

PUBLIC SECTOR BILL 2022

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Submitter Comments:



21 October 2022

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email: egc@parliament.qld.gov.au

Dear Secretary

I wish to provide the following submission in relation to the *Public Sector Bill 2022* (the Bill).

Clause 221(1) of the Bill states, “A directive binds each person to whom the directive applies.” For its part, section 47(3) of the current *Public Service Act 2008* (PSA) provides, “A directive binds the persons to whom it applies”. As it is presently framed, clause 221(1) of the Bill basically reiterates section 47(3) of the PSA, it does not improve on the provision. Indeed, clause 221(1) is as unclear about to whom a directive is meant to apply as is section 47(3). For example, is a directive binding on employees or employing departments or both? Clause 221(1) needs to be framed more explicitly to provide that directives apply to, and should be observed by, not only employees, but also by their employing departments.

The reason and need for making this point became evident during 2012 when the government of the day decided that the jobs of thousands of temporary and permanent public servants should be cut.¹ I have direct knowledge of one case in which the employing department of a long-term, permanent public servant failed to observe the provisions of Public Service directive 06/12 (in particular, sections 6.1(c) (d) and 6.2(a) (b)).² Despite section 47(3) of the PSA, at no time did the employing department of this public servant seek to work “co-operatively”, “jointly”, or “proactively” with them to facilitate their placement into a suitable alternative permanent role as was required under the directive. What happened in fact, was that the department unilaterally decided that the public servant’s position was “no longer required” and designated them as an “employee requiring placement” without any prior cooperation or consultation with the public servant to identify options for a suitable alternative permanent role. When the public servant made enquiries to the departmental HR director about why the department had not followed the principles and requirements under the directive (in particular, why it had chosen to bypass section 6.2(a)³), the

¹ For example, see: <http://www.abc.net.au/news/2012-06-19/newman3a-202c000-too-many-public-servants/4079460>; <http://www.brisbanetimes.com.au/queensland/nicholls-stands-by-job-cut-rationale-20120820-24hg5.html>; and <http://www.brisbanetimes.com.au/federal-politics/why-some-public-servants-must-go-20120629-2177p.html>.

² For a copy of now superseded Public Service directive 06/12 see: <https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/employees-requiring-placement-directive-0612>

³ Section 6.2(a) of Public Service directive 06/12 states, “In the first instance, the department and the employee must proactively consider options to facilitate the immediate placement of the employee into a suitable alternative permanent role.”

This is followed by section 6.2(b) which states, “Where an employee is unable to be placed into an alternative permanent role following workplace change, the department must advise the employee in writing that the employee has been designated as an employee requiring placement and provide the employee with two weeks to decide between two courses of action:

(i) Accept a voluntary redundancy (in accordance with the directive relating to early retirement, redundancy and retrenchment); or
(ii) Pursue transfer (and/or re-deployment) opportunities.”

In accordance with the rules of statutory interpretation, section 6.2(a) must be understood as having application first (as is also indicated by the use of the commencing words in section 6.2(a), “In the first instance”) before section 6.2(b) can be put into effect.

public servant was essentially told that the department did not have to observe every aspect of the directive and that it could prioritise section 6.2(b) ahead/instead of section 6.2(a). The public servant pointed out how this understanding could be at odds with the rules of statutory interpretation but the departmental HR director was unmoved, citing the government's jobs cutting agenda as a rationale. In the end, the public servant felt they had no choice but to take a "voluntary" redundancy albeit with a great sense of compulsion (even duress) and reluctance (since they had not wanted to leave the service).⁴ The public servant also felt a keen sense of injustice at being denied due process as a result of the department's decision to ignore the procedural requirements of directive 06/12. The case of this one public servant was not an isolated instance with others across the public service at the time being similarly treated.⁵

The government at the time should have ensured that employing departments followed the requirements of Public Service directives like 06/12 to the letter, particularly given the social and economic ramifications/consequences of their extensive public service job cutting agenda.⁶ However, it seems the government was more focussed on, even to the point of being fixated with, "right-sizing" the public service than with ensuring individual employees received due process.⁷ For

