the Bill as stated in the explanatory note:

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

There are concerns however, that the Bill does not sufficiently give effect to the commitment to maximise employment security and those concerns are discussed in this submission.

The QCU has supported those matters transferred from the Public Service Commission to the Queensland Industrial Relations Commission (QIRC). It is appropriate that those matters are now transferred from the *Public Service Act 2008* to the *Industrial Relations Act 2016* as is proposed by the Bill. The independence of the QIRC provides for a greater perception of a fair hearing on the part of public sector workers.

The Bill is also intended to clarify the threshold for taking disciplinary action. In the context of a commitment to maximise employment security and including a positive performance management framework, this submission also contains a brief discussion regarding discipline. The Bill includes provision requiring the development of directives about discipline and suspension. The QCU has had the opportunity to consider early drafts of some other

submissions. Specific mention is made of those submissions and the QCU indicates its support for those submissions throughout this submission.

Whilst the work undertaken by Government in relation to this Bill predates the current crisis caused by restrictions imposed by the COVID 19 pandemic, these reforms are timely. It is of increasing importance that Government as an employer provides security of employment wherever that is achievable.

Giving full effect to the Government's commitment to maximise employment security in public sector employment

Precarious employment has been a growing feature of Australian labour market in recent times. As such it has attracted the attention of the trade union movement and other organisations concerned with growing inequality. Casual employment and fixed term employment are amongst the types of precarious employment that contribute to this level of inequality. The Bill seeks to address these categories of precarious employment in the context of the Queensland Government's own workforce. Precarious employment effects quality of life because of the uncertainty associated with it. Precarious employment impacts on a person's ability to support themselves, their family and fully participate or contribute to their local and the broader economy.

Casual employment is associated with the payment of a loading in lieu of various forms of leave. The adequacy of that loading is often contested by the union movement. Casual employment can also be associated with substantial variations in pay from one pay period to the next, making meeting financial commitments problematic. Fixed term employment is associated with continual uncertainty, particularly when one job is continually the subject of end-to-end rolling contracts. Fixed term employment can be used rather than for its intended purpose (where there is temporary need for work or for a specified project) by an employer to avoid other obligations associated with on-going employment, such a notice periods and severance pay in the case of redundancy. Aside from the various forms of leave that casual employees are denied, workers in precarious employment are less likely to access training which has implications for those workers' ongoing employability and career prospects.

As workers in precarious employment are at greater risk of not meeting their financial commitments, this has broader implications for lifelong earnings and wealth. Quite obviously home ownership is not realistic for workers in precarious employment because of the potential risk they pose to lenders. As if the inability to obtain a mortgage was not bad enough, in recent times precarious employment has meant that workers have difficulty securing rental accommodation. This set of circumstances creates the prospect of workers being employed but homeless, which is the epitome of the working poor. This combination of circumstances is contributing to the growing income inequality being experienced in Australia, but it also worsens wealth inequality over time.

The recent outbreaks of COVID 19 in Victoria have been attributed to precarious employment because of its absence of paid leave, (necessitating workers to attend work regardless of their health); and the necessity for some workers to work several jobs to make ends meet (making it

necessary for workers to travel to and from multiple workplaces). People living with financial insecurity may also find it harder seek medical support, resulting in poorer health outcomes. Low pay, combined with uncertainty associated with precarious employment, makes it even worse. In the case of the recent COVID 19 outbreaks, it is not only the health of the individuals that is in danger, precarious employment has proven to be a threat to public health.

Job security is a fundamental benefit that has traditionally been associated with public sector employment. Providing public sector workers with tenure of employment ensures a more robust and independent public sector, willing and able to provide frank and fearless advice to the government of the day. Permanency of employment is essential for the motivated and loyal public sector workforce that is needed now more than ever in the face of the COVID 19 crisis. Public sector employment security is also of benefit to the broader community because of the macroeconomic effects of permanency of employment.

