

PUBLIC SECTOR BILL 2022

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Submission to the Economics and Governance Committee of the Queensland Legislative Assembly

Public Sector Bill 2022





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Introduction

The Queensland Council of Unions (**QCU**) is the peak trade union organisation in Queensland with 26 affiliated unions representing the political, social, and economic interests of more than 350,000 Queensland workers, many thousands of whom work across the Queensland public service - whether in blue-collar or white-collar classifications of work.

The QCU welcomes the opportunity to make these brief submissions to the Economics and Governance Committee of the Queensland Legislative Assembly on the *Public Sector Bill 2022 (the Bill)*. Like its affiliated unions, the QCU supports the Bill including for its emphasis on diversity and inclusion in the public service and, further, the stated objectives of reframing the relationship with First Nations people from within the public service.

The QCU was part of the Joint Advisory Committee (**JAC**), established to obtain feedback on the Bill's development. Affiliates of the QCU, Together Queensland (**TQ**), the Queensland Teachers' Union (**QTU**), the United Firefighters' Union Queensland (**UFUQ**), the Queensland Nurses & Midwives Union (**QNMU**), and the United Workers Union (**UWU**) were also members of the JAC and, together with the QCU, provided extensive feedback on the Bill at that stage, including but not limited to:

- Positively-framed and action-based responsibilities on the part of public service chief executives to promote equity, diversity, respect and inclusion in the public sector, including in relation to pay equity;
- Equity and diversity considerations being established for recruitment and selection provisions under the Bill;
- Appropriately balancing work performance and matters that arise out of personal conduct principles applicable to public sector employees; and
- Prioritising secure employment and maximising permanent employment for public servants over casual employment and establishing processes for conversion for casual employees to permanent employment.

The QCU has had the benefit of reading the submissions of its affiliated unions and supports those submissions. The following submissions pertain to matters that remain outstanding following consultations.

LGBTIQ+ workers

With regard to Chapter 2 - Equity, diversity, respect and inclusion, the QCU welcomes the purposes of the Bill to:

- (a) develop a diverse workforce that represents and reflects the diverse views, experiences and backgrounds of the people of Queensland; and
- (b) actively progress equity and diversity in employment matters for diversity target groups, including conducting an annual equity and diversity audit and actively progressing gender pay equity; and
- (c) allow for public sector entities to demonstrate there are equal conditions of employment and equality in access to employment opportunities and leadership roles; and
- (d) foster a respectful and inclusive workplace culture in which all employees feel safe, valued, accepted and supported at work and can participate equally; and
- (e) create a workplace free from unlawful discrimination.

To these ends, clause 27 of the Bill provides that the chief executive of a public sector entity must take reasonable action to promote, support and progress equity and diversity in the entity in relation to employment matters; ensure people who are members of 1 or more diversity target groups are able to pursue careers, and compete for recruitment, selection and promotion opportunities, in the entity; and, eliminate unlawful discrimination in the entity in relation to employment matters.

For its part, clause 28 provides that the chief executive of a prescribed entity must have an equity and diversity plan to establish objectives, strategies and targets for the employment of people who are members of 1 or more diversity target groups, as well as to publish and regularly review the plan.

However, whilst subclause 28(5) specifically provides that an equity and diversity plan of a prescribed entity may also address matters about a group of employees that is not a diversity group and makes mention in a legislative note of “people with diverse sexual orientations, gender identities or intersex variations”, it is unclear why the LGBTIQ+ community is not a fifth target group under clause 25.

In that vein, the QCU refers the Committee to the submissions of the QTU to the JAC on the Bill of August 2022, which were informed by feedback from the QTU Rainbow Action Group, which stands of evidence of disadvantage and underrepresentation of the LGBTIQ+ community in the public service.

The QCU submits that inclusion of the LGBTIQ+ community as an equity and diversity target group will only enhance public service delivery as well as acknowledge extra hurdles faced by that community in employment, consistently with the considerations outlined in the Bridgman Review. The QCU notes that further work may be required to that end.