⁴ Many public servants who lost their jobs at that time felt they had no choice but to take a "voluntary" redundancy package because they were not confident of, and so did not want to take the risk on, being redeployed (<https://www.smh.com.au/national/queensland/few-public-servants-gamble-on-redeployment-20120914-25xwg.html>). The public statements of key government figures such as then Premier Campbell Newman and then Treasurer Tim Nicholls, who both insisted that the size of the public service had to be reduced by a significant number of jobs, only served to heighten and reinforce this lack of confidence (e.g., see: <https://www.abc.net.au/news/2012-06-19/newman3a-202c000-too-many-public-servants/4079460>; <http://www.brisbanetimes.com.au/federal-politics/why-some-public-servants-must-go-20120629-2177p.html>; <https://www.brisbanetimes.com.au/national/queensland/nicholls-stands-by-job-cut-rationale-20120820-24hg5.html>; and <https://www.couriermail.com.au/news/queensland/can-dos-job-cuts-going-too-far-poll/news-story/b9cb6647ec4acbbd568ce65a682886e8>).

⁵ As reflected in submissions to the following: The Senate Education, Employment and Workplace Relations References Committee, Conditions of employment of state public sector employees, June 2013, p. 6, and various submissions to the inquiry such as 4, 18, 22/1, 24, 33, 35, 37, 38, 39

Report available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2010-13/publicsectoremployees/report/index;

Submissions available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2010-13/publicsectoremployees/submissions.

Also see The Senate Select Committee on Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs Report, March 2015, pp. 13, 17-18 and various submissions to the inquiry such as 3, 81 and 115

Report available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Certain_Aspects_of_Queensland_Government_Administration/Certain_Aspects_Qld_Admin/Report;

Submissions available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Certain_Aspects_of_Queensland_Government_Administration/Certain_Aspects_Qld_Admin/Submissions.

⁶ In 2012 the then government was forewarned that its public service reduction program and spending cuts generally "... will weigh on the Queensland economy over the coming financial years and beyond"

(<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2012/5412T1724.pdf>). Then in late 2012 Premier Campbell Newman acknowledged that his government's decision to cut public service jobs had detrimentally impacted the State's economy:

"... Premier Campbell Newman said some of his government's strategies, including public service job cuts, contributed to the reversing economy ... [he said] ... 'the fact we have had to cut back on infrastructure spending and also we are seeing some job cuts, has also probably contributed to that and it's quite reasonable for people to make that finding as well'."

(<http://www.couriermail.com.au/news/queensland/public-service-job-cuts-mining-slowdown-start-to-bite-as-queensland-economy-goes-in-to-reverse/story-e6freoof-1226530816026>). Subsequently, in mid-2014, then Deputy Premier Jeff Seeney conceded that the government's reform agenda was "too much, too quick" (<http://www.brisbanetimes.com.au/queensland/newman-government-pushed-too-hard-too-fast-jeff-seeney-20140630-zsqxi.html>). The impact of the government's cuts to staff, programs and services was felt right across the board, including by small business (e.g., see: <http://www.abc.net.au/local/stories/2012/10/24/3617461.htm>; and <http://www.brisbanetimes.com.au/opinion/the-unintended-consequences-of-job-cuts-20120815-248hn.html>).

⁷ Even the LNP's own post-2015 election review found: "It is a simple fact that no government can function without the co-operation of the public service. The decision to sack 14,000 public servants and the manner in which the issue was handled poisoned relations with the people who were needed to embrace and implement the government's reform agenda and surprised and shocked voters. It was contrary with the promises or assurances given prior to the 2012 election. Just as the public service and unease in the voting population helped destroy the Goss government, history was about to repeat itself." (<https://lnp.org.au/wp-content/uploads/2015/05/Borbidge-Sheldon-Election-Review-.pdf>)

their part employing departments, being fully aware of the government's public service reduction agenda, acted accordingly.⁸

I note the current government has given a firm commitment to the principle that public servants should be treated professionally and with respect and that their employment security should be a priority.⁹ However, as history shows, there is no certainty that a future government would necessarily have the same philosophy or take the same approach.

As section 47(3) of the PSA could be ignored by an employing department back in 2012 when implementing Public Service directive 06/12, there is no guarantee that clause 221(1) of the Bill – as it is currently worded and if it was adopted as such in law – could not be similarly disregarded by a future employing department intent on being “responsive” to the policy agenda of the government of the day.

Therefore, before steps are taken to enact it as law, clause 221(1) of the Bill needs to be amended to:

- ensure employing departments comply with the requirements of directives in full;
- prevent employing departments from picking and choosing those aspects of directives which suit their purposes (particularly if doing so results in detriment/disadvantage to an employee); and
- prevent employing departments from engaging in tokenistic/selective compliance with directives or implementing only those parts of directives they consider necessary to be “responsive” to the particular agenda of the government of the day.

