



ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP—Chair
Mr RA Stevens MP
Mr MJ Crandon MP
Mrs MF McMahon MP
Mr DG Purdie MP (virtual)
Mr A Tantari MP

Staff present:

Ms J Langford—Committee Secretary
Ms M Salisbury—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE PUBLIC SECTOR BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 24 OCTOBER 2022

Brisbane

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The committee met at 10.31 am.

CHAIR: Good morning. I declare open the public briefing for the committee's inquiry into the Public Sector Bill 2022. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today, the Yuggera-speaking people. We are very fortunate to live in a country with two of the oldest continuing cultures, those of the Aboriginal and Torres Strait Islander peoples. My name is Linus Power. I am the member for Logan and chair of the committee. Other members of the committee are: my erstwhile deputy chair, Mr Ray Stevens, the member for Mermaid Beach; Mr Michael Crandon, the member for Coomera; Mrs Melissa McMahon, the member for Macalister; Mr Adrian Tantari, the member for Hervey Bay; and Mr Dan Purdie, the member for Ninderry, who is joining us via teleconference.

The purpose of today's briefing is to assist the committee with its inquiry into the Public Sector Bill 2022. The briefing is a proceeding of the Queensland parliament and is subject to the standing rules and orders of the parliament. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I remind the many members of the public that members of the public may be excluded from the briefing at the discretion of the committee. I also remind committee members that officers are here today to provide factual or technical information. Questions seeking opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings. Your images may also appear on the parliament's website or social media pages. I give a reminder for everyone to please turn your mobile phones to silent.

McKAY, Mr Peter, Deputy Commissioner, Public Sector Reform Office, Department of the Premier and Cabinet

VARDANEGA, Ms Kira, Director, Public Sector Reform Office, Department of the Premier and Cabinet

CHAIR: Good morning. Thank you for agreeing to brief the committee today. I invite you to make some opening comments, after which committee members will have some questions for you.

Mr McKay: The Public Sector Bill 2022 represents a significant effort since October 2020 to develop modern public employment laws as recommended by Peter Bridgman in his review *A fair and responsive public service for all*. The bill seeks to discharge the primary recommendation of that review, for a new public sector act with broad application.

As well as addressing the remaining recommendations of the Bridgman review, the bill is also informed by recent developments in public administration. This includes the statement of commitment to a reframed relationship with Aboriginal and Torres Strait Islander peoples. In that regard the bill sets out the role of the public sector to support this reframing. It also includes the lessons learned through the public sector's role in responding to COVID-19. In that regard, the bill provides for increased mobility of the public sector workforce.

Most recently, the review by Professor Peter Coaldrake, *Let the sunshine in*, has led to changes such as in the membership of the Public Sector Governance Council and the terms of appointments for departmental chief executives. A hallmark of this project has been strong engagement from stakeholders including departments, public sector unions and integrity agencies. I am grateful for the time and effort they have each given. All of that has been brought together through a significant effort from the staff of the Public Sector Reform Office and the Office of the Queensland Parliamentary Counsel. I am particularly grateful for the very close and clever collaboration between them to deliver on this bill.

Mr STEVENS: The explanatory notes indicate that the bill is to implement stage 2 of the reforms coming out of the Bridgman review, which was handed to the government in 2019. The first tranche of those changes was legislated in September 2020. Why has it taken another two years to introduce the second stage of the reforms, and will this complete the implementation of the Bridgman review?

CHAIR: We do note the general rules that officers are here to provide factual and technical information and that seeking opinion on policy or indeed its implementation and timing would be left to the minister. Mr McKay or Ms Vardanega may have some factual or technical information that may be useful for our inquiry.

Mr McKay: The government made a decision during 2020 that the implementation of the Bridgman recommendations would take place in two parts. It was always the view that a fundamental rewrite—this is the first time that the public sector employment legislation has been rewritten since the mid-1980s—would take a significant amount of time to work through. The determination was made to progress some priority reforms immediately and then to set aside time to work through quite a detailed process of working through the other parts of it.

Mr STEVENS: The department has been working on those matters over that time?

Mr McKay: Absolutely.

Mr STEVENS: Okay, that is good. The second part of that question was: is it completed?

Mr McKay: There are three recommendations that do not require a legislative response, and those are in progress or ongoing. Recommendation 88 is that the Public Sector Governance Council should consider a statement of values and whether those values should be embedded in the act or through some other arrangements. That recommendation is in progress because it necessarily flowed from the recommendation before it, No. 87, which was that the government should initiate a forward-looking investigation into an integrated ethics and integrity framework. That recommendation 87 was discharged by the Professor Coaldrake review, *Let the sunshine in*. The consideration of what will happen now as part of that public sector rejuvenation, including values, will flow from government's consideration of Professor Coaldrake's report.