Recommendations:

That with regard to the LGBTIQ+ community:

- There be a review and analysis to be undertaken of all existing agency data with a commitment to instigate additional surveys across the sector after further consultation with unions and stakeholders;
- The Government commits to engaging with agencies to examine their existing employment and industrial arrangements in advance of the positive duty being introduced into the *Anti-Discrimination Act* in 2023;
- A number of pilot programs be established within agencies to implement an LGBTIQ+ diversity policy; and
- An oversight committee be established with key public sector unions to oversee and drive key changes.

Criminal history and serious disciplinary action

Under clause 50 of the Bill, a “particular duty” to be performed by a public sector entity is a “relevant duty” if the chief executive of the entity decides that it may be necessary to have regard to the criminal history of a person engaged to perform the duty to ensure the person is suitable to perform the duty. Further, clause 52 provides that a chief executive of a public sector entity may decide to obtain a person’s criminal history where the chief executive engages, or proposes to engage, a person to perform a relevant duty.

Clause 55 then provides a positive obligation on the chief executive to consider the person’s criminal history in making an assessment about the person’s suitability for engagement (or a change to a person’s duties) to perform or include a relevant duty.

Similarly, clause 72 provides for a positive obligation on the chief executive to consider the particulars of any serious disciplinary action taken against the person in making an assessment about their suitability for employment in the public sector entity.

Whilst the QCU accepts that in most circumstances, it would be appropriate for a chief executive to consider a person’s suitability to perform a relevant duty in view of their criminal history and any previous disciplinary action, it is submitted that where a chief executive finds a person to be unsuitable on either of these bases, that there also be a positive duty on the chief executive to advise the person concerned of this and to offer them an opportunity to provide any further information which may also be taken into account.

This would be consistent with the principles of transparency and procedural fairness otherwise espoused by the Bill and help to ensure suitable candidates for relevant duties are not arbitrarily overlooked.

Recommendation: that Part 5 of Chapter 3 of the Bill – Suitability for Employment – be reviewed by the Committee in view of establishing any further transparency and procedural fairness measures to ensure that workers are not unfairly excluded from public sector employment, and to assist public sector entities in having the best information available when making decisions about recruitment and placement. This would be consistent with aspects of the Bridgman Review that place a greater emphasis on ensuring suitability over correction and punishment.

Reviews of non-permanent employment

Under Part 9 of Chapter 3 of the Bill, Division 1 provides for specific review mechanisms that pertain to circumstances where a person is employed for a period in a public sector entity on a non-permanent, including where the engagement is on a purportedly casual basis but where engagement has been “regular and systematic” (cl. 111).

Under clause 113 of the Bill, a public sector employee who has been continuously employed on a non-permanent basis in the same public sector entity for at least one year, the employee may ask the chief executive to decide whether to continue the employee’s employment on a non-permanent basis or convert the employee’s employment to a permanent basis.

Clause 114 provides that a chief executive must then decide on the employee’s request within 28 days after receiving the request (subclause 114(2)). For its part, subclause 114(3) provides that the chief executive may decide to offer to convert the employee’s employment only if the chief executive considers that there is a continuing need for someone to be employed in the employee’s role or a role that is substantially similar, the employee is suitable to perform the role, and any requirements of an industrial instrument are complied with. Under subclause 114(4), if these matters are satisfied, the chief executive must decide to offer to convert the employee’s employment to a permanent basis unless it is not viable or appropriate to do so having regard to the genuine operational requirements of the public sector entity.

Notwithstanding, subclause 114(7) provides that where the chief executive does not make a decision within 28 days, the chief executive is taken to have decided not to offer to convert the employee’s employment to a permanent basis and to continue the employment on a non-permanent basis.

