

PUBLIC SECTOR BILL 2022

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Queensland Law

Society



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

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

Dear Committee Secretary

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Thank you for the opportunity to provide a submission to the Economics and Governance Committee's Inquiry into the Public Sector Bill 2022 (**Bill**). The Queensland Law Society (**Society**) appreciates the opportunity to provide submissions in response to this important inquiry.

We note the Bill was introduced on 14 October 2022 with submissions due on 28 October 2022. As there has been only a brief opportunity to review the Bill and due to the limited availability of our volunteer committee members, an in-depth analysis has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified.

With respect to the proposed amendments, we limit our comments to clauses 8 and 254 of the Bill.

The Queensland Human Rights Commission is an independent, statutory body, which provides expert dispute resolution service for discrimination, human rights, sexual harassment, and vilification complaints.¹ While the Queensland Human Rights Commission does not have the power of a tribunal to make or enforce rulings, it does have a role to play in the review of

¹ Queensland Human Rights Commission, *About us* (June 2019) Available at: <https://www.qhrc.qld.gov.au/about-us>.

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administrative decisions of public entities and compliance with the *Human Rights Act 2019*. This includes the statutory role of reviewing public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights.² Such a review has potentially serious consequences as it is unlawful for a public entity to act or make a decision in a way that is not compatible with human rights.³

We note the Queensland Human Rights Commission is a public service entity for the purposes of section 9(b) and is therefore a public sector entity for the purposes of the Bill, by virtue of section 8(1)(a).

Clause 8(2) continues by providing a list of entities that are not considered public sector entities. This includes a court of the State.⁴

Proposed Chapter 6, part 8 of the Bill outlines public sector reviews. Clause 254(1) states that the Minister or the council (each a referring entity) may ask a reviewing entity to conduct a public sector review. Clause 253 defines a public sector review as:

- (a) a review about any matter or aspect of public administration, or of public sector management, relating to the main purpose of this Act; and
- (b) includes a review about the effectiveness, efficiency, functions or activities of a public sector entity.

Clause 254(2) continues by stating that a referring entity cannot ask for a public sector review about any of the following entities:

- the Crime and Corruption Commission;
- the Office of the Information Commissioner;
- the Queensland Integrity Commissioner
- the Office of the Ombudsman
- the audit office;
- another entity prescribed by regulation; and,
- an individual.

We note that clause 254 does not include the Queensland Human Rights Commission as one of the core integrity bodies exempt from review.

The Society is concerned about the inclusion of the activities of the Queensland Human Rights Commission in Chapter 6, part 8, due to the broad scope of the public sector review as defined in clause 253(b), which includes a review about the effectiveness, efficiency, functions or

² Ibid s 61(c).

³ *Human Rights Act 2019* s 58.

⁴ Public Sector Bill 2022, clause 8(2)(g).

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activities of a public sector entity, the Society is concerned about how this provision might affect the ability of the Queensland Human Rights Commission to perform its functions.

In our view, the quasi-judicial and integrity features of the Queensland Human Rights Commission should exclude the Commission from the scope public sector reviews under Chapter 6, Part 8.

Further, it is our understanding that the referring entities for clause 254 of the Bill remain subject to the *Human Rights Act 2019*. This means the Minister or council will continue to be entities that the Queensland Human Rights Commission can review in relation to the compatibility of their decision-making and practices with human rights. Should the Queensland Human Rights Commission not be omitted from the review mechanism in clause 254, the anomalous and problematic situation can arise where concurrently:

- a referring entity is the subject of a human rights review by the Queensland Human Rights Commission, and
- the Queensland Human Rights Commission is subject of public sector review at the behest of the subject referring entity.

In light of the above, it is our recommendation that the Queensland Human Rights Commission be included in the list of non-public sector entities in clause 8(2)(g) and removed from the list of public service entities in Schedule 1. We understand that oversight of the Queensland Human Rights Commission would remain by existing integrity bodies presently omitted from operation of clause 254.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) [REDACTED].

Yours faithfully



Kara Thomson
President