The next of those is recommendation 9, which is a review across the statute book of whether procedural fairness applies for the appointment of statutory office holders. That process is quite a detailed process, as you can understand, going through each statutory office. That process is underway within the Department of the Premier and Cabinet. The last of those is recommendation 19, that the governance council should determine a five-year rolling program of public sector reviews. That will now fall to the Public Sector Governance Council, which is created under this act.

Mr STEVENS: Is the department working on 88 now?

Mr McKay: Yes.

Mr STEVENS: The explanatory notes say that these changes implement and complement the recommendations of the Coaldrake review. Could you please outline which of the 14 recommendations this bill addresses in the Coaldrake review?

Mr McKay: There are a couple of very specific recommendations or observations, if you like, of the Coaldrake report that are discharged. He does have some observations of the nature of recommendations that do not sit within the 14 recommendations. There are a couple of very specific ones. I will go to those first. One of those is about providing stability in government by prescribing that a departmental chief executive's term of appointment would be five years, and that is discharged in this bill. That is a specific recommendation. Another that is found within his report as an observation, if you like, is that the Public Sector Governance Council, in addition to being comprised of the director-general of Premier and Cabinet, the Public Sector Commissioner and the Under Treasurer, should also include two community representatives. that is also discharged in this bill.

As we went through consideration of Professor Coaldrake's review, which obviously came late in the piece of our development of the Public Sector Bill, we looked at how we could make sure we reflected Professor Coaldrake's comments around rejuvenation of the public sector. There are a number of elements that we have adjusted through this bill—things such as the way in which the public sector principles and work performance and personal conduct principles are framed in the act—seeking to support some of the views of Professor Coaldrake. The way in which we have described the role of the Public Sector Commission, which will replace the Public Service Commission, as playing a role in that key system leadership oversight, central human resources role—Professor Coaldrake talks about that in chapter 11 of his report—is captured here in the bill.

The notion of providing shared public sector stewardship roles from not just the governance council but across directors-general—the Public Sector Commission et cetera—is picked up in the way in which we have established the functions of the governance council and the roles of directors-general and the Public Sector Commissioner and the purpose of the chief executive service. There are also elements in here around requiring chief executives to support a culture of respect and inclusion. These go very much to Professor Coaldrake’s comments around the culture of the Public Service.

Professor Coaldrake also talked about the need for mobility—mobility in respect of senior executives for the purpose of their development but also mobility to allow government to scrum around particular issues, so use a surge capacity. Very much that is picked up in this bill in a couple of respects—not only extending mobility arrangements that currently apply in the Public Service to the public sector more broadly but also allowing for the Premier to establish a task force that becomes an entity under the act that can be used to deal with problems that cut across departmental boundaries.

Mr STEVENS: You mentioned the five-year terms for senior public servant contracts et cetera as part of this legislation. Is it the intention after this legislation becomes law that they will be implemented straightaway for a five-year term, or is it the intention that when their current contracts expire the next tranche is five years?

Mr McKay: I do not know that I have the answer to that.

Mr STEVENS: So it is not in the legislation?

Mr McKay: It is not in the legislation, no. From the point that the legislation commences, all initial terms of appointment would need to be five years. The question of other contracts that are existing is not a matter that is dealt with in the bill.

Mr STEVENS: So it is not dealt with in the bill?

Mr McKay: No.

Mrs McMAHON: In your opening address you spoke about some of the lessons learned from COVID. You specifically made reference to increased mobility. How does that work? What is envisioned by increased mobility within the Public Service? What does that look like for an employee and what does that look like for a department?

Mr McKay: Absolutely through the COVID response, the notion of being able to move people quickly across agency boundaries to deal with responses, whether that was contact tracing or staffing quarantine arrangements or staffing vaccination requirements, was a key driver. This provides for that to extend beyond the Public Service. There were two provisions previously, one around work performance agreements between agencies and another about interchange arrangements. The learning was that the complexity that is created by having different arrangements and by requiring then a lot of bureaucracy around the way in which those operate mitigate against moving quickly. The purpose of the provisions of the bill is to simply facilitate that. The question of how much bureaucracy is needed is a matter for chief executives to determine. The mobility arrangement is something that requires agreement between three parties—the releasing entity, the receiving entity and the employee. It is not a transfer power in the way in which the transfer power applies in the Public Service currently.