Public sector employees will in some cases develop skills that are not readily transferable to the private sector. In these circumstances it is not a simple as finding another job when considerable time and effort has been devoted to the development of skills and qualifications that a public-sector centric. The arbitrary displacement of these workers also means that the skills are lost to the public sector and broader society. Retention of experienced staff is essential for the maintenance of skill with various public sector agencies that have been crucial in operationalising the response to COVID-19.

Currently there is considerable concern as to the ongoing economic impact of COVID 19 and the QCU strongly supports those policies that would prevent the inevitable upcoming recession from turning into a depression. In this regard, we can favourably contrast the policy response to the Global Financial Crisis with that of the Great Depression. In the case of the former, an austerity policy response prolonged the impacts of the depression in Australia. It is therefore that all economic levers available to government at all levels be pulled to maintain aggregate demand and not contribute to a deflationary spiral that would cause a depression. Having a public sector secure in its employment will, to some extent, provide a bulwark against declining consumer confidence that threatens a recession turning into a depression.

The QCU does however have some concerns with the Bill as it is drafted. We are concerned that the Bill might not necessarily reflect the stated objectives mentioned above. In particular, this submission brings the following provision to the attention of the EESBC:

Clause 37

Proposed section 148 (2) (c) appears to be quite open ended and provides circumstances under which a position could be exempted from conversion because of “uncertain” or “unknown” funding. By excluding positions for which funding is “uncertain” or “unknown” could be open to a variety of interpretations. It could be argued that the funding of any budget item is not known from one year to the next and this provision would have the potential to apply to any position, thereby defeating the primary stated purpose of the Bill to “maximise employment security in public sector employment”. On this issue we would draw the Committee’s attention to the submission of the United Workers Union to this inquiry.

Recommendation 1: Delete lines 11 to 16 on page 31 of the Bill and renumber accordingly.

It is noted that the Together Union submission in this inquiry seeks that the only grounds for termination of a fixed term employee's contract of employment is for misconduct. The QCU supports this submission.

It is also noted that the Together Union submission in this inquiry seeks to expressly limit the grounds upon which fixed term employment can be used. The QCU supports this submission.

It is noted that the Queensland Nurses and Midwives Unions submission to this inquiry discusses "genuine operational requirements" and make the point that such requirements are often considered by agencies as solely financial. The QCU supports this submission in that operational requirements remains to broad an exclusion as the Bill is currently drafted.

Proposed sections 149A (5) and 149B (7) deal with a Chief Executive not making a decision on review of employment status and in such cases a failure to review equates to a decision being made to not convert. If the default position is to be permanent employment, in our submission failure to make a decision should result in the conversion being made. Provisions that would make permanent employment the default position if the Chief Executive does not make a decision would truly give effect to the commitment to maximise employment security in public sector employment. Inactivity on the part of the Chief Executive should not result in disadvantage to the employee and continued uncertainty in employment.

Recommendation 2: Reword the proposed section 149A (5) and 149B (7) to effect that a failure on the part of the Chief Executive to make a decision will result in the automatic conversion of the employee.

It is noted the Together Union submission in this inquiry seeks to clarify that employees converted to permanent employment do not require a further probation period. The QCU supports this submission.

Clause 47

Proposed section 195 (1) (i) excludes decisions not to convert after 12 months from appeal. It is understood that there is a right of appeal after two years but there does not appear to be any logic in the differentiation. The decision not to convert is rightly appealable. In our submission, there is sufficient ground to make a request after 12 months then there should also be an appeal right.

We note that the Together Union submission to this inquiry makes the case that individual appeal rights are imperative for a "fair, transparent and apolitical system." The QCU supports this submission.

Recommendation 3: That appeal rights be available from after 12 months not 2 years as proposed in the Bill.

Providing for positive performance management of public sector employees

We accept and understand the intention to provide for positive performance management in the public sector. Performance management is intended to be used to align individual performance with broader organisational goals. It is intended to lift both individual and organisation performance. By providing employees with a clear and realistic idea of the standards that are to be expected, employees are able to meet those expectations and therefore have greater security of employment. Such an expectation is consistent with the theme of maximising permanent employment addressed elsewhere in this submission.