Whilst the QCU supports the requirement of chief executives to make decisions about converting employees to permanent employment where they have been engaged on a non-permanent basis for the minimum threshold period for review, where no decision is made, and the requirements under subclause 114(3) are in any event satisfied, the deemed decision under subclause 114(7) should be that of an offer to convert to permanent employment. Should the employee's employment no longer then be viable, having regard to the genuine operational requirements of the public sector entity, the employee should then have the same rights as other workers with regard to termination, change and redundancy and their full period of service be duly recognised.

Recommendation: that subclause 114(7) be amended to provide that if the employee's chief executive does not make the decision within the timeframe set by subclause 114(2), then the chief executive is taken to have decided to offer to convert the employee's employment to a permanent basis.

Review of status after 2 years of continuous employment

With regard to clause 115 of the Bill, we QCU notes that a chief executive must review the status of a non-permanently employed public sector employee after 2 years of continuous employment. The QCU submits that this is too long a timeframe for the purpose of any review and recommends that this timeframe be shortened to twelve months, given this is sufficient to establish that the employment may be considered to be ongoing.

Recommendation: that clause 115 of the Bill be amended such that the chief executive must review the employment status of non-permanently employed public service employees after 1 year of continuous employment.

QCU

28/10/22



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

Friday, 4 November 2022

Mr Linus Power MP,
Chair, Economics and Governance Committee
Parliament House George Street
BRISBANE QLD 4000

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

Dear Mr Power,

Public Sector Bill 2022 – Public sector principles – Work Health and Safety

I refer you to the submissions of the Queensland Council of Unions (QCU) of 28 October 2022 on the Public Sector Bill 2022 (**the Bill**) and write to raise a further matter for the attention of the Committee.

I note that section 39 of the Bill provides for Public Sector Principles “in recognition that public sector entities are established for a public or State purpose, and of the trust the people of Queensland place in public sector entities”.

For their parts, subsections (2) and (3) provide for the various principles that should guide both public sector management and recruitment, respectively.

Whilst the QCU supports the proposed section 39 generally, our firm view is that it does not adequately deal with the public policy imperative of maximising the work health and safety of public sector employees in a way that is consistent with public sector best practice.

Accordingly, the QCU recommends that subsections (2) and (3) be amended to include a further principle of maximising the work health and safety of public sector employees within their respective public sector entity by way of including new paragraphs (g) and (h) under subsections 39(2) and (3) respectively.

To that end the QCU proposes the following amendments:

39 Public sector principles

[...]

(2) *The management of the public sector should be guided by the following principles—*

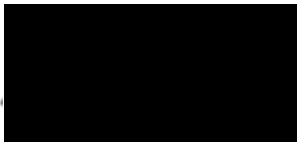
- (a) achieving a spirit of service to the community;*
- (b) ensuring accountability, integrity and support of the public interest;*
- (c) ensuring independence, transparency and impartiality in giving advice and making decisions;*
- (d) achieving responsiveness, innovation and creativity;*
- (e) promoting collaboration between public sector entities and other entities in providing services to the community;*
- (f) achieving continuous organisational improvement-*
- (g) achieving work health and safety best practice of public sector entities.*

(3) *The employment of public sector employees should be guided by the following principles—*

- (a) ensuring employment on a permanent basis is the default basis of employment, other than for non-industrial instrument employees;*
- (b) supporting equity, diversity, respect and inclusion at work;*
- (c) ensuring the taking of measures aimed at implementing and promoting pay equity;*
- (d) ensuring effectiveness and efficiency while maintaining a focus on the future;*
- (e) ensuring fairness and impartiality in making decisions;*
- (f) remunerating employees at rates appropriate to their responsibilities;*
- (g) promoting equitable and flexible working environments-*
- (h) achieving work health and safety best practice for public sector employees.*

I trust the Committee will find this to be a worthwhile amendment to the Bill.

Yours faithfully,



Michael Clifford

GENERAL SECRETARY