Mrs McMAHON: You probably answered the second part of this question with regard to where the employee stands in this increased mobility. The other aspect is the triggers for this mobility. You said that this is a COVID-19 lesson. Is it envisaged that this is something that is used at a threshold of responding to something, or is this more an across-the-board, day-to-day, operational, business-as-usual transfer of employees across departments?

Mr McKay: Speaking from a personal point of view, I am currently on what would be a mobility arrangement from my role in another agency to DPC to undertake this project. It could be for matters such as that. Certainly one of the key drivers around removing the bureaucracy attached to it is to allow for that rapid movement of numbers of staff, so it can just as easily be used there. In this instance, taking away the bureaucracy means that where it is moving me between two entities, if it is not urgent, it can be done with letters crossing between or, if it was urgent, it could be done with a simple note between chief executives to allow that movement.

Mrs McMAHON: In terms of this mobility issue, matters such as HR, pay, leave provisions and that kind of thing will travel with the employee?

Mr McKay: That will depend on the circumstances. The easiest and quickest way to move that cohort of staff may be to simply leave them on the payroll of the entity. If I think of contact-tracing arrangements, for example, if it was standing something up for a couple of weeks, that probably lends

itself to simply moving the people and leaving them on the payroll of the entity they are employed by. If it is a longer term arrangement or if the person is exercising particular statutory functions—if you are making decisions under legislation affecting the lives of others—it might be that you want more certainty and you are clearer about moving the person off the establishment of their normal entity and onto the establishment of the new temporary entity—noting that they are temporary arrangements; it is not for the permanent appointment.

Mr CRANDON: One recommendation of the Coaldrake review is to develop and the continual reinforcement of a common framework to determine appropriate relationships among ministers, their staff and senior Public Service officers: 'The tone set at the top is essential.' Does the bill address this recommendation?

Mr McKay: It does not specifically address that recommendation, no.

Mr CRANDON: Does the bill give any guidance about how a minister should treat the Public Service?

Mr McKay: In respect of the relationship between a minister and a departmental chief executive it does, and it continues the arrangements that are currently set out in the Public Service Act 2008 about the statutory independence, if you like, of the chief executive of the department for the administration of the department, but their responsibility is to the minister of that.

Mr CRANDON: Another recommendation is that rejuvenation and capability of the public sector be a major and concerted focus: 'This should emphasise a culture of performance and integrity.' How does this bill deliver on this recommendation?

Mr McKay: The bill does a couple of things in that respect. The public sector principles talk about the responsibilities of employees, or the way in which they undertake their work, or the way in which they manage their workplace, including the people who are undertaking that work, and the accountability of chief executives of entities for the way in which they discharge that obligation for the department. It also then establishes the and the Public Sector Commission to provide that system oversight, to check that the system is working, and provides for elements such as the conduct of public sector reviews, which can be done on an agency or on a theme basis, to check that performance is happening. A culture of responsiveness through performance is very much reflected in the principles of the act and the principles of the public sector employment.

CHAIR: Mr McKay, you spoke before about other recommendations that are not necessarily legislated. The recommendations regarding the interaction of ministerial officers and ministers and the Public Service is not necessarily something that would be legislated within the Public Service Act?

Mr McKay: That is right. The Public Service Act deals with the way in which the Public Service and the public sector are organised and the employment arrangements that facilitate the organisation of the sector in that way.

CHAIR: The ministerial officers themselves could be undertaking to fulfil the recommendations made regarding interaction of ministerial officers, the ministers and the Public Service within their own framework?

Mr McKay: I would imagine that is through the ministerial and other officers.

Mr TANTARI: Mr McKay, I am particularly interested in employment security and what this bill is covering in that area. I note that the bill is definitely strengthening employment security by extending application of relevant employment arrangements beyond the Public Service to the broader public sector. Can you advise the committee what is the importance of employment security to the integrity of the Public Service?

Mr McKay: The notion of the bill, if we go back to Bridgman's review, which reflects also in the recommendations of Professor Coaldrake in his review, is that having a responsive public sector—one that is responsive to the system of government and the delivery of services to the community—is best served by there being an environment where there is fairness, where there is inclusion, where security of employment underpins that and which is overseen by an effective governance framework. It is those four elements coming together to drive responsiveness in the Public Service. Both reviewers were looking at the notion of delivering better public services or building the best possible Public Service, so it is that notion of saying that within a Westminster system of government the default position should be employment security. Staff who are secure in their role are best placed to be able to give full and frank advice to government and they are best placed to be innovative in the way in which they work together to solve some of the big problems that communities are facing.