I trust this submission will be of assistance to the committee.

Yours faithfully

A solid black rectangular box redacting the signature of Don Willis.

Don Willis

⁸ For example, see the **attachment** for a copy of a *Courier Mail* news article from 12 January 2013, “Documents reveal how public service chiefs panicked as axe fell”

⁹ For example, the Premier Annastacia Palaszczuk has stated: “My government understands the importance of fairness, inclusion and security in public sector employment to ensure employees are supported in delivering frontline services to the community” (Queensland Parliamentary Hansard, Introduction Speech, Public Sector Bill 2022, 14 October 2022)

ATTACHMENT

Documents reveal how public service chiefs panicked as axe fell

by: John McCarthy

From:

HYPERLINK "<http://www.couriermail.com.au>"

The Courier-Mail

January 12, 2013 12:00PM

HYPERLINK "<http://www.couriermail.com.au/news/documents-reveal-how-public-service-chiefs-panicked-as-axe-fell/comments-e6freon6-1226552168056>"

97 comments

TOP public servants were warned there would almost certainly be instances of physical harm among staff because of the Newman Government's directive to cut jobs.

Documents obtained under Right to Information have exposed the inner workings of a department **scrambling to meet job cut targets** as it tried to continue delivering services to the community.

Internal briefing papers and email trails from the Department of Agriculture, Fisheries and Forestry obtained by The Courier-Mail show the **panic** playing out inside the department as the scale of job cuts emerged mid-last year.

They show managers frantically trying to meet **quotas**, as they warned they were already operating on their "bare bones".

Worker unrest was not tolerated, with plans to shield the minister from whinging staff and a directive they would be reported to human resources.

This was despite a risk assessment conducted for the department finding it was almost certain there would be instances of "physical harm to self or others" among stressed staff, theft or destruction of property and leaks to the media.

In the middle of the drive to strip 20 per cent of costs out of the department, **Treasury was accusing the bosses of not cutting hard enough**.

The emails, which detail the steps being taken to haul in \$20 million in costs, were written during the period leading up to last year's Budget.

Minister John McVeigh was described in the documents as being on the warpath about corporate job cuts versus frontline services.

The documents show that while the Newman Government was telling the public that frontline services would not be impacted, the department's director-general Jack Noye was asking for lists of frontline job cuts.

DAFF bosses considered an apparent double counting strategy as they **panicked over their job cuts quota**. An email chain suggests creative ways of counting staff under the job cuts quota were considered.

"Everyone that we take from the regional list and add to the (head office) list counts as two towards the extra 20 (jobs to be cut)", senior department executive Peter McKay wrote in an email to colleagues on July 30.

"Not trying to be too clever, but it might be worth talking about," he said in another email. The night before, his boss Mr Noye had written to colleagues that Monday would be "a big day".

"We have to finalise the numbers and get the "narrative" right for the Minister tomorrow," Mr Noye wrote.

When quizzed on the issue of double counting later by The Courier-Mail, Mr Noye rejected the idea.

"A number of positions that were to be abolished had initially been identified as regional

positions when in fact they were head office roles being undertaken in other Brisbane and regional office locations. The process suggested in Mr McKay's email was about correctly identifying positions," he said.

While staff worried about the future, the bosses considered whether they needed to bother consulting with the union over the job cuts.

"My understanding is that the requirement to consult is about the impact on jobs of a decision to restructure and not the decision itself. Therefore until a decision is made there is no requirement to consult the union," Mr McKay wrote at the time.

The emails show that the funding cuts to Biosecurity Queensland were so severe that its then managing director, Kareena Arthy, complained "we are feeling it operationally" and were beyond the agency's ability to absorb.

She said only a few people were left to work in the fire ant program, and in separate emails said the cuts proposed would cause "considerable pain" and that the agency was already down to its "bare bones".

Despite the comments, Mr Noye told The Courier-Mail Biosecurity Queensland was adequately funded and was a critical element of the Government's focus on agriculture.

In another email, communications head Louise Morland indicated how the stress was affecting public servants.

"We have instances of staff contacting the minister's office to complain about the savings strategy. While we understand the stress on everyone, this isn't helping matters," she said.

"The minister's office will be asked to pass on the names of staff who contact them."