As noted in The Bridgman Review, upon which these amendments are based, too often performance management is seen as a punitive measure that is something to be used by an employer only to remove an employee. This narrow focus of performance management defeats the intended purpose of performance management to develop individual and organisational performances.

It is noted that the Together Union seeks amendment to the proposed section 25A to ensure that performance management is conducted as early as possible, that expectations are measurable and achievable and that principles are integrated into management practices and policies. The QCU supports these submissions.

Discipline Generally

It is noted that the Bill touches upon broader issues of discipline, particularly in relation to suspension. The United Workers Union submission provides deidentified case studies of members of that union and their experience with disciplinary processes. Union submissions to this inquiry have identified where disciplinary action has been initiated where there has been insufficient grounds. One such way that it is possible for public sector agencies to initiate disciplinary action is for alleged breaches of the Code of Conduct.

The Code of Conduct is an aspirational document and it is possible that any employee might be in breach of the Code of the Conduct on a regular basis without the supposed infringement being serious enough to warrant disciplinary action. Breaches of the Code of Conduct have been used to initiate disciplinary action for conduct that would never reach the considerably higher bar of misconduct, that might justify disciplinary action. The Queensland Nurses and Midwives Union has provided the example of a nurse being suspended for swearing in an emergency department. This conduct would not, as far as we understand, be unheard of in the highly charged environment of an emergency department. It could not, by any reasonable standard, be grounds for the termination of that nurse's employment, so it is completely inappropriate to suspend an employee in these circumstances. Suspension on pay, whilst not necessarily financially disadvantaging an employee, can have a harmful impact on the well-being of the employee. Moreover, in a clinical working environment there are professional reasons not to remove a worker from the workplace. In addition, it is difficult to reconcile suspending employees who, even if guilty of the conduct alleged, would never have their employment terminated, as prudent financial administration.

The Together Union has encountered perverse use of the suspension powers under the Public Service Act 2008. In the particular case cited by the Together Union, the suspension without pay was used to create an absence from work that is one of the ways in which an independent medical assessment (IME) is triggered.

Recommendation 4: That the Bill be amended to clarify the precise reasons that suspension can be used and to prohibit its use for any other purpose (such as to create an absence to trigger an IME).

Recommendation 5: That the Bill clarifies that grounds for taking disciplinary action be limited to matters of a sufficiently serious nature.

It is noted that the Together Union submission to this inquiry seeks to clarify that suspension notice must include the term of the suspension, that alternative duties should be considered and that normal remuneration whilst on suspension be defined to include shift allowances, projected rosters and aggregated salaries and this be included in the Act. The Queensland Nurses and Midwives Union submission suggest looking at previous roster patterns for this purpose. The QCU supports these submissions.

It is noted that the United Workers Union and Together Union submissions to this inquiry both mention the role of a union or other person in supporting an employee in disciplinary matters. In order to ensure procedural fairness, it is essential that employees are able to be effectively represented. We are aware of the practice of attempting to limit the role a union official and consider this to be contrary to providing employees the subject of disciplinary matters with procedural fairness.

It is also noted that the United Workers Union and Queensland Nurses and Midwives Union submissions to this inquiry advocates for limitations on the time taken to investigate disciplinary processes and the resolution of performance issues. The QCU supports these submissions.

The Together Union seeks that there be “stay” provisions included in the legislation to prevent the frustration of an appeal process. The QCU supports this submission.

It is noted that the Together Union seek the inclusion of provisions that require consultation with registered organisations to be considered by the Public Service Commissioner or the Industrial Relations Minister. The QCU supports this submission.

The QCU would be willing to provide further evidence at public hearings of the committee. Please contact [REDACTED] on [REDACTED] or [REDACTED] for any further information in relation to this matter.

Yours sincerely



Michael Clifford
General Secretary
Queensland Council of Unions