Mr TANTARI: Am I right in saying that the integrity of the Public Service can be undermined by, say, a change of government that would come in and remove a whole heap of temporary staff?

CHAIR: The other way to frame it is: is the principle of having a permanent appointment fundamental to the long-term integrity of the Public Service? Is that the core question?

Mr McKay: In terms of the longer term integrity of the Public Service, the notion that the Public Service is there to support governments, regardless of the positions of government and the policies that governments take, or changes of government—that notion that the Public Service is this enduring element of public administration and having a permanency there, recognised by the five-year terms of appointment for chief executives, reflected then down through permanency in lower positions, reflects the notion that you want to maintain that stability in the Public Service and that longevity in the Public Service so that that is the enduring element of public administration. As governments change policy or as governments change, you maintain that position.

Mr TANTARI: That maintains the integrity of the overall terminology of ‘frank and fearless advice’?

Mr McKay: Yes.

Mr STEVENS: Addressing the cultural matters introduced by this bill, the 2021 Working for Queensland survey indicates that 38 per cent of public servants do not think poor performance will be appropriately addressed in their workplace. Where in this bill are those concerns addressed?

Mr McKay: There are a couple of elements to that. Fundamental to that is the creation of a positive performance management system that is established within the act, acknowledging that managers have a responsibility to work closely with the staff that work for them, to identify what the performance expectations are and to support them to achieve those performance expectations. That is set out in the bill as being a fundamental requirement of all employees, to focus on their own performance, but there is also a specific requirement on managers to manage performance through that positive performance framework.

Mr STEVENS: As an example, we have heard some horror stories coming out of the Mackay Hospital at the moment. Were life-or-death matters included when this bill was being put together to address those issues? Are they addressed in this bill somewhere or in the change of culture?

CHAIR: Mr McKay, the question is: you are in the middle of the process of a COVID response, so very much life-or-death matters would have been part of your thinking at that stage?

Mr McKay: As I said in my opening statement, one of the hallmarks has been strong consultation across the sector, and there has been strong consultation with agencies like Queensland Health to understand the context. The Public Service Act could focus just on this sort of notion of a professional public servant, someone whose job it is to provide briefings to ministers and give frank and fearless advice to ministers—and that is certainly a very important function within government—but the bill seeks to cover essentially everyone in the sector, with obvious exclusions in clause 8 I think it is. On that basis, we needed to understand what this act would do in some of those environments and how the provisions would apply, whether they be in health and hospital services or in other service delivery entities that suddenly will be covered by this legislation. Those views were very much taken into account.

Mr CRANDON: The survey that the member for Mermaid Beach referred to also shows that about a third of people do not think recruitment and promotion decisions are fair. Clearly part 4 of the Public Service Act, which talks about the merit principle for appointments or secondments, has not worked. Why will clause 44 of this bill, ‘Principles underpinning recruitment selection’, be any better? What have you done there?

Mr McKay: There are some important changes in the merit issue. Again, I suppose one of the questions earlier was around the time it has taken to do this. There were a couple of fairly significant questions left unanswered in the Bridgman review, and one of those was about how you modernise the merit principle so that you pick up on the notion of merit and diversity and inclusion in the workplace. The bill has very much sought to do that and to acknowledge that.

The first thing we must do is look at the nature of the work, so the suitability of the person. We have changed the notion of the merit principle to be the person best suited to the position, reflecting that we want to look at the way in which that person could contribute to the work they are asked to perform but then the notion that you can go beyond that simple assessment and look at other factors such as the contribution that employee will make to the workplace, particularly building a culture of respect, inclusion, high performance and the like, and then the way in which the selection of that person will add to the nature of the workforce of the entity, so looking at the way in which you could

use your selection processes to build a more diverse workforce, one that is more representative of the community it serves and brings in a whole range of other perspectives. The act looks to put more onus on those decision-makers to consider a number of factors when choosing the person for the job.

Mr CRANDON: In the same survey, in answer to the question ‘my organisation is well managed’, a quarter of public servants who responded to the survey answered ‘no’. The positive performance management principle section of the existing act has been lifted and shifted to the new act pretty much unchanged. Can we therefore expect similar results from future surveys, and in your view would that be acceptable?

Mr McKay: The member is right that the positive performance management framework has essentially been lifted and shifted from the existing act, but there are other important elements about the way in which the public sector is managed that are reflected in other parts of the bill. In the work performance and personal conduct provisions in the bill we have strengthened the requirements on managers and the way in which managers operate within their workplace and placed new expectations on them. That reflects back on managing in a way that achieves the purposes of the act, which is around a responsive, high-performing Public Service, but also reflects that notion of the requirement that a chief executive now has—and that managers have—to support a culture of respect and inclusion. My hope would be that by continuing to use the positive performance management principles that remain in the legislation, along with those new expectations and requirements and the culture of respect and inclusion, we would start to see a shift in the way in which people perceive their treatment in the workplace.

Mr CRANDON: The Public Service Act 2008 has 217 pages; the Public Sector Bill 2022 has 340 pages. Given that almost half of public servants already say there is too much red tape in their workplace, what will be the additional regulatory burden on the average public servant from this bill? It seems to be getting more complex rather than less complex.

Mr McKay: The bill does expand the scope. There are new things in the scope of the bill that are not in the Public Service Act 2008. Ostensibly, those other provisions are around reframing the relationship with Aboriginal and Torres Strait Islander people. That is probably the only major addition to the scope of the act. In terms of the regulatory burden that would fall on an everyday public sector employee, I would not imagine that there is. With respect to managers and chief executives there are some additional burdens, and I have mentioned those and I have mentioned the importance of those around the expectations on managers. There is also a requirement for auditing, planning and reporting around equity, diversity, respect and inclusion. There is also a planning requirement around reframing the relationship for Public Service departments, health and hospital services and the Queensland Police Service. Other than that, there is no addition to the regulatory burden or requirements that are placed on entities. For example, there is no additional regulatory burden placed on a nurse in a public hospital as a result of this bill.

Mr CRANDON: There is a 50 per cent increase in the number of pages, so do you feel it is more with middle and senior management?

Mr McKay: In terms of the increase in the number of pages, the bill amends 200-something pieces of legislation. Most of those are to change reference from the Public Service to the public sector and mechanical issues such as that. That adds, if you like, fairly significantly to the page count. Should the bill be passed and those amendments are no longer part of the act, the act would reduce to about the size of the current Public Service Act 2008.

Mrs McMAHON: I want to have a look at reframing the relationship and the many pages, apparently, it takes up. It talks about a framework within the bill, but how is that operationalised? How will managers and senior leaders be expected to apply it? This is a legislative framework. What is it going to look like in practice?

Mr McKay: The bill requires all entities that are required by the act plus the Queensland Police Service to take active steps to support the reframing of the relationship. That will apply to any entity. Those reflect the nature of the statement of commitment on reframing the relationship—things such as acknowledging and honouring Aboriginal and Torres Strait Islander people as our first people; engaging in truth-telling; acknowledging the importance of self-determination and so on—or a subset of those entities which are then government departments, health and hospital services and the Queensland Police Service, and places a requirement for a plan to be undertaken on an annual basis. That plan would set out how it is that the entity would look at the way in which it would build cultural capability within the entity, the steps it would take to achieve those elements of the statement of commitment that I mentioned earlier. Our hope is that that is done with the staff of the entity and also with partners through Aboriginal and Torres Strait Islander stakeholder groups.

There are currently some reporting arrangements that do not have a legislative base. Reconciliation action plans, cultural capability plans and the like are administrative requirements that are placed on departments through the Public Service planning and reporting framework. We have been talking to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships and the Public Service Commission about how we could recast many of those requirements so that the focus became a 'reframing the relationship' plan, which might pick up many of the elements that are picked up in some of that current reporting. By inserting it into the bill, we believe it sends an important message of the significance of undertaking this planning and reporting process and making it a part of the way in which the department operates—that it must undertake this planning, that is has a legislative obligation. If you want a public servant to do something, put it in legislation and we will do it. That is the intention here.

Mrs McMAHON: Your language there was 'our hope is' and an acknowledgment that if you put something into legislation it should be done, but who is the arbiter of whether it is done and whether it is not just a plan that is written on a piece of paper and not actually necessarily followed in word or deed?

Mr McKay: The Public Sector Governance Council has a general responsibility for providing advice to the minister, in this case the Premier, about the administration of the act. That is an element of the administration of the act. It can initiate public sector reviews to understand what is happening in that space. It could either seek or require entities to provide copies of those plans for review, for example. Another element that we picked up from Peter Bridgman's recommendations is to allow for the appointment of a head of practice area for various things. Peter Bridgman mentioned a whole range of things around information technology and the like. We have added another to his list, which is that you could appoint a head of practice area for reframing the relationship. It is open to the governance council to make that appointment. It is not a requirement that they make it, but it is open to the governance council to do that.

CHAIR: The time allocated for this morning's briefing has now expired. I want to thank you for the information you have provided today. Thank you to our Hansard reporters and the broadcast staff for their assistance. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare the public briefing closed.

The committee adjourned at 11.14 am.